VIKAS

INDUSTRIAL RELATIONS AND LABOUR LAWS

SIXTH REVISED EDITION

S C Srivastava

PART II TRADE UNIONS AND LAW

Trade Unions of Workers and Employers' Organizations: A Contextual and Historical Analysis

CHAPTER 4

I. NEED TO FORM TRADE UNIONS

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

II. RIGHT TO FORM TRADE UNIONS

Article 19(1)(c) of the Indian Constitution guarantees that all citizens shall have a right to form associations or unions. This right includes not only the right to form trade unions but also the right to continue as members of the trade unions[1]. It also includes the right to refuse to be a member of an association, the right to not be compelled to join an association and the right to not be compelled to withdraw from an association.[2] However, this right is not absolute. Clause 4 of Article 19 empowers the State to make any law in the interest of the sovereignty and integrity of India or public order or 'morality' and place reasonable restrictions on the exercise of the above right.

III. HISTORY OF THE TRADE UNION MOVEMENT IN INDIA

The labour movement in India is over 15 decades old, and it may be traced from 1860s.[3] Early years of the movement were generally led by philanthropists and social reformers,

---

[1] *Coimbatore Periyar Districts Dravida, Panjalal Thozhilalar Munnetra Sangam* v. *National Textile Corporation Limited*, 2011 LLR 1076 (HC Madras).

[2] See *All India Bank Employees' Association* v. *National Industrial Tribunal*, AIR 1962 SC 171: *Damyanti* v. *Union of India*, AIR 1971 SC 966.

[3] N M Joshi, *The Trade Union Movement in India* (1927), 8 and R F Rustomji, *The Law of Industrial Disputes in India* (Law Publishing House, 1961), XCIV: *(contd.)*

who organized workers and protected them against inhuman working conditions. The early years of labour movement were often full of difficulties. Strike committees emerged which called themselves trade unions and demanded the privileges of trade unions without any means of discharging responsibilities thereof.[4] The position of trade unions has considerably improved since then. The number of trade unions have gone up and their membership and funds have increased. The development during the span of about 151 years may be considered broadly under the following six periods: (*i*) pre–1918; (*ii*) 1918–24; (*iii*) 1925–34; (*iv*) 1935–38; (*v*) 1939–46; and (*vi*) 1947 and since.

The principal purpose of this section is to trace the origin and development of trade union movement in India. In this process, an effort will be made to state the characteristics of labour movement and the factors which were responsible for the growth of trade union movement during the specified period.

A. Pre-1918 Period

The earliest sign of labour agitation in India was a movement in Bengal in 1860 led by Dinbandhu Mitra, a dramatist and social reformer of Bengal followed by some journalists to protest against the hardships of the cultivators and also the plantation workers. The government thereupon appointed an Indigo Commission. The report of the commission reflected upon the gross cruelties perpetrated by foreign planters with the aid and under the protection of laws framed by the British Government specially for this purpose.[5] Thereafter, the system of indigo cultivation was abolished due to discovery of synthetic process.

In 1875[6] Sarobji Shapuri in Bombay protested against poor working conditions of workers at that time.[7] The deplorable conditions of workers were brought to the notice of the Secretary of State for India. The first Factory Commission was, therefore, appointed in 1875 and as a result, the Factories Act, 1881 was enacted. This Act was, however, inadequate to meet the evil of child labour. Moreover, no provision was made to regulate the working conditions of women workers. This gave rise to great disappointment among

Most of the writers on the subject trace the history of labour movement in India since 1875 or even later. See for instance, S D Punekar, *Trade Unionism in India*, Ahmad Mukhtar, *Trade Unionism and Labour Disputes in India*, Longmans Green and Co. Ltd (1935); Shiva Rao, *State in Relation to Labour in India*. Chapter VI; R K Das. *The Labour Movement in India*, Berlin de Gruyter (1923) 65; A S Mathur; and J S Mathur; *Trade Union Movement in India*, Allahabad, Chaitanya Publishing House, (1962) 12, 14; V V Giri, *Labour Problems in Indian Industry*, Bombay, Asia Publishing House (1959), 1; C A Myres, *Industrial Relations in India*, Bombay, Asia Publishing House (1958) 100; C B Kumar. *The Development of Industrial Relations in India*, Bombay, Orient Longman, (1961), 87; N F Duftry, *Industrial Relations in India*, Bombay, Allied Publishers Private Ltd, (1964); T N Bhagoliwal, *Economics of Labour and Social Welfare*, Agra, Sahitya Bhawan (1966), Chapter VI; Indian Law Institute, *Labour Law and Labour Relations*, Rev S C Srivastava, New Delhi, (2007).

4 The period between 1875–1917 has been described as the social welfare period of early trade union movement by Dr S D Punekar. Dr R K Das has divided the period of 1875–1917 into two sections. The first period between 1875–1891, according to him, was devoted mainly to the regulation of women and child labour in Indian factories. In the second period (1891–1917), very little was done except placing memoranda before commissions and committees.

5 R F Rustomji, *op. cit.*, XCLIV.

6 The deplorable condition of workers were brought to the notice of the Secretary of State for India and the first Factory Commission was set up in 1875.

7 V V Giri, *Labour Problems in Indian Industry*, Bombay, Asia Publishing House, (1959), 1.

workers. Thereupon, another Factory Commission was appointed in 1884. In the same year, Mr N M Lokhande organized the conference of Bombay factory workers and drew up a memorandum signed by 5,300 workers demanding a complete day of rest on Sunday, half-an-hour recess, working hours between 6.30 a.m. to sunset, the payment of wages not later than 15th of the month, and compensation for injuries.[8] In 1889, in Bombay, workers of spinning and weaving mills demanded Sunday as holiday, regularity in the payment of wages and adequate compensation in case of accident.[9]

Inspite of these agitations, no material change could be brought and, therefore, another representation was made to the government in 1890. The stand of 1884 was also reiterated and the petition this time was signed by 17,000 workers. The same year, the Bombay Mill Hands Association, the first labour association was organized[10] with Mr Lokhande as its President. It started a labour journal (*Dinbandhu*) in order to propagate effective views of their own. In the very same year, Bombay Mill Hands Association placed its demand before the Factory Labour Commission (1890), with Mr Bangalee, the great philanthropist as a member. The Commission gave due consideration to the demands of labour.

Several labour associations were formed after 1890. For instance, the Amalgamated Society of Railway Servants in India and Burma was formed in April 1897 and registered under the Indian Companies Act,[11] the Printers Union, Calcutta was formed in 1905, the Bombay Postal Union was formed in 1907, the Kamgar Hityardhak Sabha and Service League were formed in 1910.

The post-1890 period was also important for the reason that several strikes occurred during this period. Instances, may be cited of two strikes which occurred in Bombay in 1894. The first big strike of mill operators of Ahmedabad occurred in the first week of February, 1895. The Ahmedabad Mill Owners Association decided to substitute a fortnightly wage system for a weekly one which was in force ever since 1896. This forced over 8,000 weavers to leave work. However, the strike was unsuccessful.[12]

There were also strikes in jute industries in Calcutta in 1896.[13] In 1897, after a plague epidemic, the mill workers in Bombay went on strike for payment of daily wages instead of monthly payment of wages.[14]

In 1903, the employees of press and machine section of Madras Government went on strike against overtime work without payment. The strike prolonged for six months and after great hardship and starvation, workers returned to work. Two years later in 1905, the workers of the Government of India Press, Calcutta, launched a strike over the question of (*i*) non-payment for Sunday and gazetted holidays; (*ii*) imposition of irregular fines; (*iii*) low rate of overtime pay; and (*iv*) the refusal of authorities to grant leave on medical

8 R K Das, *The Labour Movement in India*, Berline de Gruyer (1923) 9; Ahmad Mukhtar, *Trade Unionism and Labour Disputes in India*, Bombay, Longmans Green and Co. Ltd, (1935), 11; C B Kumar, *op. cit.*, 87.

9 Ahmad Mukhtar, *op. cit.* 11.

10 The Bombay Mill Hands Association cannot, however, be classified as a genuine trade union. The workers did not have any effective organization of their own. The Bombay Mill Hands Association has no existence as an organized body, having no roll of membership, no funds and no rules. (See Report on the Working of Factories Act in Bombay, 1892).

11 Ahmad Mukhtar, *op. cit.*, 13.

12 Annual Provincial Factory Report for Bombay for the year 1895, 5–6.

13 G Ramanujam, *Story of Indian Labour*.

14 Gopal Ghosh, *Indian Trade Union Movement*.

certificate.[15] The strike continued for over a month. The workers returned on fulfilment of certain demands. In December 1907, the workers of Eastern Railway Workshop at Samastipur went on strike on the issue of increment of wages. They went back to work after six days when they were granted extra allowance owing to famine conditions prevailing at that time in the region. In the same year, the Bombay Postal Union and Indian Telegraph Association called a strike. In 1908, workers of textile operators in Bombay struck work in sympathy with Shri Bal Gangadhar Tilak who was imprisoned for sedition. The workers in Bombay went on strike in 1910 demanding reduction in working hours. As a result of this agitation, the Government of India set up a commission to enquire into the desirability of reducing the working hours. On the basis of the recommendation, the working hours were reduced to 12 hours a day. Similar strikes continued from year to year particularly in Bengal and Bombay demanding an increase in wages.

Certain broad features of the labour movement during the period of 1860–1917 may be briefly noted:

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

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

> The Bombay Mill Hands have no organized trade unions. It should be explained that although Mr N M Lokhande, who served on the last Factory Commission, described himself as President of the Bombay Mill Hands Association, that Association has no existence as an organized body, having no roll of membership, no funds and no rules. I understand that Mr Lakhonde simply acts as volunteer adviser to any mill hand who may come to him.[16]

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

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

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

Fifth, there was absence of strike as a means of getting grievances redressed. The association of workers worked with the cooperation of management and government officials and some of them considered it their duty 'to avoid strikes upon the part of its members by every possible and lawful means'.[17]

Sixth, strike during this period was considered to be a problem of law and order, instances are not lacking where police acted upon strikers by using force and framed false charges against them.[18]

[15] Ahmad Mukhtar, *op. cit.*, 4.
[16] Report on the Working of Factories Act at Bombay, (1892), 15.
[17] S D Punekar, *op. cit.*, 59.
[18] See AITUC Report of the First Session held at Bombay, (1920), 12.

B. 1918–1924

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

The growth of trade unions was accompanied by a large number of strikes. The deteriorating economic conditions of workers resulted in strikes. The wages of workers were increased but it could not keep pace with the soaring prices of commodities. Further, there was a shortage of labour in some industries due to influenza epidemic.[19]

Several factors were responsible for formation and growth of trade unions:

First, the economic conditions of workers played an important role in the formation of trade unions. The demand for Indian goods increased enormously for two reasons: (*i*) The shortage of shipping facilities led to restricted imports of several commodities for which India was dependent on foreign countries; (*ii*) There was great demand for Indian goods from allies and neutral countries. For these reasons the prices of Indian commodities, *viz.*, salt, cotton, cloth, kerosene, rose high. Naturally, the cost of living steadily increased. The employer earned huge profits. The wages of workers were increased but not in pace with the soaring prices of commodities. This resulted in further deterioration of conditions of workers. Further, there was shortage of labour in some industrial centres due to epidemic of influenza.[20] These reasons led to the formation of trade unions to improve their bargaining positions.

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

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

Fourth, was the worldwide unrest in the post-war period. The war awakened in the minds of industrial workers.

Fifth, was the setting up of the International Labour Organization in 1919 of which India was the founder member. The constitution of ILO required one representative from the governments of member states. The government, without consulting the unions, appointed Shri N M Joshi as its representative. This propelled the workers to organize. As a result, AITUC was formed in 1920. This gave an opportunity to send members for ILO conferences and also brought a change in government attitude while dealing with labour problems.

C. 1925–1934

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

[19] Shiv Rao, *op. cit.*
[20] Shiv Rao, *The Industrial Workers in India*, 19.

This period also showed remarkable decrease in the intensity of industrial conflict. At least two factors were responsible for it. *First*, the Trade Disputes Act was passed in 1929 prohibiting strikes and lockouts. *Second*, the failure of strikes and lockouts resulted in industrial strife.

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

D. 1935–1938

During this period, unity was forged among trade unions. This led to a revival of trade union activity. In 1935, the All India Red Trade Union Congress merged itself with the AITUC. Again, in 1938, an agreement was arrived at between All India National Trade Union Federation and AITUC and consequently, NTUC affiliated itself with AITUC.[21]

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

The year 1938 saw the most important state enactment, *viz.*, the Bombay Industrial Disputes Act, 1938. The significant features of the Act were: '(*a*) compulsory recognition of unions by the employer; (*b*) giving the right to workers to get their case represented either through a representative union or where no representative union in the industry/centre/unit existed, through elected representatives of workers or through the government labour officer; (*c*) certification of standing orders which would define with sufficient precision the conditions of employment and make them known to workmen; (*d*) the setting up of an industrial court, with original as well us appellate jurisdiction to which parties could go for arbitration in case their attempts to settle matters between themselves or through conciliation did not bear fruit; and (*e*) prohibition of strikes and lockouts under certain conditions.'[22] The scope of the Act was limited to certain industries in the province.

E. 1939–1946

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

[21] For instance see National Federation of AITUC.
[22] See Government of India, *Report of the National Commission on Labour*, New Delhi. (1969), 319.

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

In 1946, another enactment of great significance in labour relations, namely, the Industrial Employment (Standing Orders) Act, 1946 was passed with a view to bring uniformity in the condition of employment of workmen in industrial establishments and thereby to minimize industrial conflicts.[23] The Act makes it compulsory for employers engaging 100 or more workmen 'to define with sufficient precision the conditions of employment' and to make those conditions known to workmen.[24]

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

F. 1947 and Since

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

In 1948, the Socialist Party formed an organization known as Hind Mazdoor Sabha. The aims and objects of the Sabha were to: (*i*) promote the economic, political, social and cultural interest of the Indian working class; (*ii*) guide and coordinate the activities of affiliated organizations and assist them in their work; (*iii*) watch, safeguard and promote the interests, rights and privileges of workers in all matters relating to their employment; (*iv*) promote the formation of federation of unions from the same industry or occupation; (*v*) secure and maintain for the workers freedom of association, freedom of speech, freedom of assembly, freedom of press, right of work or maintenance; right of social security and right to strike; (*vi*) organize and promote the establishment of a democratic socialist society in India; (*vii*) promote the formation of cooperative societies and to foster workers' education; (*viii*) cooperate with other organizations in the country and outside having similar aims and objectives'.[25]

A year later in 1949, another organization, namely, the United Trade Union Congress was formed. The aims and objects of the United Trade Union Congress as given in its constitution were: (*i*) establishment of socialist society in India; (*ii*) establishment of a workers and peasants state in India; (*iii*) nationalization and socialization of the means

[23] *S S Rly Co.* v. *Workers Union*, AIR 1969 SC 513.
[24] Preamble of the Industrial Employment (Standing Orders) Act, 1946.
[25] Constitution of the Hind Mazdoor Sabha.

of production; (*iv*) safeguarding and promoting the interests, rights and privileges of the workers in all matters, social, cultural, economic and political; (*v*) securing and maintaining for the workers' freedom of speech, freedom of press, freedom of association, freedom of assembly, right to strike, right to work or maintenance and the right to social security; and (*vi*) bringing about unity in the trade union movement.[26]

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

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

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

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

The Act was once again amended in 1964. It made two changes: (*i*) it disqualified persons convicted by the court of an offence involving moral turpitude from becoming

[26] Constitution of UTUC.

office-bearers or members of the executive of a registered trade union; and (*ii*) it required for submission of annual returns by registered trade unions on a calendar year basis.

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

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

G. The Unity Move

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

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

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

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

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

(*iii*) The Act does not lay down any time-limit for registration of trade unions. It proposed to provide for a period of 60 days for the registration of trade unions by the registrar after all the formalities have been completed by trade unions. It also proposed to

provide that a trade union whose certificate of registration has been cancelled would be eligible for re-registration only after the expiry of a period of 6 months from the date of cancellation of registration, subject to certain conditions being fulfilled by the trade union;

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

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

(*vi*) Penalties specified in the Act for the contravention of its provisions were proposed to be enhanced.[27]

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

The Bill also provides for the constitution of a bargaining council for a three year term to negotiate and settle industrial disputes with the employer. The check-off system would be normally adopted for verification of the strength of trade unions in an industrial establishment, though the Bill provides for the holding of a secret ballot in certain exceptional circumstances.[28]

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

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

[27] See 'Statement of Objects and Reasons' appended to the Bill.
[28] *Ibid.*

The Government of India had in 1997, approved certain amendments to the Trade Unions Act, 1926. The objective of these amendments is to ensure organized growth of trade unions and reduce multiplicity of trade unions. The Trade Union Amendment Bill, 1997 was to be introduced in the Rajya Sabha in the winter session of the Parliament in the year 1997, but due to various reasons, it was not introduced.[29]

During 1999, a consensus emerged among the leading trade union federations like the BMS, AITUC, CITU and INTUC on protection to domestic industry, strengthening the public sector units by way of revival and induction of professionals in the management and amendment of labour laws and inclusion of rural and unorganized labour in the social safety net.[30]

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

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

During 2009, a consensus emerged among major central trade unions including BMS, INTUC, AITUC, HMS, CITU, AIUTUC, TUCC, AICCTU and UTUC which had organized the National Convention of Workers in Delhi on 14 September 2009 and decided to launch joint action programme on price rise, labour law violations, job losses, creation of National Social Security Fund for Unorganized Workers and against disinvestment of profit-making PSUs. The National Convention was followed by All India Protest Day on 28 October 2009. The trade unions also met the Prime Minister on 17 September 2009 and urged upon him to address the above main concerns of the working people effectively. As a follow up, central trade unions staged massive dharna before Parliament on 16 December 2009 as a protest against government inaction to control price rise, check labour law violations, non-creation of National Fund for Unorganized Workers Social Security, loss of jobs in the name of recession and disinvestment of profit-making public sector undertakings. Similar joint dharnas have been staged all over the country in state capitals and industrial centres. The trade unions being dissatisfied with the attitude of the government in not taking any appropriate steps to meet the five demands, the workers went on Satyagraha/Jail bharo on 4 March 2010 all over the country, for the aforesaid demands.

On 28 February 2012, a national strike was called by 11 central trade union organizations (including AITUC, BMS, CITU, HMS, INTUC, AITUC, TUCI and NLO) supported by about 5,000 other smaller trade unions for their 10-point charter of demand which included rising unemployment, labour right violations, mass contractualization, price rise particularly of essential commodities, universalization of social security, etc. It was not only successful in

[29] Government of India, Ministry of Labour, *Annual Report* 1997–98. 31.
[30] See *Economic Times*, New Delhi, February 14, 1999.

bringing together the much-divided trade union movement but was also able to convey its seriousness over the issues facing the working class.

H. A Broad Survey

A survey of the development of trade unions in India shows that most of the unions are affiliated with either of the four central trade union federations, *viz.*, the Indian National Trade Union Congress, All India Trade Union Congress, Hind Mazdoor Sabha and United Trade Union Congress. Besides these, some trade unions are affiliated with seven other trade union federations, *viz.*, Bhartiya Mazdoor Sangh, Hind Mazdoor Panchayat, Centre of Indian Trade Union, National Federation of Independent Trade Unions, National Labour Organization, Trade Union Coordination Committee and United Trade Union Congress (Lenin Sarani). These trade union organizations have been patronized by different political parties in the country. Further, a survey of trade unions in India reveals that over the years, the trade union movement has undergone significant development. Both workers and non-workers have been involved. The beginnings of the movement were the outcome of the efforts made by certain social reformers and labour leaders, 'The early ... trade union movement (was) often full of difficulties. Strike committees called themselves trade unions and demanded the privileges of trade unions, without any means of discharging the responsibilities thereof.'[31] The position has considerably changed since then. The number of unions has gone up and membership and funds of trade unions have increased.

IV. EXISTING STRENGTH OF CENTRAL TRADE UNIONS

As per the report of the Ministry of Labour, Government of India, the strength of central trade unions as per the verification of membership of trade unions as on 31 December 2002 was as follows:

(*i*)	BMS	–	6215797
(*ii*)	INTUC	–	3954012
(*iii*)	AITUC	–	3442239
(*iv*)	HMS	–	33384.91
(*v*)	CITU	–	2678473
(*vi*)	UTUCLS	–	13,73268
(*vii*)	UTUC	–	606935
(*viii*)	AICCTU	–	639962
(*ix*)	TUCC	–	732760
(*x*)	SEWA	–	688140
(*xi*)	LPF	–	6115 06
(*xii*)	NIFTU CDHN	–	569599

Source: Govt. of India; Ministry of Labour and Employment, Order No L–52025/20/2003–1R (IMP–1) dated 11.1.2008

[31] See the Report of the Bombay Industrial Disputes Committee, 1922.

V. CURRENT ISSUES

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

(*i*) The trade union movement in India has now come to be characterized by multiplicity of unions, fragmentation, politicization, and a reaction that shows a desire to stay away from politically-oriented central federation of trade unions and struggles for cooperation and joint action.

(*ii*) One sees an increase in the number of registered unions in the years from 1983 to 1994. But one also sees a reduction in the average membership per union and in the number of unions submitting returns.

(*iii*) There are other unions that have founded into bodies relating to certain industries or employment, but have kept out of the main central trade union federations. This includes National Alliance of Construction Workers, National Fish Workers' Federation, National Alliance of Street Vendors, etc.

(*iv*) We must also make specific mention of the emergence of the trade union—SEWA group of organization. It did not confine itself to the traditional method of presenting demands and resorting to industrial action in pursuit of them. It took up the work of organizing the women workers who were engaged in unorganized sector of employment, combining other constructive activities like marketing, the provision of micro-credit, banking, training and representing the views and interests of workers.

(*v*) There is yet another development on the trade union scene which relates to the increasing tendency on the part of trade unions to get together in *ad hoc* struggle committees to launch struggles, or to support a struggle that one of them has launched.

(*vi*) Another new feature is the readiness and the determination of central trade unions to escalate the objective to matters of government policy like, disinvestment, privatization, etc. Instances of such action were witnessed in the strike on BALCO privatization, the Rajasthan agitation by the government servants and the strikes by electricity workers in U P, government employees in Kerala, and so on.

(*vii*) A grave threat to the authentic trade union movement seems to be emerging from the underworld. There are also reports of some cases where such unions have succeeded through other means. Many questions arise. The primary question perhaps is: what are the methods or abnormal methods that these new 'leaders' employ, and how can the authentic trade unions, the management and industry as a whole be protected from the inroads and tactics of these interlopers from the underworld. The use of terror in any form will only nullify democratic rights by creating an atmosphere in which people are forced to act or not to act merely to protect their skin. It has therefore, become necessary to protect the workers as well as managements from such forces.

(*viii*) There are trade union leaders who ask for abolition of contract labour but ultimately relent if the contract assignment is given to them or their benami agents. This makes a mockery of the trade union movement and brings down the trade union leaders in the esteem of employees.

(*ix*) Another practice that undermines respect is that of permitting permanent workers to get their jobs done through proxy workers or letting others work in their place, and taking a cut form the wages of their proxies. Similar is the effect of so-called unions that take up the grievances of workers and charge a commission on the monetary gains they may secure.

(*x*) There is also a tendency to convert unions into closed shops.

VI. CLOSED SHOP/UNION SHOP

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

Lord Denning defines 'closed shop' as:

> A factory or workshop or firm in which all the workmen are members of trade union; it is closed to everyone except the members. Any newcomer who comes to work must join the union. If the newcomer refuses to do so, the union members will insist on his dismissal. They tell the employer, sack him or we will go on strike. The employer gives in. He dismisses the man, or the man gives in and joins the union.[32]

The First National Commission on Labour explains 'closed shop' as an agreement with the employer or at least his acquiesce to recruit only trade union members. On the other hand 'union shop' is one 'by which new entrants to employment, if they are not union members, they must join the union within a specified period.'[33]

Unlike the industrially advanced countries like USA or UK, closed shop or union shop has not gained momentum in India. The committee appointed by the Government of Bihar in 1956 strongly opposed the system of closed shop on the ground that 'the right of the citizens to seek and get employment is one of the fundamental rights guaranteed under the Constitution and any interference with that right in the shape of prior membership of a trade union would impose an unreasonable restriction on the right to work.' The same line of approach was adopted by the First National Commission on Labour. According to the Commission, closed shop is neither practicable nor desirable. Indeed it is against the fundamental right of association guaranteed under Article 19 (1) (c) of the Constitution.[34]

VII. EMPLOYERS' ORGANIZATIONS

A. Need to Form Employers' Organizations

We have seen in previous section that a workers' get together for joint action through a trade union, meets the employer on equal terms. Like-wise, employers organize themselves in furtherance of common objectives of evolving common attitudes to labour or approaches to national policies, as also for standardization of wages and other conditions of employment in an industry within a local area[35]. The following are the main objectives:

(*i*) to promote collective bargaining at different levels;

(*ii*) to develop healthy and stable industrial relations;

[32] Lord Denning, *The Closing Chapter* (1983), 197.
[33] Government of India, *Report of the (First) National Commission on Labour* (1969), 293.
[34] Government of India, *Report of the (First) National Commission on Labour* (1969) 298.
[35] N H Tata *'Why Employers' Organization? In Pursuit of Industrial Harmony—An Employer's perspective'*, Bombay, National Institute of Labour Management (1975) 122.

(*iii*) to bring a unified employers' viewpoint on various issues of industrial relations; and

(*iv*) to represent employers' organization in the meetings of ILC and SLC boards in conformity with tripartite approach to labour matters.[36]

B. Origin and Growth

The origin, growth and development of employers' organizations have three distinct phases :(*i*) the period prior to 1930; (*ii*) the period between 1931 to 1946; and (*iii*) the post-Independence period. Each phase reveals its own structural and functional characteristics; in each period the organizations had to undergo changes because of contemporary economic, social and political developments. These changes have been more rapid in some than in others. The periods referred to also coincided with important developments in the labour field, and these have had a great impact on the pattern and development of employers' organization as also on their functioning[37].

1. Pre-1930 period: This period was characterized mainly by the formation of associations of merchants in the form of chambers of commerce. During the latter half of the last century, industrial associations also came into being with the aim of protecting the commercial interest of their members and securing concessions from the government. Regional associations at important centres of industrial activity developed, but again with a different focus for action. The Bombay Mill-Owners Association, the Bengal Mill-Owners' Association, the Ahmedabad Mill-Owners' Association are instances in point[38].

2. 1931–1946: Organizing chambers of commerce and industrial associations for dealing with a variety of problems connected with industry was the rule prior to 1930. Some of these chambers dealt with labour matters too.[39] The All-India Organization of Industrial Employers (AIOIE)[40] and the Employers' Federation of India (EFI) came into existence in 1933 to comprehend and deal with problems of industrial labour in a concerted manner. The All-India Manufacturers' Organization (AIMO) was formed in 1941. The setting up of these organizations was again, as in the case of workers unions, in response to the need then felt for representation on international conferences and legislative bodies.[41]

3. Post-Independence period—The period since Independence witnessed the growth of planning, expansion of industrial activity, extension of the democratic apparatus, passing of several labour laws and a growing trade union movement, all of which acted as a spur for the strengthening and expansion of employers' organizations. Experience of working together convinced employers of the advantage of united action. Employers' organizations grew in strength mainly to meet the requirements of individual employers for advice on labour matters. In some cases, they built up their strength to match that of organized labour; in others, it was the other way round. At present, employers' organizations are organized at three levels namely: (*a*) employers operating through their local organizations or otherwise; (b) industrial associations which cut across state boundaries; and (c) federations which comprise representatives both of industries and centres. Of the three, the local organizations

[36] *Ibid*
[37] *Ibid.*
[38] *Ibid.*
[39] The role played by employers' organization has been described in the Report of the Royal Commission on Labour. 316–17.
[40] This organization has since changed its name. It is now called All India Organization of Employers.
[41] *Ibid.*

which operate mainly through the chambers of commerce cover all industries in an area; their activities in the labour field are comparatively less extensive.

This period witnessed significant developments and several employers' organizations and federations were set up. However, multiplicity of organizations at the national level has not been a problem with employers' interest at tripartite forums. This has, for all practical purposes, been effectively secured by the main employers' organizations coming together under the CIE. But the AIMO is outside the CIE. The First National Commission on Labour felt that it will be desirable that CIE brings this organization also within its fold.

Some organizations at the industry level and the Employers' Federation of India at the national level, originally registered under the Companies Act, are now registered under the Trade Unions Act, 1926, while many are still outside its purview.

C Role and Functions of Employers' Organizations

The main role and functions of an employers' organization is to protect and promote the interest of its members. The membership of employers' organizations is basically composed of corporations/employers. All enterprises have to meet the test of economic viability. For a proper appraisal of the role and functions of an organization, this aspect cannot be ignored. Thus, its activities are designed and directed in such a manner that their members stand to gain. Also the organizations have to work on a broader plane; labour problems are only a part of their overall responsibilities. Economic, commercial and fiscal matters and policies are equally or even more important for them. The organizations represent their members' view in formulation of government's policies, rules and regulations and in giving advice to members on the interpretations and extent of applicability of agreements arrived at various bipartite and tripartite bodies and on Acts and regulations which come into force. Labour departments/advisory services, which have come in vogue in many employers' organizations to advise and assist members have been the direct consequence of the recognition of these functions.[42]

Employers' organizations find it necessary to have legislative support for realization of their objectives. The pursuit of their activities leads to their involvement in politics or to their developing lobbies without directly aligning themselves with any political party. There is evidence on record to show that individual employers and not the employers' organizations have used these avenues to the extent necessary although providing finances to political parties or sponsoring candidates are not unknown to the organizations or industrial associations—national or local. Political activity by employers' associations may be as inimical to peace in industry as that by workers' associations, particularly when we are envisaging employers' organizations to include both public and private sector units. This should be eschewed. It is thus, that they will be able to establish rapport between the two sectors and work exclusively in the interest of industry rather than in the sectional interests of one or the other form of ownership.[43]

The pursuit of economic gains by employers' organizations does not mean that they should not recognize social responsibilities. With planned economic development and increasing democratization of the institutional framework of society, there is active

[42] See Govt of India, Report of the [First] National Labour Commission (1969) 299.
[43] *Ibid.*

consultation by the state with all organizations, including those of employers, for formulation, *inter alia*, of economic, educational, social and labour policies. Employers' organizations are, therefore, expected to take a stand consistent with the social and economic objectives of the community/country as a whole and be active in promoting policies and measures that are not contrary to the general interest of the community. Along with their gains, they should keep in view the needs of the developing economy, the requirements of planned growth, importance of maintenance of peace in industry and the desirability of an equitable distribution of national wealth. There can, however, be differences as in the case of trade unions, as to the priority between the interest of the community and the employers.[44]

D. Employers' Federations

1. Employers' Federation of India: The principal objects for which the EFI has been established are embodied in its constitution. These are :

(*i*) to promote and protect the legitimate interests of employers engaged in industry, trade and commerce;

(*ii*) to maintain harmonious relations between management and labour and to initiate and support all well-considered schemes that would increase productivity and at the same time, give labour a fair share of the increased return;

(*iii*) to collect and disseminate information affecting employers and to advise members on their employer–employee relations and other ancillary problems.

These objects lie within the field of 'industrial relations'. Although consideration of broad economic problems is not altogether excluded, the EFI does not generally comment on commercial questions of customs, taxation and the like which lie in the sphere of the Associated Chambers of Commerce and Industry.[45]

2. The All India Organization of Employers : The objects of the AIOE *inter alia* include:

(*i*) To take all steps which may be necessary for promoting, supporting or opposing legislative and other measures affecting or likely to affect directly or indirectly, industries in general, or particular industries;

(*ii*) To nominate delegates and advisors, etc., to represent the employers at the International Labour Conference, United Nations Organization, International Chamber of Commerce and other conferences and committees affecting the interests of trade, commerce and industries, whether as employers or otherwise;

(*iii*) To promote and support all well-considered schemes for the general uplift of labour and to take all possible steps to establish harmonious relations between capital and labour".[46]

3. The All India Manufacturers' Organization: The objectives of the AIMO are :

(*i*) To help in bringing about rapid industrialization of the country through sound and progressive economic policies;

(*ii*) To help in increasing the aggregate wealth of India;

[44] *Ibid.*
[45] *Supra* note 41.
[46] *Ibid.*

(*iii*) To raise the standard of living of the people of India by utilizing to the fullest possible extent all the available national resources and talent in the country; and

(*iv*) To play a positive role in relieving the pressure of population on land.

The industrial relations functions of the AIMO are similar to those of the EFI and AIOE. All these federations function through their regional offices.

4. Council of Indian Employers: The Council of Indian Employers founded in 1956 is responsible for choosing delegates to represent Indian employers in international conferences/committees. It is this Council which is a member of the International Organization of Employers at Brussels in place of the AIOE and the EFI. The period since Independence is thus particularly important because of the joint approach by employers to deal with labour problems, informally in the first half and somewhat more formally in the second. Building up of adequate specialized advisory services in labour matters and training of management and personnel officers at various levels have been the result of this joint approach, although a beginning in this direction had been made earlier by individual industrial associations.[47]

5. Federation of Indian Chambers of Commerce and Industry (FICCI): FICCI was established in 1927. It is the largest and oldest apex business organization in India with a nationwide membership of over 1,500 corporates and 500 chambers of commerce. Its activities are representative, legislative and promotional. The Federation is represented in various advisory committees appointed by the government. It also provides training programmes and organizes seminars and conferences. It works with the government on policy issues and on enhancing efficiency, competitiveness and expanding opportunities for industry.

6. The Associated Chamber of Commerce and Industry of India (ASSOCHAM): The membership of ASSOCHAM is confined to local chambers of commerce. It provides advisory service on labour matters. It has been given representation on many consultative bodies set up by the government.

7. Standing Conference of Public Enterprises (SCOPE): It is one of the three constituents of the Council of Indian Employers and is a member of the International Organization of Employers. It represents employers at various tripartite forums and committees. It has representations on the boards of Central Provident Fund, the Employees' State Insurance Board, National Apprentices Board, National Workers' Education Board, National Productivity Council and many other committees/boards. It also represents employers at ILO conferences. The main tasks of SCOPE are both internal and external to the public sector. Internally, it endeavours to assist the public sector in such ways so as to improve its performance. Externally it seeks to provide required information and assist the public sector to improve its performance and advise the community and the government in order to help public sector in its role.

[47] *Ibid.*

Judicial Delineation of Statutory Definition of Trade Union and Trade Dispute

CHAPTER 5

I. THE DEFINITION

Until 1926, no legislative attempt was made in India to delineate the contours of the expression 'trade union' or any of its synonyms. In 1926, Section 2(h) of the Trade Unions Act, 1926, *inter alia*, defines a 'Trade Union' to mean:

> 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.

The dimensions of the aforesaid definition determine the permissible area of trade union activities. An analysis of the above definition reveals that a trade union: (*i*) must be a combination; (*ii*) such a combination should be either temporary or permanent; and (*iii*) should include any federation of two or more trade unions. Further, the definition recognizes that the objectives under its constitution are one or more of the following: (*a*) to regulate the relations: (*i*) between workmen and employers; (*ii*) among workmen; or (*iii*) among employers; (*b*) to impose restrictive conditions on the conduct of any trade or business. But it shall not affect: (*i*) an agreement between parties as to their own business; (*ii*) agreement as to employment; (*iii*) agreement in consideration of sale of the goodwill of a business or profession, trade or handicraft.[1]

A delineation of the nature of trade unions requires description of: (1) the person who can become member of a trade union; (2) the place in relation to which trade unions are formed; and (3) the objectives of trade union. Let us now examine each of them.

[1] See proviso to Section 2(h) of the Trade Unions Act, 1926.

II. MEMBERS OF TRADE UNIONS

The Trade Unions Act, 1926, does not specifically provide persons who may be a member of a trade union[2]. However, the regulations framed under the Trade Unions Act, 1926[3] make it clear that the trade union may either be formed by workmen or employers. Section 2(h) of the Act and other provisions also confirm this view. It is therefore, necessary to delineate the contours of the expression 'workmen' and 'employers'.

A. Workmen

In the traditional sense[4], trade union is used to denote the union of workmen. Further, the workmen constitute the major part of a trade union. It is, therefore, necessary to ascertain its meaning. The term 'workmen' has not been independently defined in the Trade Unions Act. But in the definition of the term 'trade dispute' in Section 2(g), the definition of the term 'workmen' is found which says:

> All persons employed in the trade or industry whether or not in the employment of the employer with whom the trade disputes arise.

Broadly speaking, workmen must be: (*a*) persons; (*b*) employed; (*c*) in any trade or industry; (*d*) to do work.

The definition of the term 'workmen' however raises various problems: *First*, whether the persons other than those who are employed to do any skilled or unskilled, manual, supervisory, technical or clerical work may be covered within the meaning of the word 'workmen'? *Second*, whether the 'workmen' may be persons: (*a*) who are subjected to Army, Air Force or Navy Act; or (*b*) who are employed in the police service or as officers or other employees of a prison; or (*c*) who are employed mainly in a managerial or administrative capacity or exercise functions mainly of managerial 'nature'? *Third*, whether the gratuitous workers may indulge in trade unions? *Fourth*, whether there should be a contract of employment between 'employers' and 'workmen'? *Fifth*, whether there is any age restriction for becoming a member of a trade union? *Sixth*, whether *badli* workers are workmen? *Seventh*, can the dismissed, discharged or retrenched worker become member of a trade union? Let us turn to examine these issues.

As to the first, it is significant to note that the term 'workmen' as defined in the Trade Unions Act, 1926 has a wide coverage and is not merely confined to only those persons who are employed to do any manual, skilled, unskilled, supervisory, technical, operational or clerical work. In other words, all persons employed to do any kind of work may be covered within the definition of 'workmen' provided they are employed in any trade or industry.

The second problem may conveniently be divided in two categories. The employees of the first category, namely: (*i*) those who are subject to the Army, Air Force and Navy Act or (*ii*) those who are employed in the police service or as officers or other employees of a prison are not covered within the meaning of the term 'workmen' because they are

[2] Out of 402.3 million workers in terms of 2001 census, only 8.93 million were members of reporting registered trade unions during 2006.

[3] See for instance, Entry 4 of Form A; Application for registration of trade union prescribed under the Central Trade Unions Regulations, 1938.

[4] According to Sydney and Beatrice Webb in *History of Trade Unions*, 'a Trade Union is a continuous association of wage earners for the purpose of maintaining the conditions of their lives.'

not employed in the trade or industry. The employees of the second category, namely: (*i*) those who are employed mainly in the managerial or administrative capacity; or (*ii*) those who are employed in the supervisory capacity exercising functions mainly of managerial nature may conveniently be brought within the preview of 'workmen' provided they are employed in any 'trade' or 'industry'.

As to the third problem, it may be said that the definition of 'workmen' covers even gratuitous workers. It may, therefore, be possible for them under the Trade Unions Act, 1926 to be members of a trade union.

The fourth problem requires careful scrutiny. According to the definition, it is not necessary that there should be a contract of employment between the 'employer'' and 'workmen'. Indeed, the courts emphasize that an 'employee' does not cease to be an 'employee' merely because he is employed through intermediaries.

Section 21 A (1) (*i*) of the Trade Unions Act, 1926 sheds sufficient light on the fifth problem. It, *inter alia*, provides that a person who has attained the age of 15 years, may be a member of registered trade unions unless the rules of trade unions provide otherwise. But a person who has not attained the age of 18 years can neither be an office-bearer of any such trade union nor can he be chosen a member of the executive of the unions.[5]

Formation of Trade Union by *Badli* Workers

As to the sixth problem, the Andhra Pradesh High Court in *Panyam Cement Employees Union* v. *Commr. of Labour*[6] held that *badli* workmen are 'workmen' and, therefore, if management disapproves of a trade union of *badli* workers or discourages *badli* workers to join a trade union or denies voting right to *badli* workers, the same would amount to unfair labour practice.

The last problem requires due consideration. The definition unlike the Industrial Disputes Act, 1947, does not specifically include the dismissed, discharged or retrenched workers in its fold. Indeed, the use of the expression 'employed in the trade or industry' occurring in Section 2(g) of the Act and the expression 'union of workers engaged in industry occurring in Form A of the Central Trade Unions Regulation, 1938, make it highly doubtful whether the dismissed, discharged or retrenched workmen may be covered in the definition of 'workmen'.

It has been observed[7] that the definition brings under the term 'trade union' not only combination of workmen, but also combination of employers such as employers' federation (or union of employers) or a combination of employers in any industry, imposing restrictions on the members in respect of prices to be charged from the customers, since one of the principal objects of the latter is to regulate the relations between employers. The Trade Unions Act, 1926, therefore, applies to employers' federation as it does to unions of workmen. It is, therefore, essential to know its coverage. The Trade Unions Act, 1926, does not define the term 'employer'. However, Section 2(g) of the Industrial Disputes Act, 1947, defines an 'employer' to mean: (*i*) in relation to an industry carried on by or under the authority of any department of 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

[5] See Section 21 A.

[6] (2004) 1 LLJ 915.

[7] *Radkhakishan Jaikishan Ginning and Pressing Factory* v *Jimnadas Nursery Ginning and Pressing Co. Ltd*, AIR 1940 Nagpur, 228.

to an industry carried on by or on behalf of a local authority, the chief executive officer of that authority.

In Western India Automobile Association Ltd v. *Industrial Tribunal*,[8] the Federal Court held that statutory definition is not exhaustive. Observed Justice Mahajan:

> In relation to (industries carried on by government or local authorities only) a definition has been given of the term 'employer' ... No attempt, however, was made to define the term 'employer' generally or in relation to other persons carrying on industries or running undertakings. The proposition has since been not challenged though, paradoxically, the provisions of the Industrial Disputes Act, 1947, have never been invoked to the industrial disputes arising in 'an industry carried on by or under the authority of any department of the Central or a State Government.'

An 'employer' does not cease to be an 'employer' merely because instead of employing workmen himself, he authorizes his agent or servant to employ them.[9] However, in view of the provisions of Section 18 of the Industrial Disputes Act, 1947, the coverage of the expression 'employer' has been extended to include his heirs, successors and assignees.

Formation of a Trade Union by Supervisors and Managers

Can the supervisory officers and managers form a trade union under the Trade Unions Act? This question arose in *Government Tool Room and Training Centre's Supervisors and Officers Association* v. *Assistant Labour Commissioner*.[10] In order to deal with the issue, the court referred to the provisions of Section 2(g) of the Trade Unions Act which defines trade dispute to mean 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 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.

It also referred to the provisions of Section 2(h) of the Trade Unions Act which defines 'trade union' to mean any combination, whether temporary or permanent, formed primarily for the purpose of regulating the relations between the 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.

While interpreting the scope of the aforesaid two definitions, the Karnataka High Court observed that the word 'workmen' under the Trade Unions Act includes all persons employed in a trade or industry. It is not a restricted definition as in any other enactment of labour laws. When the Act itself provides for wider definition and for a wider meaning, the court cannot narrow it down by its decision. That would be against the very object of the Trade Unions Act itself. The court added that it is a well-settled principle of law that two conditions are necessary for interpreting an earlier enactment in the light of the provisions of a later Act. They are: (*i*) the two Acts of the legislature must be in, *pari materia*, that is to say that they form a system or code of legislature; and (*ii*) the provisions in the earlier Act are ambiguous.

---

[8] *Western India Automobile Association Ltd* v. *Industrial Tribunal*, (1949) LLJ 245 (FC).
[9] *Purushottam Pottery Works*, (1958) 2 LLJ 523 (IT); *Bombay Dock Labour Board and the Stevedores*, (1953) 2 LLJ 200 (IT).
[10] (2002) Lab. IC 103.

III. TRADE OR INDUSTRY

After having discussed as to who may become the members of a trade union, it is necessary to determine the area in which the trade unions operate. The arena of interaction of trade union is 'trade or industry'. The Trade Unions Act, 1926, however, does not spell out either the term 'trade' or 'industry'. A question, therefore, arises whether the Trade Unions Act, 1926 is in *pari materia* with the Industrial Disputes Act, 1947. The Madras High Court[11] has answered it in negative[12] because in its view, a comprehensive meaning of the term 'industry' was considered by the legislature in regard to the Industrial Disputes Act. On the other hand, the Andhra Pradesh[13] and Karnataka[14] High Courts have taken the view that two enactments are in *pari materia* and that the expression 'trade or industry' in Section 2(g) of the Trade Unions Act carries the same meaning as the word 'industry' in Section 2 (j) of the Industrial Disputes Act. There is, however, no decision of the Supreme Court on this point. Section 2 (j) of the Industrial Disputes Act, 1947, however, defines the term, 'Industry' to mean:

> any business, trade, undertaking, manufacture or calling of employers and includes any calling services, employment, handicraft, or industrial occupation or avocation of workmen.

The words used in the above definition are of very 'wide import'. It will be observed that the word 'industry' is wide enough to include 'trade' in its ambit. It will be further noticed that the definition is in two parts. The first part defines 'industry' with reference to employers and the other part defines it with reference to workers. The words occurring in the definition are vague and have given rise to several disputes. Courts and tribunals have, therefore, been called upon to interpret and apply the key expression on innumerable occasions.

An analysis of judicial response relating to the Trade Unions Act, 1926, reveals that the several organizations such as Employees' State Insurance Corporation,[15] Provident Fund

---

[11] *Rangaswami* v. *Registrar of Trade Unions*, AIR 1962 Madras 231.
[12] '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 *pari materia*, that is, as forming one system and interpreting one in the another. See *supra* note 11.
[13] *T T Devasthanam* v. *Commissioner of Labour*, (1979) 1 LLJ 448.
[14] *C M T Institute* v. *Assistant Labour Commissioner*, (1979) 1 LLJ 192.
[15] *Registrar of Trade Unions* v. *Mihir Kumar Gooha*, AIR 1963, Cal 56. In this case a question arose whether employees of Employees' State Insurance Corporation could form a 'trade union' under the Trade Unions Act. The Registrar on an application made by the employees for registration first registered it but later cancelled its registration. Against the latter order of cancellation, an appeal was filed before the appellate court. The court set aside the order of the registrar cancelling the certificate of registration. Against this decision they preferred a Letters Patent Appeal before the division bench of the Calcutta High Court. The Division Bench, upholding the order of the single judge, observed: In my opinion, this test may well be applied to the expression industry as also 'trade' or 'business' as used in the Trade Unions Act. In this Act also, profit motive is not essential and providing of amenities or services to the community or a substantial portion of it would be sufficient to satisfy the test. The fact that such services are to be rendered by a statutory corporation makes no difference. The fact that a large number of employees are employed by an employer, to render services for particular class of persons in an organized manner is quite sufficient to bring the corporation within the mischief of the Act. The employees of such a corporation are, 'workmen' as defined in Section 2 (g) of the Trade Unions Act and are entitled to form a trade union and get it registered. The Court added the learned judge below had come to the right conclusion and rightly set aside the order of cancellation passed by the registrar of trade unions.

Organization,[16] Fire Brigade Service,[17] Devasthanam,[18] CMT Institute[19] have been held to be trade or industry under Section 2(j) of the Industrial Disputes Act, 1947 and the Trade Unions Act, 1926.

On the other hand, persons employed in the following are not employed in 'industry', *e.g.*, Raj Bhawan,[20] educational institutions run by Ramakrishna Mission,[21] Pasteur Institute of Southern India and the Council of Scientific and Industrial Research,[22] sovereign or legal functions[23] of the state and a temple managed by trustee of a Devaswom governed by the Hindu Religious and Charitable Endowment Act, 1951.[24]

[16] *Registrar of Trade Unions* v. *M Mariswami*, (1973) 2 LLJ 256. In this case, the employees of the Provident Fund Organization made an application to the registrar of trade unions for the registration of its trade union called the Mysore State Provident Fund Employees Union under the Trade Unions Act, 1926. The registrar of trade unions first issued a certificate of registration but later, after issuing a show cause notice, withdrew its registration certificate. On appeal, the district court allowed the appeal and set aside the order of the registrar. In a revision petition against the order of the district court, the High Court observed:

... As the activity of the Provident Fund Organization is 'industry', the members of the union, who are its employees have to be regarded as workmen. As the union was formed primarily for the purpose of regulating the relations between the workmen and its employer, it is a trade union as defined in Section 2(h) of the Act.

[17] *Registrar of Trade Unions* v. *Fire Service Workers Union* (1963) 1 LLJ 167. In this case, the employees of the Fire Brigade Services formed a union and applied for its registration to the registrar of trade unions. The registrar first registered the union but later cancelled the certificate of registration after giving the notice. Against this order, the union filed an appeal to the High Court. The High Court held that employees employed in Fire Brigade Services were employed in 'trade or industry' and were entitled to be registered under the Trade Unions Act, 1926.

[18] *T T Devasthanam* v. *Commissioner of Labour*, (1979) 1 LLJ 192.

[19] The Karnataka High Court in *C M T Institute* v. *Assistant Labour Commissioner*, (1979) 1 LLJ 192 applied and extended the definition of 'industry' under the Industrial Disputes Act, 1947 in interpreting the word 'trade or industry' occurring in section 2(g) of the Trade Unions Act, 1926. The Court also pointed out that there was no difference between the meaning of the word 'industry' as defined in section 2(j) of the Industrial Disputes Act and the word 'trade or industry' as used under section 2(g) of the Trade Unions Act. The Court also held that the word 'trade or industry', even without elaborate definition of the word 'industry' under the Industrial Disputes Act, was sufficiently wide enough to bring the Society of Central Machine Tool Institute within the definition of 'trade or industry' notwithstanding the fact that it had no profit motive.

[20] *Rangaswami* v. *Registrar of Trade Unions*, AIR 1962 Madras 231. In this case it was held that persons employed in Raj Bhawan for domestic and other duties could not form trade union on the ground that workers were not employed in trade or industry carried on by the employer. The services rendered by them were purely of a personal nature. A union of such workers was not, therefore, entitled for registration under the Trade Unions Act, 1926.

[21] *N Karappann* v. *Additional Registrar of Trade Unions*, (1976). Lab. IC 1388, 1389–90. But in *Bangalore Water Supply and Sewerage Board v. A Rajappa*, AIR 1976 SC 548, the Supreme Court held that Research Institute, irrespective of profit motive, was an 'industry'.

[22] *Ibid.*

[23] *Bangalore Water Supply and Sewerage Board* v. *Rajappa*, AIR 1978 SC 548.

[24] *Cherinjumpatty Thariparatty* v. *State of Kerala*, (2005) 1 LLJ 32.

IV. OBJECTIVES OF TRADE UNIONS

The Trade Unions Act, 1926 prescribes the primary objectives of a trade union. The objectives are one or more of the following:

(*a*) to regulate the relations: (*i*) between employers; (*ii*) among workmen; or (*iii*) between employers and workmen.

(*b*) to impose restrictive conditions on the conduct of any trade or business.

The objectives for which the trade union is formed must comply with the aforesaid primary objects. In other words, the primary objects of trade unions determine whether the union is a trade union under the Act. The statutory provisions 'for only primary objectives in the Act, however, suggests that there may be some objectives other than the primary objectives of trade unions. These objectives may be broadly categorized as follows: (*i*) economic objectives; (*ii*) political objectives; and (*iii*) social and welfare objectives. This view is fortified by the provisions of section 15 of the Act.

V. TRADE DISPUTE

'Trade dispute' is defined in Section 2(g) of the Trade Unions Act, 1926 to mean:

> 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 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:

Reading the definitions of 'trade union' and 'trade dispute' it is evident that any dispute, *inter alia*, between the employer and workmen connected with the employment or non-employment, terms of employment or conditions of labour of any person would be a trade dispute and the term 'workman' includes all persons employed in the trade or industry. Any dispute between *badli* workers and the management is also a trade dispute. It is for this reason that when there was a settlement between the Mazdoor Union and Panyam Cement Co. in June, 2000, both the parties agreed on certain terms regarding assured employment to *badli* workers. In that view of the matter, *badli* workers cannot be excluded from participating in the election to recognize the majority trade union. Any other interpretation would lead to *badli* workers to lurch in helpless state of suspended animation.[25]

[25] *Panyan Cement Employees Union* v. *Commissioner of Labour, Hyderabad*, (2004) 1 LLJ 915.

CHAPTER

6

Registration of Trade Unions

The Trade Unions Act, 1926, was enacted with a view to encourage the formation of permanent and stable trade unions and to protect their members from certain civil and criminal liabilities. The registration of a trade union is, however, not conclusive proof of its existence.[1] The Societies Registration Act, 1960[2], Co-operative Societies Act, 1912[3] and the Companies Act, 1956[4] do not apply to trade unions and registration thereof under any of these Acts is void *ab initio*.[5]

I. LEGAL STATUS OF REGISTERED TRADE UNIONS

Every registered trade union is a body corporate by the name under which it is registered and shall have perpetual succession and a common seal[6] with a power to sue and to be sued.[7] It is, however, not a statutory body. It is not created by statute or incorporated in accordance with the provisions of a statute. In other words, a registered trade union is neither an instrumentality nor an agency of the state discharging public functions or public duties.[8] A registered trade union is an entity distinct from the members of which the trade union is composed. It has a power to contract and to hold property—both moveable and immovable and to sue and be sued by the name in which it is registered. It can institute a suit in *forma pauperis* within the meaning of Order XXXIII Rule 1 of the Civil Procedure Code.[9] However, by mere registration of a trade union under the Trade Unions Act, the

1 *Kandan Textile Ltd* v. *Industrial Tribunal*, AIR 1951 Mad. 661.
2 XXI of 1860.
3 11 of 1912.
4 1 of 1956.
5 Section 14.
6 Section 13.
7 *Radhakishan Jaikishan Ginning and Pressing Factory* v. *Jamnadas Nursery Ginning and Pressing Company Ltd*, AIR 1940 Nagpur 228.
8 *Chemosyn Pvt. Ltd* v. *Kerala Medical and Sales Representative's Association* 1988 Lab. IC 115.
9 *East Indian Coal Co. Ltd* v. *East Indian Coal Co. Ltd Workers' Union, AIR*. 1961 Pat 51.

trade union does not become an authority under Article 12 of the Constitution of India. It continues to remain just a private body and all disputes relating to election of such a private body cannot be canvassed or challenged in a writ petition.[10]

II. COMPULSORY VERSUS VOLUNTARY REGISTRATION

Under the Act, the registration of trade union is not compulsory but is merely voluntary. The question of voluntary registration is, however, debatable. Two conflicting views are discernible: (*i*) Compulsory registration would prove burdensome and expensive. It is felt that the present legal position should continue. The provisions of the Trade Union Act, 1926 itself affords legal status and protection to trade union members which will encourage trade unions to get themselves registered; (*ii*) The registration of trade unions should be made compulsory because all the unions shall be governed by the provisions of the Act and the rules framed thereunder in a similar manner. This view was also shared by the National Commission of Labour. The Commission is of the view that the registration of trade unions should be made compulsory 'because it will bring the application of same standards of obligation to all unions'.[11] The second view seems to be better. It will not only bring the application of uniform standards and obligation to all unions, but would prevent 'fraud, embezzlement or deception practised upon members by unscrupulous persons.' Further, it will result in qualitative improvement of their organization and functioning. Moreover, it will strengthen the trade union movement. This should however, be done in stages. To begin with, it would be better if registration of trade unions is made compulsory for the purposes of their recognition.

III. APPOINTMENT OF THE REGISTRAR

Section 3 empowers the appropriate government[12] to appoint a person to be the Registrar[13] of Trade Unions. The appropriate government is also empowered to appoint as many additional and deputy registrars of trade unions as they think fit. Such persons will function under the superintendence and direction of the Registrar. He exercises such powers and functions of Registrar with local limit as may be specified. Where, however, additional or deputy registrar exercises the powers and functions of Registrar in the area within which a registered office of the trade union is situated, he shall be deemed to be Registrar.

[10] *K V Sridharan* v. *S Sundarmoorthy*, 2009 LLR414.

[11] Govt. of India, *Report of the National Commission on Labour* (1969) 295.

[12] Under Section 2 of the Trade Unions Act, 1926, the Central Government is the appropriate government in relation to trade unions whose objects are not confined to one state. The state government is the appropriate government in relation to other trade unions. However, in practice, the Act is implemented by the state government. The powers of the Central Government were delegated to the state governments.

[13] Section 2(f) defines 'Registrar' to mean:
(*i*) a Registrar of Trade Unions appointed by the appropriate government under Section 3, and includes any additional or deputy registrar of trade unions and (*ii*) in relation to any trade union, the Registrar appointed for the State in which the head or registered office, as the case may be, of the trade union is situated.

IV. MODE OF REGISTRATION

A. Who may Apply: Minimum Membership of Trade Unions

1. *Legislative Response*: Under section 4(1):

Any seven or more members of a trade union may by subscribing their names to the rules of trade union and by otherwise complying with the provisions of this Act with respect to registration, apply for registration of the trade union under this Act.

Provided that no trade union of workmen shall be registered unless at least 10 per cent or 100 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 application for registration:

Provided further that no trade union of workmen shall be registered unless it has on the date of making application not less than seven persons as its members, who are workmen engaged or employed in the establishment or industry with which it is connected.[14]

Where an application has been made under sub-section (1) for the registration of a trade union, such application shall not be deemed to have become invalid merely by reason of the fact that, at any time after the date of the application, but before the registration of the trade union, some of the applicants, but not exceeding half of the total number of persons who made the application, have ceased to be members of the trade union or have given notice in writing to the Registrar dissociating themselves from the application.[15]

The Supreme Court in *Tirumala Tirupati Devasthanam* v. *Commissioner of Labour*[16] held that any group of employees may be registered as a trade union under the Act for the purpose of regulating the relations between them and their employer or between themselves. The Court added:

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

Earlier in *Registrar of Trade Unions in Mysore* v. *M Mariswamy*[17], the employees of the Provident Fund Organization got themselves registered under the Trade Unions Act, 1926.

[14] Section 4(1).

[15] Section 4(2).

[16] (1995) Supp (3) SCC 653.

[17] (1974) Lab IC 695.

This registration was subsequently withdrawn by the department resulting in litigation which ultimately reached the Karnataka High Court. It was held by the court that from the definition of the expression 'trade union', it could be a combination either of workmen or of employees or of both, provided it is formed primarily for one of the purposes mentioned 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. The court accordingly directed the registrar to register the petitioner who fulfils all other legal requirements in terms of the Trade Unions Act, 1926.

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

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

B. Whom to Apply?

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

C. Form for the Application

Section 5 requires that every application for registration made to the Registrar must be in Form 'A'. Further, every application must be accompanied with a statement of the following particulars, namely: (*a*) the names, occupations and addresses of the members making the application. However, 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.[18] (*b*) the name of the trade union and the address of its head offices and (*c*) the title, names, ages, addresses and occupations of the office bearers of the trade union. Moreover, every application must be accompanied by a copy of rules. Such rules must comply with the items mentioned under Section 6 of the Act. Furthermore, the trade union of more than one year standing applying for registration is required to submit a general statement of its assets and liabilities in the prescribed manner to the Registrar.[19] Moreover, a trade union (which had previously been registered by the registrar in any state) applying for registration is required to submit with its application a copy of certificate of registration granted to it and copies of entries to it to the Registrar of Trade Unions for the state.[20]

D. Rules of a Trade Union

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

(*a*) the name of the trade union;

[18] Ins. by Act No. 31 of 2001 w.e.f. 9-1-2002.
[19] Trade Unions Act, 1926, Section 5(2).
[20] Central Trade Union Regulation, 1938, Rule 7.

(*b*) the objects for which the trade union has been established;

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

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

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

(*ee*) the payment of a minimum subscription by members of the trade union which shall not be less than:

(*i*) one rupee per annum for rural workers;

(*ii*) three rupees per annum for workers in other unorganized sectors; and

(*iii*) 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 and under which any fine or forfeiture may be imposed on the members;

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

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

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

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

(*j*) the manner in which the trade union may be dissolved.

a. Nature and Scope of Rules

The existence of the aforesaid matters in the rules is a condition-precedent for the registration of the union. But, the fact that section 6 provides that no union can be registered unless its rule provides for these matters does not necessarily mean that rules relating to matters contained in section 6 acquire a statutory force. They have only contractual force.[21] Thus, the rules framed by trade unions under section 6 of the Trade Unions Act, 1926 are rules meant for internal administration and, therefore, cannot create any statutory obligation upon the labour commissioner. It is like bye-laws of a cooperative society or rules framed by a society for securing registration under the Societies Registration Act, 1860.

b. Amendment in Rules of the Trade Union when not Valid

In *B S V Hemantha Rao* v. *Deputy Registrar, Trade Union*[22], the Hyderabad Allwyn Workers' Union amended its rules appointing its president to act as election officer and empowering

[21] *Tirlok Nath* v. *All India Postal Workers Union*, AIR 1957 All. 234.
[22] (1988) 1 LLJ 83 (AP).

him to nominate all office-bearers, whereas this power is vested with the general body of the trade union. Even though such amendments were registered by the Registrar of Trade Union, the Court held the amendments were contrary to the letter and spirit of the trade union and such a procedure allowing the president to nominate office bearers amounts to allowing a person to act as a judge in his own cause. Accordingly, it was held invalid.

c. Scope of Section 6(e)

In *Bokajan Cement Corpn. Employees' Union* v. *Cement Corpn. of India Ltd*[23], a question arose whether on ceasing to be an employee, one would lose his right to continue as a member of the trade union. A single judge of the Guwahati High Court answered the question in negative. But a division bench of the High Court reversed the findings of the single judge on appeal. It was held that the right to continue as a member of the trade union continues only so long as an employee is actually employed. Thereupon, the union filed an appeal before the Supreme Court. The Court held that Section 6(e) only provides for admission of membership of those who are actually engaged or employed in industry as ordinary members so as to entitle a trade union to seek registration under the Act and not for automatic cessation of membership. It does not provide that on cessation of employment, an employee would cease to be a member.

V. POWERS OF THE REGISTRAR

Section 7 empowers the Registrar of Trade Unions to make further enquiries on receipt of an application for registration to satisfy himself that the application complies with the provisions of Section 5 or that the trade union is entitled for registration under Section 6.[24] Such enquiries can be made only from the application and not from any other source.[25] Further, the Registrar may require the trade union to change its name if the name of the trade union is identical or resembling with any other existing trade union.[26] However, he has no power to declare the election of the office-bearer of a trade union unconstitutional. Further, whenever there is a dispute between the groups of office-bearers, each claiming itself to be a valid executive, such dispute is very much falling within the jurisdiction of the competent court of law, and the Registrar of Trade Unions has no power or jurisdiction to decide the issue.[27] But where the petitioner himself called for an inquiry with regard to the election of new office-bearers of a union and submits to the jurisdiction of Registrar of Trade Unions, he is stopped from challenging the jurisdiction of the Registrar if the result of the inquiry happened to be against him.[28]

VI. NO POWER OF THE REGISTRAR TO VERIFY MEMBERSHIP OF TRADE UNIONS

Under the Trade Unions Act 1926, the Registrar has no power to verify membership of registered trade unions. However, Section 28A of the Trade Unions (Amendment) Bill, 1982,

[23] (2004) 1 LLJ 197.
[24] Trade Unions Act, 1926, Section 7.
[25] *Kondalnao* v. *Registrar of Trade Unions*, (1952) 1 LLJ. Notes of cases, 15.
[26] Trade Unions Act, 1926, Section 7(2).
[27] *Ratan Kumar Dey* v. *Union of India*, (1991) 2 LLN 506 (Gau.) (DB).
[28] *R Tanji* v. *Registrar of Trade Unions*, Bihar, AIR 1962 Pat. 338.

empowers the Registrar to verify the membership of registered trade unions and matters connected therewith and, for this purpose, Registrar shall follow such procedure as may be prescribed by regulation.

VII. POWER TO CONDUCT ELECTION

The Registrar of Trade Unions is the authority charged with the duty of administration of the provisions of the Act. The Registrar is empowered under Section 28 to ascertain who are the elected office-bearers in order to register their names. However, in making such inquiry, the Registrar does not perform any quasi-judicial functions; but only administrative functions. He has no authority to ask any party to lead evidence and to give opportunity to the other party to cross-examine any witness. Under this concept of a limited administrative inquiry, the dispute as raised by the rival parties cannot be set at rest.[29]

In *Ranipet Greaves Employees' Union* v. *Commissioner of Labour*[30], the union requested the labour commissioner to conduct the election of the union as per settlement arrived at under section 12 (3) of the Industrial Disputes Act. The labour commissioner rejected such a request. On a writ petition the Madras High Court held that the labour commissioner committed an error in rejecting such a request. It accordingly directed the labour commissioner to conduct the union election to elect the representative body which could get recognition from the management and the right to negotiate with it.

Earlier in *H M T Karmika Sangh* v. *Labour Commissioner*[31], the Court held that if a trade union makes a request to appoint an officer of labour department as returning officer, as he considers that it is expedient to do so, he could do so and there is nothing in the Act or rules which prevents him from doing so. However, the order of the High Court in designation to the general manager to hold election of the trade union was wrong. Instead, the Court ordered that the election should be held under the supervision of the Registrar of Trade Union or his nominee.[32]

In *IFFCO Phulpur Karmchari Sangh* v. *Registrar, Trade Union Kanpur*,[33] the Allahabad High Court held that Section 28 (3) of the Trade Unions Act, 1926 read with Regulation 17A does not contemplate holding of any elaborate inquiry such as one required in judicial or quasi-judicial proceedings. All that the Registrar is required to do is to hold a summary inquiry for satisfying himself before making any change in the register regarding office bearers whether the elections have been held in accordance with the rules of the trade union.

In *K V Sridharan and Others* v. *S Sundermoorthy*[34], the Madras High Court held that all disputes relating to holding of election of such incorporated bodies, which are nothing but private bodies, cannot be challenged before the writ court. If there are disputes between

[29] *North Eastern Railway Employees' Union* v. *Registrar of Trade Unions*, 1975 Lab. IC 860 (Allahabad); *Mukund Ram Tanti* v. *Registrar of Trade Unions* AIR 1962 Pat. 338, *ONGC Workmen's Association* v. *State of West Bengal*, 1988 Lab. IC 555 (Calcutta).
[30] (2004) 2 LLJ 622.
[31] (1985) Lab IC 633.
[32] *North Eastern Railway Employees' Union* v. *Addl. District Judge*, (1989) Lab IC 44 (SC). See also, *Indian Explosive Workers Union* v. *State of Bihar* (1992) 1 LLJ 578.
[33] 1991 Lab. IC 531.
[34] 2009 LLR 414.

the parties over such election, those disputes can be challenged, if so advised, before the appropriate civil court. Since the writ petition itself is not maintainable, this Court held that no order can be passed in the writ petition on the dispute relating to the election of such trade union. It may be noted that these private bodies are not enforcing any statutory direction by filing such writ petitions inasmuch in the State of Tamil Nadu, there is no law relating to grant of recognition to a trade union, nor is there any law relating to holding of election of such trade unions. These matters are covered by general law and as such, the disputes in this regard should be settled by civil court.

VIII. NO POWER TO HOLD INQUIRY

In *IFFCO Phulpur Karmchari Sangh* v. *Registrar, Trade Union Kanpur*,[35] the Allahabad High Court held that Section 28 (3) of the Trade Unions Act, 1926 read with Regulation 17A does not contemplate holding of any elaborate inquiry such as one required in judicial or quasi-judicial proceedings. All that the Registrar is required to do is to hold a summary inquiry for satisfying himself before making any change in the register regarding office bearers whether the elections have been held in accordance with the rules of the trade union.

IX. NO POWER TO DECIDE RIVAL CLAIMS

In *Rattan Kumar Dey* v. *Union of India*[36], the Guwahati High Court held that under Section 28 of the Trade Unions Act, 1926, the Registrar of Trade Unions has no power or authority to decide a dispute between the rival office-bearers of the union. However, Registrar of Trade Unions under Section 28(4) has the power to make inquiries and give his own conclusion in regard to maintenance of the office-bearers of the union.

In *Ram Das Tigga* v. *State of Jharkhand*[37], the Jharkhand High Court held that the Registrar of Trade Union cannot resolve the dispute pertaining to election of rival office-bearers of union. Such dispute can only be decided by civil court of competent jurisdiction.

In *Kovai Periyar Maavatta Dravida Panchalai Thozhilalar Munnetra Sangam, Coimbatore* v. *Commissioner of Labour (Registrar of Trade Unions), Chennai*[38], the Madras High Court held that Section 28 of the Trade Unions Act does not confer any quasi-judicial power to decide the dispute between the rival claimants and even if any decision is taken, such a decision does not have any binding force and the dispute between the rival claimants in a union can be decided by a civil court.

In *Roadways Mazdoor Sabha, UP* v. *State of UP*[39], the Allahabad High Court held that the Registrar has got only limited power to make the necessary entry in his records. Under Section 28 of the Trade Unions Act, he can record the changes in the office bearers made by the trade union during the year to which general statements were filed. Thus, he has no power to adjudicate as to which one of the rival claims is correct.

[35] 1991 Lab. IC 531.

[36] 1991 (2) LLN 506; See also *North-Eastern Railway Employees' Union, Gorakhpur* v. *The Registrar of Trade Unions, U P*, Kanpur 1975 Lab. IC 860.

[37] (2004) LLR 936.

[38] (2004) 1 LLJ 6. Similar view has been expressed in *R Murugesan* v. *Union Territory of Pondicherry*, (1976) 1 LLJ 435 (Mad.). *Fateh Singh* v. *Rashtriya Mill Mazdoor Sangh*, 1994 I LLJ 294 (Raj.), and *Bokaro Steel Workers Union and Another* v. *State of Bihar*, 2000 I LLJ 117 (Pat).

[39] (2011)1LLJ 239.

X. NO POWER TO DECIDE REGARDING ADMISSION OF MEMBERSHIP

In *Borosil Glass Works Ltd Employees Union* v. *D D Bombode*,[40] the Supreme Court interpreted Section 28 (1-A) of the Trade Unions Act. In this case, certain workers made a joint application for membership of the appellant union which is a registered and recognized trade union. However, no action was taken because the application was not in accordance with the procedure laid down by the appellant union thereon. The employees were asked by the union to apply individually in the prescribed form and make payment of requisite fee and membership subscription. Aggrieved by this, employees filed a complaint before the Registrar of Trade Unions. Thereupon, the Registrar of Trade Unions under Section 10(b) of the Trade Unions Act issued a notice to the appellant union threatening to cancel its registration pursuant to a complaint filed by these employees under Section 28(1-A). The union then represented its case before the Registrar. The Registrar of Trade Unions found that the complainants were not members of the appellant union for six months prior to the date of the application which was a necessary condition under Section 28(1-A). Therefore, no certificate under that section could be granted to them, permitting them to refer the dispute to the industrial tribunal. Aggreived by the decision of the Registrar, these employees filed a writ petition in the Bombay High Court seeking direction to the Registrar of Trade Unions to issue a consent certificate. The High Court ruled that even a person who has applied to become a member is covered by Section 28(1-A) of the Trade Unions Act and accordingly, directed the Registrar of Trade Unions to issue a consent certificate to these employees to enable them to refer the dispute to the industrial tribunal. This order of the High Court was challenged by the union before the Supreme Court under Article 136 of the Constitution.

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

[40] (2001) 1 SCC 350.

XI. DUTIES OF THE REGISTRAR

Section 8 lays down the duties of the Registrar in matters of registration of trade union. It provides that as soon as the Registrar is satisfied that the trade union has complied with all the requirements of this Act in regard to registration, he shall register the trade union by entering in a register, to be maintained in such form as may be prescribed, the particulars relating to the trade union contained in the statement accompanying the application for registration. This shows that where the definitions under Section 2(g) and 2(h) are themselves inapplicable to the so called union, the Registrar has every power to refuse the registrations.[41] Section 8 raises several questions: (*i*) whether it is obligatory upon the Registrar to register a trade union within a reasonable time where it has complied with all the requirements of the Act? (*ii*) what is the scope of inquiry under this section? (*iii*) whether Section 8 contravenes the fundamental right under Article 19(1) (*c*) of the Constitution? (*iv*) whether the Registrar can refuse to register more than one union in one plant/industry? Let us turn to examine these questions.

A. Time-Limit for Registration

The Trade Unions Act does not prescribe any time-limit for the grant or refusal of registration. It only imposes a statutory duty upon the Registrar to register a trade union if he is satisfied that the requirements of the statute have been complied with. The absence of any provision regarding the time-limit for grant or refusal raises a question whether the court can interfere in regard to the time taken by the Registrar in granting or refusing registration of trade union. The decision in *ACC Rajanka Lime Stone Quarries Mazdoor Union* v. *Registrar of Trade Unions, Government of Bihar*[42] has a direct bearing on this question. In this case the union sent an application on 31 July 1957 for registration to the Registrar of Trade Unions in the prescribed manner together with the constitution and rules of the said union which was received by the latter on 3 August 1957. But no action was apparently taken under Sections 7 and 8 on the application for over 3 months. The union sent many reminders but they remained unreplied. Under the circumstances, the union filed a writ petition before the Patna High Court, praying that the Registrar of Trade Unions be directed to perform his statutory duty of registering or refusing to register the trade union under the Act. The High Court of Patna held that Section 8 imposes the statutory duty upon the Registrar to register a trade union on being satisfied that it had complied with the requirements of the Act. The court accordingly held that there was a case for issuance of writ in the nature of *mandamus* under Article 226 of the Constitution. The court directed the Registrar of Trade Unions to perform the statutory duty imposed upon him under Sections 7 and 8 and to deal with the application of the trade union according to law at an early date.

It is submitted that time limit should be prescribed for the grant or refusal of registration by the Registrar. The National Commission on Labour has suggested 30 days excluding the time which the union takes in answering queries from the Registrar. This view is likely to give some scope to the Registrar to make vexatious inquiries simply to gain time. Indeed, Section 23 of the Industrial Relations Bill, 2978 prescribed 60 days' time from the date of the receipt of the application by the Registrar either in granting or refusing to grant registration

[41] *Tamil Nadu Union* v. *Registrar of Trade Unions*, AIR 1962 Mad. 234.
[42] *ACC Rajanka Lime Stone Quarries Mazdoor Union* v. *Registrar of Trade Unions*, AIR 1958 Pat. 475.

to trade union and communicating the order to the applicant. Where, however, the Registrar refuses to grant registration to a trade union, he is under an obligation to state reasons for refusing to grant registration. The Trade Unions (Amendment) Bill, 1982 has provided for insertion of the words 'within a period of 60 days from the date of such compliance' after the words 'Register the Trade Unions' in Section 8 of the Trade Union Act, 1926.

B. Scope of Inquiry Under Section 8

The second problem also requires careful scrutiny. Three pronouncements of Indian judiciary in regard to the scope of inquiry of Section 8 deserve to be mentioned.

Inland Steam Navigation Workers' Union[43] decided an important point, namely, the scope of inquiry with reference to the application for registration of trade unions. In this case, an application made by the Inland Steam Navigation Worker's Union for its registration was rejected by the Registrar of Trade Unions on the ground that the union was for all practical purposes the same union which has been registered and, therefore, be declared unlawful under Section 16 of the Criminal Law (Amendment) Act, 1908. Against this finding, the appeal was preferred before the Calcutta High Court under Section 11 of the Trade Unions Act, 1926. Chief Justice Derbyshire, in the course of the judgement observed:

> In my view, the Registrar in taking up that attitude is wrong. The functions of the Registrar are laid down in Section 8...The new union may or may not be a continuation of the other union or its successor. Whether the new union is or is not the same as the old union, depends on evidence.

He added:

> In my view, the duties of the Registrar were to examine the application and to look at the objects for which the union was formed. If those objects were objects set out in the Act, and if those objects did not go outside the objects prescribed in the Act and if all the requirements of the Act, and the regulations made thereunder had been complied with, it was his duty, in my view, to register the union.[44]

R K Workmen's Union v. *Registrar of Trade Unions*,[45] raised an important problem as to whether the Registrar of Trade Union is under an obligation to hear the then-existing unions in the field before making the order under Section 8. The High Court of Calcutta answered the question in negative and observed:

> Once, therefore, the Registrar is satisfied that the requirements of the statute have been complied with, it is obligatory upon him to enter in a register the applicant-union and he has no obligation to hear the existing unions in the field before making the order under Section 8.

The Court added:

> In fact, the statute does not deal with the matter of registration from the standpoint of any existing union at all. It is significant to note that though Section 11 (1) provides a statutory appeal from an order of refusal to register

[43] AIR 1963 Cal 57.
[44] *R K Workmen's Union* v. *Registrar of Trade Unions*, (1968) 1 LLJ 335 (Calcutta).
[45] (1968) I LLJ 335 at 337.

a union, there is no provision for an appeal or other remedy against an order granting registration.

The aforesaid decisions suggest that the only duty of the Registrar is to examine the application for registration with reference to the provisions of Sections 2(h), 4 to 7 and 15.[46] If the Registrar is satisfied that statutory requirements have been complied, he is bound to register the trade union within a reasonable time. He is under no obligation to hear the existing trade unions before making the registration under Section 8.

ONGC Workmen's Association v. *State of West Bengal*[47] delineated the nature and scope of inquiry under Section 8. The Calcutta High Court held that any order passed under Section 8 by the Registrar must be administrative in nature. The Court also held that the Registrar is not deemed to be a quasi-judicial authority to decide any disputed question of fact or law. He has no authority to ask for any of the parties to lead evidence and to give opportunity to the other party to cross examine any witness. Thus, the scope of inquiry under Section 8 is very limited.

C. Constitutional Problems in Section 8

Kesoram Rangan Workmen's Union v. *Registrar of Trade Union*[48] is an important case on this problem. The Registrar of Trade Unions failed to offer any opportunity to an existing trade union while registering a new union under Section 8. The question arose whether Section 8 imposed any unreasonable restriction on the fundamental right by not offering a right of hearing to an existing union. The question was answered in negative by the Calcutta High Court. In the course of judgement, the Court observed that the freedom guaranteed under Article 19 (1) (c) of the Constitution belongs to all workmen, so that every workman has the freedom to form a union of his own choice and to refuse to become a member of any union which he does not like.[49] The Court, therefore, concluded that 'no union can claim a monopoly or a right to complain if some other union is brought into existence by other workmen'.

D. Registration of One Union in One Industry

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

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

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

[46] This duty is, of course, subject to the powers of Registrar laid down in Section 7.

[47] *ONGC Workmen's Association* v. *State of West Bengal*, (1988) Lab. IC 555 at 560.

[48] *Kesoram Rangan Workmen's Union* v. *Registrar of Trade Unions*, (1968) 1 LLJ 335, 337. See also *Survapal* v. *Uttar Pradesh Government*, AIR 1951 Allahabad 674–698; and *O K Ghosh* v. *E X Joseph*, (1962) 2 LLJ 615.

[49] *Kesoram Rangan Workmen's Union* v. *Registrar of Trade Unions*, (1968) 1 LLJ 335 (Calcutta).

XII. CERTIFICATE OF REGISTRATION: A CONCLUSIVE EVIDENCE

The certificate of registration issued by Registrar shall be in the prescribed form, *i.e.*, in Form C of Schedule III and is conclusive evidence to show that the trade union has been duly registered under the Act.[50] This finality is only for the purposes of the Act and cannot in any way affect the powers of the High Court under Article 226 of the Constitution as the provisions of the statute are always subjected to the jurisdiction of the Constitution.[51]

XIII. MINIMUM REQUIREMENT FOR MEMBERSHIP OF A TRADE UNION

Section 9-A provides that a registered trade union of workmen shall, at all times, continue to have not less than 10 per cent or 100 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.[52]

XIV. CANCELLATION AND DEREGISTRATION OF A REGISTERED TRADE UNION

A. Grounds for Cancellation of Registration

The registration of a trade union may be cancelled by the Registrar on any one of the following grounds: (*i*) that the certificate under Section 9 had been obtained by fraud or mistake; (*ii*) that the trade union had ceased to exist; (*iii*) that the trade union had 'wilfully' contravened any provision of the Act even after notice from the Registrar[53]; (*iv*) that a trade union allowed any rule to continue in force which was inconsistent with any provisions of the Act; (*v*) that the trade union had rescinded any rule providing for any material provision which was required by Section 6; (*vi*) if the Registrar is satisfied that a registered trade union of workmen ceases to have the requisite number of members. However, not less than two months' previous notice in writing specifying the ground on

[50] Section 9.

[51] Inserted by Act No. 31 of 2001 w.e.f. 9-1-2002.

[52] Cancellation of registration is illegal on basis of reply by one of disputed members and no finding as to wilful disobedience of Section 10. [See *Ceramic Workers Progressive Union* v. *Addl. Registrar*, (1994) Lab. IC NOC 66.]

[53] New Section 9A inserted by Act No. 31 or 2001 w.e.f. 9-1-2002.

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.[54]

The grounds for cancellation of registration are open to several objections: *First*, the term 'wilful' is vague. In practice, it is found that trade unions do not submit their annual return. The section, however, requires that the default has to be 'wilful'. To establish a wilful default to the satisfaction of a court is difficult. In view of this, the (First) National Commission on Labour recommended that where the union failed to submit the annual return, its registration should be cancelled irrespective of whether the default is 'wilful' or otherwise. This recommendation should be implemented. *Second*, it is doubtful whether the materially defective return should be treated as 'return' under Section 10. In view of the prevailing ambiguity, the National Commission on Labour suggested that 'materially defective return' should amount to a default and the union should be under an obligation to rectify mistakes within the prescribed period failing which the Registrar should be deemed not to have received the return.[55]

The Registrar is not competent to cancel the registration of a trade union, without, in the first instance, giving to the trade union concerned two months' previous notice in writing, specifying the grounds on which he proposes to withdraw or cancel the certificate and giving an opportunity to the trade unions to show cause against proposed action.[56] However, unlike Section 26(3) of the Industrial Relations Bill, 1978, there is no provision that 'while cancelling the certificate of registration of a trade union, the Registrar shall record the reasons of doing so and communicate the same in writing to the trade union concerned.' Once the Registrar cancels or withdraws the registration of a trade union, he has no power to quash that order. Further, he has no power to review it. Moreover, he has no power to withdraw it because of subsequent events.[57]

B. Powers of the High Court in Respect of Cancellation of Registration

The Bombay High Court held that the High Court may exercise its powers under Article 226 of the Constitution where the cancellation of the registration of the trade union had been effected improperly.[58] Again, the Gujarat High Court quashed the orders of Registrar

[54] The Trade Union (Amendment) Bill, 1982, provides for insertion of new clause (c) after the proviso to Section 10, namely:
if the Registrar is satisfied that the Trade Union has called for, or participated in, any illegal strike.
Explanation— For the purposes of this section, 'illegal strike' has the meaning assigned to it in Section 24 of the Industrial Disputes Act, 1947. See also Government of India, *Report of the National Commission on Labour* (1969) 296.

[55] Section 10; See also *Mysore Iron and Steel Works* v. *Commissioner of Labour and Registrar of Trade Unions*, (1972) Lab. IC 799. See also *Tata Electric Companies Officer Guild* v. *Registrar of Trade Unions*, (1993) Lab. IC 1849. *Tamil Nadu Government Press Workers Sangam* v. *First Trade Union Addl. Registrar (Deputy Commissioner of Labour I)*, (2004) 1 LLJ 274.

[56] *Mukund Iron Steel Works Ltd* v. *V V Deshpande*, (1986) Lab. IC 1612 (Bombay).

[57] *Ibid.*

[58] *Gujarat Rajya Kamdar Sabha* v. *Registrar under the Trade Unions Act*, (1999) LLR 285

where no show cause notice was given before cancellation of registration as required under Section 10(b).[59]

C. Powers of the Registrar in Respect of Deregistration

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

The power of cancellation of registration of trade unions also confers an in-built power to withdraw the order of cancellation. Thus, the Registrar is also empowered to withdraw the order of cancellation on realization of mistake and on such order, the cancellation becomes *non-est*.[60]

XV. APPEAL

The Act[61] confers right of appeal on persons aggrieved against an order of the Registrar (*i*) refusing to register a trade union; or (*ii*) withdrawing the certificate issued after registration; or (*iii*) cancelling the certificate of registration. The Act does not, however, define the word 'person'. In the absence of any definition, Section 3 (42) of the General Clauses Act may be taken into account for the purposes of the definition of the term. Thus, the 'person' includes a legal person like a trade union.[62] In an appeal by a trade union, whose certificate of registration is cancelled, no other trade union has a right to be impleaded as a party.[63]

A. Appellate Forum

The appeal may be filed (*a*) where the head office of the trade union is situated within the limits of a presidency town to the High Court; (*aa*) where the head office is situated in an area falling within the jurisdiction of a labour court or an industrial tribunal, to that court or tribunal, as the case may be; or (*b*) where the head office is situated in any other area to such court, not inferior to the court of an additional or assistant judge of a principal civil court of original jurisdiction, as the appropriate government may appoint in this behalf for the area.

The expression 'High Court' in Clause (*a*) above refers to the original side of the High Court and not to the appellate side. Further, the expression 'Presidency Town' in Clause (*a*) refers to the towns where the High Court has original civil jurisdiction. And Section 3(44) of the General Clauses Act (Act X of 1897) defines 'Presidency Town' to mean the total limits for the time being or the ordinary original civil jurisdiction of the High Court of

[59] *Association of Engineering Workers* v. *Dockyard Labours*, (1992) 1 Lab. IC 214.

[60] Section 11.

[61] *Mysore Iron and Steel Works Labourers' Association* v. *Commissioner of Labour and Registrar Trade Unions*, (1972) Lab. IC 779

[62] *KSEB* v. *KSEB Trade Union*, (1987) 2 LLN 560.

[63] *Tamil Nadu Non-gazetted Government Officers Union, Madras* v. *Registrar of Trade Unions, Madras*, AIR 1959 Madras 55.

Judicature at Calcutta, Madras or Bombay as the case may be.[64] In cases where high courts are situated outside the presidency town, the high courts have no jurisdiction to entertain appeals under Section 11 (1) (*b*). In regard to such areas, any court not inferior to the court of an additional/assistant judge of the principal civil court of original jurisdiction, as the appropriate government may appoint in this behalf for that area, shall have jurisdictions.[65]

B. Powers of The Appellate Court[66]

The appellate court may either: (*i*) dismiss the appeal; or (*ii*) pass an order directing the Registrar to register trade unions and to issue a certificate of registration under Section 9; or (*iii*) set aside the order for withdrawal or cancellation of the certificate as the case may be. The Registrar is under an obligation to comply with such orders of the appellate authority.

C. Procedure to be Adopted by the Appellate Court[67]

The appellate court shall, as far as practicable, follow the same procedure and have the same powers in respect of the appeal as vested in the civil court while trying a suit under the Code of Civil Procedure, 1908. Further, it may also determine from whom the whole or any part of the costs of appeal shall be recovered. Such costs shall be recovered as if they had been awarded in a civil suit under the code.

D. Second Appeal

The Act[68] also confers a right of second appeal on persons whose appeals under Section 11(1) (b) have been dismissed. Such an appeal shall be filed in the high court, and the high court for the purposes of such an appeal has all the powers of the appellate court. However, no second appeal shall lie where the high court hears an appeal under Section 11(1) (a).

E. Time for Making an Appeal

The appeal under Section 11 must be filed within such time as may be prescribed under the rules for the purpose.

XVI. THE RESULT OF DEREGISTRATION

A trade union whose certificate of registration has been withdrawn or cancelled, loses its status as a legal entity under the Act. Upon the cancellation of certificate of registration, the trade union and its members cease to enjoy the privileges of a registered trade union.

XVII. RE-REGISTRATION

There is no provision in the Act for re-registration of a trade union whose registration has been cancelled. The National Commission on Labour, therefore, recommended that the Trade Union Act should provide that any application for re-registration from a union, (the

[64] *Tamil Nadu Non-gazetted Government Officers Union, Madras* v. *Registrar of Trade Unions, Madras*, AIR (1959) Madras 55.
[65] Section 11(2).
[66] Section 11(3).
[67] Section 11(4).
[68] Govt. of India, *Report of the National Commission on Labour*, (1969) 297.

registration of which has been cancelled) should not be entertained within six months of the date of cancellation of registrations.[69] Perhaps in view of this recommendation, the Industrial Relations Bill, 1978[70] and the Trade Unions (Amendment) Bill, 1982[71] have provided for re-registration of a trade union.

XVIII. REGISTERED OFFICE

Section 2(a) defines 'registered office' to mean the 'office of a trade union which is registered under the Act as the head office thereof.' And, Section 12 requires that all communications and notices to a registered trade union may be addressed to its registered office. Further, notice of any change in the address of the head office shall be given within 14 days of such change to the Registrar in writing, and the changed address shall be recorded in the register referred to in Section 8.

XIX. CHANGE OF NAME, STRUCTURE AND DISSOLUTION

A. Change of Name

A registered trade union with the consent of not less than two-third of the total number of the members may change its name.[72] Notice of the change of name signed by seven members and the secretary of the trade union changing its name must be sent to the Registrar.[73] The Registrar, before approving the change of name, has to ascertain that the new name is not identical with that of any existing trade union known to him, or so nearly resembling such name as to deceive the public or member.[74] If otherwise, he shall refuse to register the change of name. On the contrary, if he is satisfied that the provisions of the Act have been complied with in respect of changing the name, he shall register the change of name in the register maintained for this purpose.[75] The change in the name of registered trade union neither affects its rights nor obligations nor does it render defective any legal proceedings by or against the trade union and any legal proceedings which might have commenced or continued by its new name.[76]

[69] Section 28 of the Industrial Relations Bill, 1978, (since lapsed owing to the dissolution of the Lok Sabha), provided the following for re-registration of trade union:
A trade union whose certificate of registration has been cancelled may apply for re-registration after the expiry of a period of six months from the date of the last cancellation of the certificate of registration.
[70] The Trade Union (Amendment) Bill, 1982, provides for insertion of new Section 11A in the Act to read as follows:
A trade union whose certificate of registration has been cancelled may apply for re-registration to the Registrar after the expiry of a period of six months from the date of such cancellation:
Provided that where such cancellation is on the ground that such trade union has failed to comply with any of the requirements provided by or under this Act, it shall not be re-registered until it has complied with such requirement.
[71] Section 23.
[72] *Ibid*.
[73] Section 25(1).
[74] Section 25(2).
[75] Section 25(3).
[76] Section 26.

B. Amalgamation of Trade Unions

Any two or more registered trade unions may become amalgamated together as one trade union with or without dissolution or division of funds of such trade unions. This can be done only if: (*i*) 50 per cent of the members of each and every trade union entitled to vote record their votes; (*ii*) the votes in favour of amalgamation is not less than 60 per cent,[77] (*iii*) notice in writing of amalgamation signed by seven members and the secretary of each and every registered trade union (which is party to amalgamation) accompanied by such statement as may be prescribed, is sent to the Registrar of Trade Unions.[78] If the aforesaid requirements are fulfilled, the Registrar after satisfying himself that the provisions of the Act in respect of amalgamation have been complied with and that the trade union formed thereby is entitled to registration, he shall register the trade union in the prescribed manner.[79] The amalgamation shall be effective from the date of such registration. The amalgamation shall not prejudice any right of such trade unions who are parties to it or any right of a creditor or any of them.[80]

C. Dissolution of Trade Unions

When a registered trade union is dissolved, notice of the dissolution signed by the secretary and seven members must be sent within 14 days of dissolution to the Registrar of Trade Unions.[81] The notice must be in the prescribed form. The Registrar after satisfying himself that the dissolution has been effected in accordance with the provisions of the Act makes the entry in the register maintained by him.[82] Where the rules of trade union contain no provision for the distribution of funds on dissolution, the Registrar shall divide the funds in proportion to the amounts contributed by the members by way of subscription during their memberships.[83]

XX. SUBMISSION OF RETURNS

Registered trade unions are required under Section 28: (1) to submit annual returns in the prescribed form to the Registrar along with an audited statement of income and expenditure during each year of all receipts and expenditure during the year ending on the 31st day of December, next preceding such prescribed date; and of the assets and liabilities of trade union existing on 31st December[84] (2) The general statement should be accompanied by the statements, (*i*) showing any change of office bearers made during the year to which general statement refers; and (*ii*) a copy of rules of the trade union corrected upto the date of despatch thereof to the Registrar[85] (3) Every alteration made in the rules of trade union shall be sent

[77] Section 24.
[78] Section 25(1).
[79] Section 25(3).
[80] Section 26.
[81] Section 27(1).
[82] *Mysore Iron and Steel Works v. Commissioner of Labour and Registrar of Trade Unions*, (1972) Lab. IC 799.
[83] Section 27(2).
[84] Sub-section (1).
[85] Sub-section (2).

within 15 days of the alterations.[86] (4) The Registrar or any other duly authorized officer is empowered to inspect and require production of the certificate of registration, account books, registers and other documents relating to trade unions for examining the returns submitted by them.[87] A statement of change of office-bearers under Section 28(2) has to accompany a general statement as required under Section 28(1). Even if general statement cannot be prepared under Section 28(1), statement under Section 28(2) can still be re-prepared.[88]

XXI. PENALTIES AND PROCEDURE

A. Failure to Submit Return

In case of failure to submit returns or statements required under Section 28: (*i*) every office-bearer; (*ii*) other persons bound by the rules of the trade union to give or send the same; or (*iii*) if there is no such office-bearer or person, every member of the executive of the trade union shall be punishable with fine not exceeding ₹5. But if the contravention is continued after conviction, a further fine not exceeding ₹5 for each week during which the default was made shall be imposed.[89] However, the aggregate fine shall not exceed ₹50.[90]

The Act provides more deterrent punishment with a fine which may extend upto ₹500 upon persons wilfully making, or causing to be made any false entry in, or any omission from the general statement required by Section 28, or in or from any copy of rules or of alterations of rules or document sent to the Registrar under that section.[91]

B. Penalties for Supplying False Information Regarding Trade Unions

Quite apart from penalties mentioned earlier, if any person with intent to deceive or with like intent gives: (*i*) to any member of a registered trade union; or (*ii*) to any prospective member of such union, any document purporting to be a copy of rules of a trade union or any alteration of such rules which he knows or has reason to believe that it is not a correct copy, or (*iii*) gives a copy of any rules of any unregistered trade union to any person on the pretence that such rules are the rules of a registered trade union shall be punishable with a fine which may extend to ₹200.[92]

C. Cognizance of the Offence

Only a presidency magistrate or magistrate of the first class can try any offence mentioned in Sections 31 and 32 of the Act[93]. Similarly, no court shall take cognizance of any offence unless: (*i*) a complaint has been made by the Registrar; or (*ii*) with his previous sanction by

[86] Sub-section (3).
[87] Sub-section (4).
[88] *Sagdish Bharti* v. *Union of India*, 1969 Lab. IC 205 (Allahabad).
[89] Section 31(1).
[90] Provision to Section 31(1).
[91] Section 31(2).
[92] Section 32.
[93] Section 31(1).

any person; or (*iii*) in the case of any offence under Section 32 by the person to whom such copy has been given;[94] (*iv*) the complaint is made within six months of the date on which the offence is alleged to have been committed.

[94] Section 32(2).

CHAPTER 7

Members, Office Holders and Outsiders in Trade Unions

I. SOME DISTURBING ASPECTS OF OUTSIDERS IN THE UNION

One of the significant features of Indian trade union movement is outside leadership. The early trade union movement was led by philanthropists and social reformers. Said the Royal Commission on Labour in India:

> At present, the union depends for their leaders mainly on social workers, lawyers and other professionals and public men. A few of these have interested themselves in the movement in order to secure private and personal ends. The majority, however, are motivated by an earnest desire to assist labour.[1]

Since independence, many of them have identified themselves completely with labour some others have engaged entirely in political activities; still others continue to work both in political and labour fields.

Several factors have been responsible for outside interference in the executive of trade unions. *First*, the majority of workers are illiterate. *Second*, fear of victimization and of being summarily dismissed by management were further responsible for outside interference in the trade union movement. *Third*, the financial weakness of trade unions and absence of full-time trade union workers have given the opportunity to outsiders to interfere in trade unions' administration and in their executive.

II. RIGHTS OF MINORS TO MEMBERSHIP OF TRADE UNIONS

Section 21 provides that any person who has attained the age of 15 years may be a member of a registered trade union subject to any rules of the trade union to the contrary, and may,

[1] *Government of India*, Report of the Royal Commission in India (1931) 328.

subject as aforesaid, enjoy all the rights of a member and execute all instruments and give all acquittances necessary to be executed or given under the rules.

III. OUTSIDERS IN THE UNION EXECUTIVE AND THE LAW

Section 22 of the Trade Unions Act, 1926, provides:

Proportion of office-bearers to be connected with the industry: (1) Not less than one half of the total number of the office-bearers of every registered trade union in an unorganized sector shall be persons actually engaged or employed in an industry with which the trade union is connected:

(1) Provided that the appropriate government may, by special or general order, declare that the provision of this Section shall not apply to any trade union or class of trade unions specified in the order.

Explanation: For the purposes of this section, 'unorganized sector' means any sector which the appropriate government may, by notification in the official gazette declare.

(2) Save as otherwise provided in sub-section (1), all office-bearers of a registered trade union, except not more than one-third of the total number of the office-bearers or five, whichever is less, shall be persons actually engaged or employed in the establishment or industry with which the trade union is connected.

Explanation: For the purpose of this sub-section, an employee who has retired or has been retrenched shall not be construed as an outsider for the purpose of holding an office in a trade union.

(3) No member of the council of ministers or a person holding an office of profit (not being an engagement or employment in an establishment or industry with which the trade union is connected), in the Union or a state, shall be a member of the executive or other office-bearer of a registered trade union.

The aforesaid provisions which permit non-employees to be an office-bearer of a registered trade union raises various problems:

(*a*) What is meant by the 'outsider'? (*i*) Whether an ex-worker or a worker whose services had been terminated by the employer may be treated as an outsider? (*ii*) Whether a full-time employee of a trade union should be treated as an outsider?

(*b*) Whether there should be a legal ban on non-employees holding positions in the executive of the union? Does it affect Article 19 of the Constitution?

(*c*) Whether the present limit of non-employees in the executive of a trade union be curtailed? (iii) Whether union leaders should be debarred from holding offices in more than a specified number of unions? Let us discuss these questions.

A. Concept of Outsider

The explanation of sub-section 2 of Section 22 provides that for the purposes of this sub-section, an employee who has retired or has been retrenched shall not be construed as outsider for the purpose of holding an office in a trade union.

The Supreme Court in *Bokajan Cement Corporation Employees' Union* v. *Cement Corporation of India Ltd*[2] held that an employee would not cease to be a member of a trade union on termination of his employment because there is no provision in the Act or the constitution of trade union providing for automatic cessation of employment.

A question therefore arises whether an employee whose services are terminated or who has retired would be an outsider. The question can only be answered in affirmative because it is not desirable to permit dismissed workers in the executive of a trade union.

[2] 2004 1 LLJ 197.

B. Entry of Outsiders in the Executive of Trade Unions

As the law stands today, there is no bar to having outsiders such as lawyers, politicians, social workers etc., in the executive of trade unions. Conflicting views have, however, been expressed in regard to the question of banning outsiders in the executive of trade unions. Managements do not favour outside entry in the executives of trade unions. Workers, on the contrary, are of the view that devoted leaders, even if they are outsiders, should be permitted to be office-bearers of trade unions. They are of the view that management or any outside agency should not interfere in their affairs. If they decide to allow outsiders in the trade union's executive, they should be permitted to do so. However, sub-section 3 of Section 22 debars

(*i*) a member of the council of ministers or

(*ii*) a person holding an office of profit, other than those engaged or employed in an establishment or industry with which the trade union is connected, in the Union or state to be a member of the executive or office-bearer of a registered trade union.

(*iii*) From the above it appears that a member of the Parliament or state legislature or ex-member of the council of ministers may become a member or executive or other office-bearer of a registered trade union.

C. Number of Outsiders in the Executive of Trade Unions

The Trade Unions Act now places the limit of 50 per cent in case of unorganized sector. However, all office-bearers of a registered trade union except not more than one-third of the total number of office-bearers or 5, whichever is less shall be persons actually engaged or employed in the establishment or industry with which the trade union is connected.

IV. DISQUALIFICATION OF OFFICE-BEARERS

The following persons are not eligible to be appointed as office-bearers or members of the executive of a registered trade union if

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

(*ii*) 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 elapsed since his release.[3]

Section 21A(2) gives retrospective effect to the application of the aforesaid clause. It provides that any member of the executive or other office-bearer of a registered trade union who, before the commencement of the (Indian) Trade Unions (Amendment) Act, 1964 has been convicted of any offence involving moral turpitude and sentenced to imprisonment shall

[3] Section 21A(*i*) of the Trade Unions (Amendment) Bill, 1982 provides for insertion of a new clause viz., '(*iii*) he has been convicted of any offence under the Industrial Disputes Act, 1947.'

on the date of such commencement cease to be a member or office-bearer unless a period of five years has elapsed since his release before that date.

In *R Murugesan* v. *Union Territory of Pondicherry*,[4] the Madras High Court held that where a dispute arises as to who are validly and legally elected office-bearers of a trade union, the Registrar is under an obligation to decide the question so that he can record the name in his register. For this purpose, the scope of enquiry is limited. Otherwise, the registrar will be in an enviable position of having to record two sets of office bearers of the same trade unions without having any power to decide as to which of them will be recognized for the purpose of administration of the Act.[5]

V. CEILING ON HOLDING OFFICES IN TRADE UNIONS

Another problem of great practical significance is whether union leaders should be debarred from holding office in more than a specified number of unions. The first National Commission on Labour is of the view that there should not be any legal ban on leaders from holding the executive post of more than one union. The view is, however, open to criticism. In order to attract only devoted and hard-working leaders in trade unions, it is necessary to place some limit on the union leaders from holding office of more than a specified number of unions. It is significant to note that Section 33 (*iii*) of the Industrial Relations Bill, 1978, provided that a person shall be disqualified for being chosen an office-bearer of a registered trade union if he is already office-bearer of not less than four trade unions. This will ensure the entry of only devoted and interested persons in the trade union's executive. Be that as it may, the (Second) National Commission on Labour in its report to the Government of India submitted on 29 June 2002, *inter alia* recommended that a ceiling on the total number of trade unions of which an 'outsider' can be a member of executive bodies is needed.

VI. TENURE OF ELECTED OFFICE-BEARERS/MEMBERS OF EXECUTIVE

Section 6(hh) of the Trade Unions Act 1926 provides that the members of the executive and other office-bearers of a trade union shall be elected for a period of not more than 3 years.

VII. RIGHTS AND DUTIES OF OFFICE-BEARERS AND MEMBERS

An office-bearer or member shall be entitled to inspect: (*i*) the account-books; and (*ii*) list of members[6] at such time as may be provided for in the rules of the trade union. Further, a member not under 15 has a right to execute all instruments and give all acquittance necessary to be executed or given under the rules.[7] The scope of the legal rights and privileges was

[4] (1976) 2 LLJ 435.
[5] *Sanjeeva Reddi* v. *Registrar of Trade Unions*, (1969) 1 LLJ 11 and *Mukund Ram Tanti* v. *Registrar of Trade Unions*, (1963) 1 LLJ 60.
[6] Section 20.
[7] Section 21.

delineated in *Secretary of Tamil Nadu Electricity Board Accounts Subordinate Union* v. *Tamil Nadu Electricity Board*.[8] In this case, two workmen of the Tamil Nadu Electricity Board were allowed to do the full-time union work. However, the board refused to extend this facility after about 4 years. On a dispute being raised, the government referred it to the labour court for adjudication. The labour court held that this was a mere concession granted to the office-bearers of the union and was not a part of service condition. Aggrieved by this order, the trade unions preferred a writ petition before the Madras High Court. Three issues were raised, namely: (*i*) Whether the workman had a legal right to do trade union activity without attending to office duties? (*ii*) Whether the withdrawal of permission to do trade union work on full-time basis would affect the service conditions? and (*iii*) Whether it is a privilege within the meaning of Item 8 of Schedule IV of the Act? The court answered all the issues in the negative and observed:

> It is true that trade unionism (has been) recognized all over the world but that does not mean that an office-bearer or any trade union can claim, as a right, to do trade union activities during office hours. In a poor country like India, tax payers pay money not for the purpose of encouraging trade unionism, but in the fond and reverend hope that every person who is entrusted with the task of doing service will do his service. Whether he actually does service or not, there can be a fond expectation of the same. To allow one to claim as of right to do trade union activity without attending to office duties, would in my opinion be an anachronism since it will amount to fleecing the tax payer in order to encourage trade union activities. That is not the purpose for which the workman was appointed by the Electricity Board.

The Court further stated:

> [We] are totally unable to appreciate the argument of the petitioner that merely because the recognition of trade union is a part of the service condition, it must necessarily follow that a right to represent or espouse the cause of workmen during office hours is a necessary concomitant. If this kind of trade unionism is allowed to flourish in our country, I could say 'Woe to our country and poor tax payers.' For my part, not that one should be against trade unionism, which is welcome because it is that which brings about solidarity among workers, the crucial question is, can a right be claimed to active trade unionism during office hours? The answer should be an emphatic 'no'.

Again in *Indian Bank Employees Union* v. *Indian Bank*[9], it was held that a trade union worker cannot enjoy the luxury of getting salary and not doing the assigned work. In other words, the indulgence of trade union activity cannot be at the cost of the work for which they are paid their emoluments by the employer.

In *Burn & Co.* v. *Their workmen*[10], the Court held that the office-bearers are not immune from punishment for remaining absent from their duty. Likewise, office-bearers of a trade

[8] (1984) 2 LLJ. 478.
[9] (1994) 2 LLJ 497.
[10] (1959) 1 LLJ 458.

union are not immune from disciplinary action.[11] Moreover, office-bearers of a trade union cannot claim immunity from transfer.[12]

Again, in *Usha Breco Mazdoor Sangh* v. *M/s Usha Breco Ltd*[13], it was held :

1. Whereas the management cannot resort to victimization and unfair labour practice so as to get rid of the union leaders, the union leaders in turn are bound to maintain discipline;
2. A union leader does not enjoy immunity from being proceeded against in a case of misconduct.
3. Assault and intimidation are penal offences. A workman indulging in commission of a criminal offence should not be spared only because he happens to be a union leader.

It is submitted that the Court, while recognizing the need of a healthy trade union, cautioned that it should not be at the cost of the tax payer. This appears to be a very healthy approach and would bring discipline in the industry.

VIII. TRANSFER OF OFFICE-BEARERS OF TRADE UNION

It has now been held in a series of cases of the Supreme Court and high courts that :

(*i*) The power of the employer to transfer its employees (including the office-bearers of trade union is a general conditions of service of the employee and that such transfers are to be effected for administration convenience of the board and the court does not sit in appeal nor calls for details of administrative exigencies);

(*ii*) The employee under transfer cannot claim any immunity from transfer merely by reason of his being office bearer of the trade union;

(*iii*) The fact that the office bearer of the trade union organized protests and agitations is not a ground from which intention to victimize the petitioner (office bearer of trade union) can be inferred.

(*iv*) Only in cases where the order of transfer is found to be *mala fide* or colourable exercise of power, would the order become illegal;

(*v*) Transferring an employee because he is troublesome/trouble-maker would be in the interest of administration and such transfers cannot be characterized as punishment.[14]

In *Singapore Airlines Ltd* v. *Mr Rodrigntin*[15], the plaintiff joined the Singapore Airlines Ltd as clerk at Mumbai on 5 January 1987. As per item 6 of the appointment letter, the airlines was empowered to transfer the plaintiff at any time at any SAL station all over India at its discretion. However, according to the plaintiff, the airlines had not transferred any employees from Mumbai to elsewhere. The plaintiff was carrying on trade union activities for more than 10 years and he was also elected as president of the union. According to the plaintiff, as the defendant wanted to prohibit him from participating in trade union activities and charter of demands made by the union, the airlines transferred the plaintiff to Jalandhar. The airlines

[11] (1991) LLR 456.
[12] *TNEB Engineers Sangam* v. *Tamil Nadu Electricity Board*, (1996) LLR 942 (Mad).
[13] 2008 LLR 619.
[14] *Varada Rao* v. *State of Karnataka*, (1986)11 CLR 277 (SC); *N K Singh* v. *Union of India*, (1995) 1 LLJ 854 (SC); *TNEB Engineering Sangram* v. *Tamilnadu Electricity Board*, AIR 1966 SC 1685.
[15] (2004) ILLJ 197 (SC).

issued transfer order on 9 July 2007 and asked him to join within 15 days. According to the plaintiff, the transfer was *mala fide* and not in accordance with model standing orders. According to the airlines, it transferred the plaintiff because it wanted to concentrate on its business at Jalandhar and since the plaintiff was experienced in marketing for over 10 years; it decided to transfer him from Mumbai to Jalandhar. Upholding the validity of the order of transfer, the Bombay High Court ruled:

1. Merely that the employee is president of the union, the transfer would not be *mala fide*.
2. Transfer cannot be stalled merely because he is an office-bearer of the union;
3. Had there been *mala fide* intention of the management, transfer of the employee who has been an active worker of the union for the last 10 years would have been made earlier also;
4. It is an individual dispute and not an industrial dispute. The union has not passed any resolution supporting the case of the employee. It did not espouse or take up or support his case. Hence, civil court has no jurisdiction;
5. Inconvenience to the employee is not relevant to stay the transfer;
6. In matter of transfer, employee who has been served with the transfer order must first report to the place where he is transferred and, thereafter make a representation or file legal proceedings;

The Court, accordingly, set aside the order of the trial Judge that the transfer was *mala fide* and not in accordance with terms of contract.

IX. INTER-UNION AND INTRA-UNION RIVALRIES

Since independence, inter-union and intra-union rivalries, primarily based on political considerations, leading to disputes between rival sets of office-bearers of trade unions, have become sharper. However, except non-statutory Code of Discipline evolved in 1958 which has failed to achieve the desired result, there is at present no legal machinery or procedure for resolution of inter-union disputes in the Trade Unions Act. To fill this gap, the Trade Unions (Amendment) Bill, 1982, provides for such machinery. Section 2(i) of the Bill defines 'trade union dispute' to mean any dispute:

(*a*) between one trade union and another; or

(*b*) between one or more members or office-bearers of a trade union and the trade union (whether also with any of the other members or office-bearers of the trade union or not) relating to its registration, administration or management of its affairs, including the appointment of the members of the executive or other office-bearers of the trade union, the validity of any such appointment, the area of operation of the trade union, verification of membership and any other matter arising out of the rules of the trade union, but excluding matters involving determination of issues as to the title to, or ownership of, any building or other property or any funds.

And, Section 28B permits the parties to a trade union dispute to refer such dispute for arbitration. Such arbitration agreement must be in the prescribed form and signed by the parties in the manner prescribed by regulation. Further, Section 28C empowers the Registrar to follow such procedure as he thinks fit in adjudging the disputes referred to him. The procedure that may be followed by the Registrar will be subject to such regulation as may

be made in this regard. Any person aggrieved by the award of the Registrar in a reference may appeal to the court within such period as may be prescribed by regulation. The Bill also permits the parties to trade union disputes to apply jointly or separately in the manner prescribed by regulation for adjudication of disputes to the Registrar.

CHAPTER

8

Trade Union Finances and Funds

I. FACTUAL REVIEW

The weakness of a trade union is also determined by its financial status. It is, therefore necessary to know the income and expenditure of workers' and employers' unions from 1996 to 2005.

Table 8.1: Income and Expenditure of Registered Workers' and Employers' Trade Unions Submitting Returns for the Years 1991 to 2005

	Workers' Unions			*Employers' Unions*		
Year	*No. of Unions Submitting Returns*	*Income (₹ Lakh)*	*Expenditure (₹ Lakh)*	*No. of Unions Submitting Returns*	*Income (₹ Lakh)*	*Expenditure (₹ Lakh)*
1991	8351	3156.99	2409.97	67	5.16	3.65
1992	9073	3237.93	2409.97	92	36.83	29.32
1993	6776	1371.15	1319.63	30	7.34	6.32
1994	6265	2037.10	1895.76	12	4.97	5.25
1995	8048	3124.98	3269.54	114	94.88	76.15
1996	7229	2917.26	1962.15	13	26.17	23.74
1997	8774	2507.13	2280.92	98	85.14	72.00
1998	7291	2629.26	2335.44	112	93.27	102.09
1999	8061	5791.36	5043.13	91	66.91	48.74
2000	7231	7463.60	5940.66	22	24.61	20.90
2001	6513	5558.52	4895.56	18	22.21	17.59
2002	7734	6254.54	5340.46	78	404.19	341.70
2003	7229	9432.81	6733.15	29	31.08	23.89
2004	5217	6983.41	5627.83	25	78.41	40.18
2005	8255	11609.18	8852.97	62	63.59	41.54

Source: Government of India, Ministry of Labour, *Indian Labour Year Book*, 2007 (2009), 90.

From Table 8.1, it is evident that during 2005, income as well expenditure of workers' unions, as compared to previous years, have witnessed considerable increase. In case of employers' unions, both income and expenditure of unions submitting returns registered a decrease during the period under reference. But the average income of trade unions is inadequate looking at the size of the unions. Several factors accounted for low average income of trade unions: *First*, the strength of union members is inadequate due to small size of unions and irregularity in payment of membership subscription. *Second*, workers are apathetic towards trade unions and do not want to give their hard-earned money. *Third*, unions are also interested in boosting up their membership figures and, therefore, do not insist on regular payment.[1] *Fourth*, lack of full-time trade union staff may be responsible for irregularity in collection of membership subscription.

II. MEMBERSHIP SUBSCRIPTION: LAW'S RESPONSE

A. Rate of Subscription of Union Members

Section 6 (ee) of the Trade Unions Act, 1926, provides that the payment of minimum subscription by members shall not be less than:

(*i*) one rupee per annum for rural workers;

(*ii*) three rupees per annum for workers in other unorganized sectors; and

(*iii*) twelve rupees per annum for workers in other cases.

The aforesaid clause provides minimum membership fee. The basic difficulty of trade unions is about the realization of monthly subscription from its members. The subscription is not regularly paid and accumulation of 'arrears pertaining to several years are not uncommon'. Equally common is the practice of collecting subscription from those who want to avail themselves of the privileges of being a trade union member.[2] These irregularities can be eradicated by providing a machinery for regular realization of dues. Further, the aforesaid rate of subscription is inadequate and creates a hurdle in effective functioning of unions.

B. Right of Members to Subscribe

The members of trade unions are members under Section 6(e) of the Trade Unions Act, 1926. The payment of subscription by members to the trade union has been made compulsory under Section 6(ee) of the Act. The trade unions cannot refuse to receive subscription from its members.[3] The same has been declared as a right of members.[4]

C. Realization of Union Subscription and Check-off

In India, the Trade Unions Act, 1926 does not provide for check-off facilities. The check-off system is a system under which the employer regularly deducts membership subscription

[1] S C Pant, *Indian Labour Problem* (1964), p 101.
[2] *Ibid.*
[3] *Coimbatore Periyar Districts Dravida, Panjalal Thozhilalar Munnetra Sangam* v. *National Textile Corporation Limited*, 2011 LLR 1076 (HC Madras).
[4] *M T Chandrasennan* v. *N Sukumaran*, AIR 1974 SC 1789.

from the wages of employees and hands over the amount to the union. This system is in vogue in USA and UK and is enforced through a clause in the collective bargaining agreement and is made legally permissible.[5] Obviously, the collection is made by the union concerned from the members. This is a lacuna in the law. To fill this gap, the (First) National Commission on Labour recommended that the right to demand check-off facilities should vest with the union and if such a demand is made by a recognized union, it should be made incumbent on the management to accept it. In this direction, an attempt was made by the Trade Unions (Amendment) Bill, 1969. The Bill empowered the employer to deduct the subscriptions from the pay of employees for handing over the same to the appropriate union.

D. Deduction of Subscription Under Payment of Wages Act, 1936

Section 7(2)(kkk) of the Payment of Wages Act, 1936 permits deduction of subscriptions from willing members of the trade union and employer is bound to deduct and remit the same into the account of the trade union. Thus, Section 7(2)(kkk) provides:

7. Deductions which may be made from wages.

(2) Deductions from the wages of an employed person shall be made only in accordance with the provisions of this Act, and may be of the following kinds only, namely,

(kkk) deductions made with the written authorization of the employed person, for payment of fees payable by him for membership of any trade union registered under the Trade Unions Act, 1926 (16 of 1926).

Thus, there is a statutory duty/obligation on the part of the employer to deduct subscription payable by the members of registered trade unions, who have given consent/authorization in writing. Refusal by the employer to deduct and remit the amount to the account of the registered trade union is a statutory violation and the same amounts to defeating the object of forming trade unions.[6]

E Check-off: Judicial Response

Judicial policy to strengthen the hands of trade unions by allowing union subscription to be deducted by employer is evident from the judgement in *Balmer Lawrie Workers' Union* v. *Balmer Lawrie & Co. Ltd.*[7] The Supreme Court examined the validity of a clause of settlement between employer and a representative union which authorized the employer to deduct 15 per cent of gross arrears payable to workmen towards union fund. Upholding the validity of the clause, the Court observed:[8]

> It is well known that no deduction could be made from the wages and salary payable to a workman governed by the Payment of Wages Act unless authorized by that Act. A settlement arrived at on consent of parties can be however, permitted as it is the outcome of understanding between the parties even though such deduction may not be authorized or legally permissible under the Payment of Wages Act .... Such deductions can neither be said to be compulsory exaction nor tax. Therefore such a provision of deduction at a certain rate as agreed between

[5] See Government of India, *Paper of the National Commission on Labour*, (1969), 294.
[6] See infra note 10.
[7] (1985) Lab. IC 242.
[8] Id. at 253 (emphasis added).

the parties for payment to the union, the same being with the consent and as part of overall settlement would neither be improper nor impermissible nor illegal.

The Court therefore, rejected the contention that by permitting deductions towards union fund of one union, the management discriminated between union and union, and between members of the union and non-members and thereby violated Article 14 of the Constitution.

The division bench of the Madras High Court in *State Bank Staff Union* v. *State Bank of India*[9] held that the plea of the recognized trade union that it should alone be given the check-off facility cannot be accepted because: (*i*) check-off facility granted to the recognized trade union under the code of discipline was not statutory in character; (*ii*) There was nothing in the code to indicate that such a facility must be given only to the recognized trade unions.

The aforesaid view as reiterated in *Coimbatore Periyar District Dravida Panjalal Thozhilalar Muneetra Sangam* v. *National Textile Corporation Ltd.*[10] In this case, the Madras High Court held that management was not justified in refusing to deduct and remit subscriptions to the account of the registered trade unions, a practice which has been in vogue for the past 25 years, merely on the ground that the said trade unions were not recognized unions for the purposes of negotiations.

In *Rashtriya Colliery Mazdoor* v *South Eastern Coalfields Ltd.*[11], the Madhya Pradesh High Court upheld the order of withdrawal of check-off facility to the petitioner on the ground that it is not affiliated to one of the recognized central trade union organizations which are in turn recognized under the Code of Discipline as being the representative union under industrial relations prevalent in the SECL. The Court also held that it is a policy matter of the petitioner and since a policy decision is taken and code of conduct has been evolved by the process of joint consultative machinery, the same is beyond the scope of judicial review.

III. GENERAL FUND: PURPOSES FOR WHICH IT MAY BE SPENT

Section 15 of the Trade Unions Act, 1926, lays down the purposes for which general fund of a registered trade union can be utilized namely:

(*a*) the payment of salaries, allowances and expenses to office-bearers of the trade union;

(*b*) the payment of expenses for the administration of the trade union, including audit of the accounts of 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 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 to members for loss arising out of trade disputes;

[9] 1991 Lab. IC 197.
[10] (2011) 4 LLJ 857.
[11] 2009 Lab IC 2836.

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

(*g*) the issue of, or the undertaking of liability under, policies of assurance on the lives of members, or under policies insuring members against sickness, accident or unemployment;

(*h*) the provision of educational, social or religious benefits for members (including the payment of expenses of funeral or religious ceremonies for deceased member) or for the dependants of members;

(*i*) the upkeep of a periodical published mainly for the purpose of discussing questions affecting employers or workmen as such;

(*j*) the payment, in furtherance of any of the objects on which the general funds of the trade union may be spent, for contributions to any cause intended to benefit workmen in general, provided that the expenditure in respect of such contributions in any financial year shall not at any time during that year be in excess of one-fourth of the combined total of the gross income, which has upto that time accrued to the general funds of the trade union during that year and of the balance at the credit of those funds at the commencement of that year; and

(*k*) subject to any conditions contained in the notification, any other object notified by the appropriate government in the official gazette.

Refund of Subscription

In *G S Dhara Singh* v. *E K Thomas*[12], the Supreme Court held that any amount received from or on behalf of members by trade union, is liable to be refunded to the members on resignation from the trade union.

IV. POLITICAL FUND

As mentioned earlier, trade unions have political affiliation and they are often compelled to plunge in political sphere in order to show their strength. Law, therefore, cannot keep itself away from realities. It is in view of this that Section 16 of the Act permits a registered trade union to raise a separate political fund for its members in furtherance of the objectives mentioned in Section 16 (2), namely;

(*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 for 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

[12] AIR 1988 SC 1829.

(*e*) the holding of political meetings of any kind, or the distribution of political literature or political documents of any kind.

Of these, clause (*c*) requires further examination. This clause which confers a right upon a trade union to spend as much as it likes for the maintenance of the member has been criticized[13] on the ground that: (*i*) it violates the fundamental right to equality as guaranteed by the Indian Constitution (*ii*) it results in improper influence on the members thereby interfering with the freedom of speech amounting to breach of privilege (*iii*) it encourages the growth of puppet legislators who can get double maintenance (*iv*) such a provision has great potential for corrupting our parliamentary system and (*v*) a new line of lobbying pattern emerges.[14]

Nature and Effect of Non-contribution

Contribution to the political funds of the trade union is merely voluntary and not compulsory. Thus, no member who does not contribute to the fund shall be under any disability or disadvantage except in respect of management and control of such funds. Further, a non-contributory member cannot be excluded from the benefits of the trade union. Moreover, no condition can be imposed for the admission to membership of the union.[15]

While dealing with the provisions of separate political fund, the [second] National Commission on Labour in its report felt that it may be allowed to continue and appropriately included it in the proposed integrated law. However, care must be taken to ensure that the general funds of trade unions are not used for political purposes.

[13] See Shashi K Sharma, Maintenance Clause as per Section 45 16(2) (c) of the Trade Unions Act, 1926, 22 JILJ 282 (1980).
[14] *Ibid.*
[15] Section 16(3).

CHAPTER 9

Privileges of Registered Trade Unions

Let us turn to consider the immunity afforded to the members and office-bearers of registered trade unions from civil and criminal conspiracies and restraint of trade under the Trade Unions Act. Until 1926, unions or workers indulging in strike and causing financial loss to management were liable for illegal conspiracies. For instance, in *Buckingham and Carnatic Mills*, the unions were held liable for illegal conspiracies and employers were awarded damages.

I. IMMUNITY FROM CRIMINAL CONSPIRACY

A. Only a Fraction of Labour Force Protected

Section 17 of the Trade Unions Act, 1926, (hereinafter referred to as TUA) seeks to insulate trade union activity from liability for criminal conspiracy:

> No office-bearer or member of a registered trade union shall be liable for punishment under sub-section (2) of Section 120 B of the Indian Penal Code 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.

The immunity is, however, available only:

(*i*) to office-bearers and members of registered trade unions;
(*ii*) for agreement between the members;
(*iii*) such agreement that may further any such trade union object as is specified in Section 15 of the Act; and
(*iv*) such agreements is not to commit an offence.

The first of these limitations confines the protection to a only members and office-bearers of a trade union. Table 9.1 tabulates the position of registered trade unions.

Table 9.1: Number of Registered Unions (Workers' and Employers') and Membership of Unions Submitting Returns for the Years 1991 to 2006

Year	Number of Registered Trade Unions	Number of Unions Submitting Returns	Membership of Unions Submitting Returns (in 000's)			Average Membership per Union Submitting Returns
			Men	Women	Total	
1	2	3	4	5	6	7
1991	53535	8418	5507	594	6100	725
		(15.7)	(90.3)	(9.7)		
1992	55680	9165	5148	598	5746	627
		(16.5)	(89.6)	(10.4)		
1993	55784	6806	2636	498	3134	460
		(12.2)	(84.1)	(15.9)		
1994	56872	6277	3239	855	4094	652
		(11.0)	(79.1)	(20.9)		
1995	57952	8162	5675	863	6538	801
		(14.1)	(86.8)	(13.2)		
1996	58988	7242	4250	1351	5601	773
		(12.3)	(75.9)	(24.1)		
1997	60660	8872	6504	905	7409	835
		(14.6)	(87.8)	(12.2)		
1998	61992	7403	6104	1145	7249	979
		(12.0)	(84.2)	(15.8)		
1999	64817	8152	5190	1218	6407	786
		(12.6)	(81.0)	(19.0)		
2000	66056	7253	4510	910	5420	747
		(11.0)	(83.2)	(16.8)		
2001	66624	6531	4392	1481	5873	900
		(9.8)	(74.8)	(25.2)		
2002	68544	7812	5102	1871	6973	893
		(11.4)	(73.2)	(26.8)		
2003	74649	7258	4854	1423	6277	865
		(9.7)	(77.3)	(22.7)		
2004	74403	5242	2954	443	3397	648
		(7.0)	(87.0)	(13.0)		
2005	78465	8317	6341	2381	8722	1049
		(10.6)	(72.7)	(27.3)		
2006(p)	79494	9037	6154	2778	8932	988

Source: Government of India, *Indian Labour Year Book*. 2008 (2010) 85.

B. Immunity Jeopardizes Community's Interests

As to the second limitation, the most significant provision is Section 15 which relates to the conduct of trade disputes on behalf of the trade union or any member thereof. The key expression 'trade dispute' is defined in Section 2 (*g*) of the Act to mean:

> 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 words used in this definition differ from the definition of 'industrial dispute' in the Industrial Disputes Act, 1947 (hereinafter referred to as IDA) in two minor respects (*i*) whereas the Trade Unions Act uses the word 'trade' or 'industry', the Industrial Disputes Act uses the legislatively defined word 'industry'; and (*ii*) the definition of 'trade dispute' omits the words 'or difference' which occur in the definition of 'industrial dispute.'

We believe that despite these differences, the definition of 'trade dispute' as such, is *pari materia* with the definition of 'industrial dispute' and generally the controlling judicial decisions[1] while interpreting the latter definition also delineate the contours of the former definition.

An effective difference between the respective coverages of the definition of 'trade dispute' and 'industrial dispute' arises because of the definition of 'workmen' in the TUA. The aforesaid Section 2(g) of TUA further states that 'workmen' means:

> all persons employed in trade or industry *whether or not in the employment of the employer with whom the trade dispute arises* (emphasis added).

It will be noticed that on the one hand, the italicized words in the aforesaid definition did not occur in the corresponding definition of 'workman' in the IDA. On the other hand, a whole series of qualifying words used in the definition of 'workman' in the IDA are conspicuous by their absence from the corresponding definition in the TUA. Under Section 2(s) of IDA:

> 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 Army Act, 1950, or the Air Force Act, 1950 or the Navy Act, 1957; or
>
> (ii) who is employed in the police service or as an officer or 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 one thousand and six hundred rupees per mensem or exercises, either by the nature of duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature.

The Trade Unions Act, 1926 has the potential[2] to cover a much larger number of persons than the Industrial Disputes Act, 1947. Thus, Section 17 of the TUA grants immunity from liability for criminal conspiracy to persons in whose industrial dispute the government cannot intervene, whether by way of conciliation or adjudication, and in the absence of the

---

[1] *Newspapers Ltd* v. *Industrial Tribunal*, (1995) 2 LLJ 1 (SC); *Working Journalists of the Hindu* v. *The Hindu*, (1961) 2 LLJ 188 (SC); *Indian Cable Co. Ltd* v. *Its Workmen*, (1962) 1 LLJ 409 (SC); *Workmen of Rohtak General Transport Co.* v. *Rohtak General Transport Co.*, (1962) 1 LLJ 654 (SC): *Workman* v. *Dharam Pal Prem Chand*, (1965) 1 LLJ 668 (SC).

[2] Actually, because of the requirement of registration, the effective difference may be less.

possibility of such intervention, the provisions of the IDA regulating the use of instruments of economic coercion do not apply.

C. Nature of the Immunity

The last of the limitations on the scope of the immunity granted by Section 17 of the TUA raises an issue relating to the very nature of the immunity. Section 120-A of the Indian Penal Code (hereinafter referred to as IPC) defines criminal conspiracy to mean: (*i*) an agreement between two or more persons to commit an offence, *i.e.*, in, general,[3] an act which is punishable under IPC or any other law for the time being in force; and (*ii*) an overt act done in pursuance of an agreement between two or more persons to do an illegal act or to do a legal act by illegal means. The IPC defines the word 'illegal' to include, *inter alia*:

> ... everything which is prohibited by law, or which furnishes ground for a civil action.[4]

Since workman's use of instruments of economic coercion in an industrial dispute involves breach of contract and injury to the property right of the employer, both the acts are actionable, and amount to an illegal act within the meaning of Section 120A read with Section 43 of the IPC.

But under Section 17, breach of contract and injury to employer's property cease to be actionable and, therefore, do not amount to criminal conspiracy as defined in Section 120-A read with Section 43 of the IPC. A question therefore, arises as to what is the criminal liability in respect of which Section 17 of the TUA grants immunity. In considering the matter, it is relevant to note that Section 17 does not grant charter of liberty to commit an offence, which is punishable with death, life imprisonment or rigorous imprisonment for a term of two years or more.[5] In fact, the last words of the Section 17 of the TUA indicate that it does not insulate agreement to commit any offence whatsoever. Perhaps the immunity is confined to an agreement between two or more persons to do, or cause to be done, acts which are prohibited by law but which neither amount to an offence nor furnish grounds for civil action.

Breach of contract does give rise to a civil cause of action. Therefore, under Section 43 of the IPC, an agreement to commit breach of contract through withdrawal of labour as an instrument of economic coercion in an industrial dispute is a criminal conspiracy. Further, so long as any law declares withdrawal of labour in breach of contract to be an offence, if a member of the consenting party takes any step to encourage, abet, instigate, persuade, incite or in any manner act in furtherance of the objective, criminal conspiracy would have been committed. Finally, since criminal conspiracy is a substantive offence punishable under Section 120B of the Indian Penal Code, it is doubtful if Section 17 grants immunity at all.

---

[3] Section 40 of IPC defines the word 'offence' to mean 'except in the chapters and sections mentioned in clauses 2 and 3 of this section the word' offence 'denotes a thing made punishable by this Code'. In Chapter IV, Chapter V-A and in the following sections namely, Sections 64, 65, 66, 67, 71, 109, 110, 112, 114, 115, 116, 117, 187, 194, 195, 203, 211, 213, 214, 221, 222, 223, 224, 225, 327, 328, 329, 330, 331, 347, 348, 388, 389, and 445, the word 'offence' denotes a thing punishable under this Code, or under any special or local law as hereinafter defined.
And in Sections 141, 176, 177, 201, 202, 212, 216, and 441, the word 'offence' has the same meaning when the thing punishable under the special or local law is punishable under such law with imprisonment for a term of six months or upwards, whether with or without fine.

[4] Section 43.

[5] Section 17 does not refer to clause (1) of Section 120B of the Indian Penal Code.

The word 'illegal' is applicable to everything which is an offence or which is prohibited by law, or which furnishes ground for a civil action, and a person is said to be 'legally' bound to do, whatever it is illegal in him to omit. Reading Section 18 of the Trade Unions Act with Section 43 of the Indian Penal Code, it would appear that withdrawal of labour as an instrument of economic coercion in an industrial dispute in breach of contract is not illegal. Accordingly, an agreement between two or more workmen, members of a registered trade union to withdraw labour as an instrument of economic coercion in an industrial dispute is not an agreement 'to do or cause to be done an illegal act' and amounts to a criminal conspiracy within the meaning of Section 120-A of the IPC. Accordingly, withdrawal of labour in breach of contract does not give rise to a cause of action in civil courts.

D. Judicial Response

The Calcutta High Court in *Jay Engineering Works Ltd* v. *Staff*[6] while interpreting the provisions of Section 17 observed:

> No protection is available to members of a trade union for any agreement to commit an offence ... When a group of workers, large or small, combine to do an act for the purpose of one common aim or object, it must be held that there is an agreement among the workers to do the act and if the act committed is an offence, it must similarly be held that there is an agreement to commit an offence.

II. IMMUNITY FROM CIVIL ACTIONS

Section 18 of the Trade Unions Act, 1926, grants immunity to registered trade unions from civil suits.[7]

---

[6] AIR 1968 Cal. 407.

[7] Since Section 18 of the Trade Unions Act, 1926 is based upon English law, it is useful to note the developments in the United Kingdom. Until 1906, wilful interference with the business of employer, *e.g.*, strikes causing financial loss to management was actionable in England and until 1926 in India. In *Quinn* v. *Leathern* [1901]. A.C. 495 unions were held liable for illegal conspiracies. Dissatisfaction in England with *Taff Value Co.* v. *Amalgamated Society of Railway Servants* [1901]. A.C. 406, decision led to the enactment of the Trade Disputes Act, 1906, which gave legislative disapproval to judicial decision, [see Bertram F Willcox and Others (Ed.). *Labour Law and Labour Relation*, Indian Law Institute, 43. (1967)]
Section 3 of the English Trade Disputes Act, 1906 exempted trade unions from the liability in tort for an act done by a person in contemplation or furtherance of a trade dispute if: (*i*) it induces a breach of contract of employment; or (*ii*) it interferes with the trade, business or employment or right to dispose of his capital or his labour as he wills. The scope of immunity afforded in Section 3 was delineated by the House of Lords in *Rookes* v. *Barnard*, All E.R. 1964 367. In this case a worker (who resigned from membership of the union) was dismissed by the corporation in consequence of a threat by fellow workers (union members) to strike in breach of a no-strike clause in their service agreement. He brought an action for damages against union officials for tort of intimation. The Court awarded him damages of £7,500. Justice Sach, held that the threat to strike in breach of the agreement was an unlawful act constituting intimidation, and actionable as tort as it had harmed the plaintiff. The Court accordingly held that the defendants were not protected under Section 3. The Court of Appeal revised the findings and held that although the tort of intimidation existed, it did not cover the case
(*Contd.*)

(*i*) No suit or other legal proceeding shall 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 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 his labour as he wills.

(*ii*) A registered trade union shall not be liable in any suit or other legal proceeding in any civil court in respect of any 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 unions.

The above section does not afford immunity to the members or office-bearers of a trade union for an act of deliberate trespass.[8] The immunity also cannot be availed of by them for unlawful or tortuous act.[9] Further, such immunity is denied if they indulge in an illegal strike or *gherao*. Moreover, the immunities enjoyed by the union do not impose any public duty on the part of the union.'[10]

The section, however, raises various problems.[11]

First, like immunity from criminal conspiracy, immunity from civil action is also confined to members of the registered trade unions. We have already seen that such protection was limited to 10.6 per cent of the labour force in 2005.

Second, it does not afford adequate protection from civil liabilities. For, it is arguable whether it gives protection and, if so, to what extent in excess of the aforementioned Section 17 of the Trade Unions Act. A suit or proceeding may not be maintainable for a number of reasons. Does it necessarily follow that the conduct does not 'furnish ground for civil action' within the meaning of Section 43 of the Indian Penal Code?

Third, the expression 'in contemplation or furtherance of a trade dispute to which a member of the trade union is a party' is obviously narrower than the ambit of protection under the said Section 17.

of threat to breach of contract. The House of Lords reversed the findings of the Court of Appeal and held that a threat by persons that contracts of employment would he be broken unless the employer conceded their demands was a threat to do something unlawful and constituted the tort of intimidation. Consequently, the person concerned when sued for damages for civil conspiracy could not rely on the protection afforded by the 1906 Act. This decision was nullified by the Trade Disputes Act, 1965. 'Then followed the decisions in J T *Stratford & Sons Ltd*, v. *Lindley* [1965] A.C. 269; *Emerald Construction Co. Ltd* v. *Lowthian & Others* [1966] IWLR. 691. *Torquay Hotel Co. Ltd* v. *Cousins & Others* [1969] 2 Ch. 106 and *Ford Motor Co. Ltd* v. *Amalgamated Union of Engineering and Foundary Workers* [1969] 2 All. ER 481 which did not totally free the industrial relations from the operation of law efforts and the Trade Disputes Act of 1906 was found to be inadequate. Parliament passed the Industrial Relations Act, 1971 to alleviate the position of labour to some extent. This Act was repealed by the Trade Unions and Labour Relations Act, 1974 which was amended in 1976.' [See E S Vankataramiah. '*A Brief History of the Liability of a Participant in a Strike in England*,' 23 JILI (1981), 331.

[8] *Dalmia Cement Ltd* v. *Naraindas Anandjee Bechar*, AIR 1939 Sind 256.

[9] *Shri Ram Vilas Service Ltd* v. *Simpson and Group Companies Workers Union*, (1979) 2 LLJ 284 (Madras).

[10] See *Chemosyn Pvt. Ltd* v. *Kerala Medical and Representatives Association*, (1988) Lab. IC 115.

[11] Anandjee, 'Impact of Labour Laws on Trade Union Movement,' a paper read at the All India Labour Economic Conference.

Fourth, Section 18 helped in maintenance of union funds, howsoever meagre. The real significance is in rejecting the application of the common law doctrines of restraint of trade and criminal conspiracy in so far as they encroach on the field of labour management relations. Together with Section 17, it provides a great impetus for, and facilitates the active participation of 'outside leaders' in the trade union movement.

In *Rohtas Industries Staff Union* v. *State of Bihar*[12], certain workmen went on an illegal and unjustified strike at the instance of the union. A question arose whether the employers had any right of civil action for damages against the strikers. The arbitrator held that the workers who participated in an illegal and unjustified strike, were jointly and severally liable to pay damages. On a writ petition, the Patna High Court quashed the award of the arbitrator and held that employers had no right of civil action for damages against the employees participating in an illegal strike within the meaning of Section 24 of the Industrial Disputes Act, 1947. From this decision, it is evident that Section 18 grants civil immunity in case of strike by the members of the trade union. On appeal, the Supreme Court affirmed the judgement of the High Court on the ground that the claim for compensation and the award thereof in arbitration proceedings were invalid and such compensation for loss of business was not a dispute or difference between the employers and the workmen which was connected with the employment or non-employment or terms of employment or with the condition of labour of any person. The Supreme Court did not decide the question as to whether the Patna High Court was right in relying on Section 18 of the Act to rebuff the claim for compensation because the Supreme Court did not wish to rest its judgement on that ground.

In *Jay Engineering Works* v. *Staff*[13], the full bench of the Calcutta High Court was invited to consider the question whether the protection under Sections 17 and 18 of the Trade Unions Act can be availed of where workers resort to *gherao*. Chief Justice Sinha explaining the scope and ambit of protection observed:

> The net result of the decision set out above is that Sections 17 and 18 of the Indian Trade Unions Act grant certain exemption to members of a trade union but there is no exemption against either an agreement to commit an offence or intimidation, molestation or violence, where they amount to an offence. Members of a trade union may resort to a peaceful strike, that is to say, cessation of work with the common object of enforcing their claims. Such strikes must be peaceful and not violent and there is no exemption where an offence is committed. Therefore, a concerted movement by workmen by gathering together either outside the industrial establishment or inside, within the working hours is permissible when it is peaceful and does not violate the provisions of law. But when such a gathering is unlawful or commits an offence then the exemption is lost. Thus, where it resorts to unlawful confinement of persons or criminal trespass or where it becomes violent and indulges in criminal force or criminal assault or mischief to person or property or molestation or intimidation, the exemption can no longer be claimed.

The Calcutta High Court once again in *Reserve Bank of India* v. *Ashis*[14] held that in order to secure immunity from civil liability under Section 18, inducement or procurement in breach of employment in furtherance of trade dispute must be by lawful means and not by means which would be illegal or wrong under any other provisions of the law.

[12] *Rohtas Industries Staff Union* v. *State of Bihar*, AIR 1963 Patna 170; On appeal AIR 1979 SC 425.

[13] *Joy Engineering Works* v. *Staff*, AIR 1968 Cal. 407.

[14] *Reserve Bank of India* v. *Ashis*, 73 CWN 388, (1969).

The Madras High Court in *Sri Ram Vilas Service Ltd* v. *Simpson Group Company Union*[15] held that it was not within the purview of the High Court to prevent or interfere with the legitimate rights of the labour to pursue their agitation by means of a strike so long as it did not indulge in unlawful and tortuous acts.

In *Federation of Western India Cine Employees* v. *Filmalaya Pvt. Ltd*[16], a question arose whether an injunction can be issued restraining the trade union, its members or agents from acting upon the direction issued by the union, namely, not to report at the studio? The Bombay High Court answered it in the negative because such act was protected by Section 18 of the Trade Unions Act, 1926. In this case, there was a dispute between Filmalaya Pvt. Ltd, a private limited company and the workers (represented through federation of affiliated unions) regarding employment, non-employment, status of 19 employees and alleged illegal termination of services of certain workers. The federation of the concerned affiliated union issued a letter on 3 May 1980 addressed to various bodies and associations of cine artists, technicians and workers requiring them to issue instructions directing their members not to report for shooting work at the studio of Filmalaya Pvt. Ltd. The net effect of that letter was that the business of the company came to a standstill. The company, therefore, filed a suit against the employees mainly for an injunction restraining them from acting upon the directive of the federation. The civil court came to the conclusion that there was no trade dispute pending between the parties and hence, Section 18 had no application to the fact. It also issued a notice of motion in absolute in terms of prayer. The High Court observed that the directions amount to intimidation or coercion and, therefore, are not protected by Section 18. The court added that the act in contemplation or in furtherance of trade dispute, which induces breach of contract of other employees causes interference with the trade, business or employment of some other person, fell within the ambit and scope of Section 18. However, the inducement or interference must be by lawful means. In other words, Section 18 does not give protection to trade union from acts of violence.[17] The court accordingly held that the union was entitled to carry out its legitimate trade union activities peacefully and, therefore, slogans or demonstrations *per se* could not be termed as unlawful and hence, a blanket injunction could not be granted in that behalf. The court however, cautioned that this was not to say that the trade union was also protected from its violent activities; activities which were normally termed as violent could not be regarded as trade union activities of a union.

In *Usha Breco Mazdoor Sangh* v. *Management of M/s Usha Breco Ltd.*[18], the Supreme Court ruled:

(*i*) A workman indulging in commission of a criminal offence should not be spared only because he happens to be a union leader;

(*ii*) A union leader does not enjoy immunity from being proceeded with in case of misconduct.

Again, in *Indian Bank* v. *Federation of Indian Bank Employees' Union*[19], the Indian Bank sought an interim injunction against the employees' unions restraining them from holding

[15] *Sri Ram Vilas Service Ltd* v. *Simpson & Group Company Union*, (1979) 2 LLJ 284 (Madras).
[16] (1981) 1 LLJ 123.
[17] *See Jay Engineering Works* v. *Stage of West Bengal*, AIR 1963 Cal. 407; *Railway Board, New Delhi* v. *Niranjan Singh*, (1969) 2 LLJ 743; *M P Collieries Workers Federation* v. *United Colliers*, (1972) Madh. Pr LJ 79; Sri *Rama Vilas Service Ltd* v. *Simpson & Group Companies Workers Union*, (1979) 2 LLJ 284.
[18] 2008 LLR 619.
[19] (1982) 1 LLJ 123.

meetings, demonstrations, etc., within a radius of 50 metres of the central office or any of the branches of the bank. A question arose whether the bank was entitled to an interim injunction against its own employees? The Madras High Court held that an interim injunction would virtually prevent the exercise of statutory rights conferred on unions to hold demonstrations and meetings within the scope of the Trade Unions Act and, therefore, no injunction could be issued. The court, however, added that if any act is committed resulting in unlawful activities, and constitutes cognizable offences under the Indian Penal Code, or other special enactments like the Banking Regulations Act, 1949, etc., the immunity available under the Trade Unions Act, 1926, would not be available.

In *Ahmedabad Textile Research Association* v. *ATIRA Employees Union*[20], a division bench of the Gujarat High Court held that it is not within the purview of the civil court to prevent or interfere with the legitimate rights of the workmen to pursue their demands by means of strike or agitation or other lawful activities so long as they do not indulge in acts unlawful, tortuous and violent. The court further held that any agitation by the workmen must be peaceful and not violent. Any concerned movement by workmen to achieve their objectives is certainly permissible even inside the industrial establishment.

In *Orchid Employees Union* v. *Orchid Chemicals & Pharmaceuticals Ltd*[21], the Supreme Court held that although the trade union and its members were restrained to assemble within 100 meters of the boundary of the factory premises of the respondent company and raise slogans or obstruct the ingress and egress of the vehicles carrying raw materials and finished products, staff bus and other vehicles into factory premises, and obstruct the loyal workers, foreign customers and other visitors from entering into the respondent company and getting out of the same till the disposal of the suit or the conciliation proceedings, whichever is earlier. It was, however, observed that the above interim injunctions will not in any way interfere with the present appellants' rights to strike or peaceful picketing.

Under the Trade Unions Act, 1926, the members of the union are certainly not permitted to involve themselves in violent activities. In such circumstances, giving police protection to factory by this court in exercising its jurisdiction under Article 226 of the Constitution of India is not unknown[22].

In *Mining and Allied Machinery Corporation Ltd,* (by its law officer and constituted attorney N X Mandal) v. *Superintendent of Police, St. Thomas Mount, Madras,*[23] it was held that a negative approach of lawful agitation by the working class cannot be justified by resorting to law and order problem in the industrial sector, which is as follows:

> Strikes, lock-outs, satyagrahas and demonstrations are nothing new in our country. Promotion of social justice over the past few decades was to a considerable extent, due to militant and agitational approach of the workmen and not, to any appreciable degree, due to condescension by the management. It is but true that in the process of securing to the workmen more amenities and privileges and better condition of service, the industrial tribunals, labour courts, and the courts of this country have played a vital role. A negative approach to lawful agitation by the working class to secure higher wages and better living

[20] (1993) Guj. LH 783.
[21] 2008 LLR 519.
[22] *K C P Ltd* v. *Inspector of Police, Tiruvottiyur*, 1993 ILLJ 365.
[23] (1987) 2. LLN 294.

conditions cannot be justified by resort to the plea of maintaining law and order in the industrial sector.

The jurisdiction of this court in granting a writ of mandamus by directing the police to give protection to the management to carry on lawful trade was again reiterated by the division bench of Kerala High Court in *Midland Rubber & Produce Co. Ltd, Cochin* v. *Superintendent of Police, Pathanamthitta and Others*,[24] wherein Justic A R Lakshmanan, while presiding over the bench, held as follows :

> ...Just as the workers are entitled to protection of their legal rights by courts of law, the employers are also equally entitled to protection of their fundamental right to carry on their lawful trade or business. In our opinion, it is not open to the respondents—unions to take the law in their own hands and obstruct the permanent workers of the appellant from discharging their duties or prevent the appellant from doing the rain guarding work. Sufficient safeguards are provided under the Industrial Disputes Act to prevent exploitation of workers by employers. It is strange to find that one set of workers claimed the right to get employment on the basis of some practice and preventing the employer from engaging labour of their choice. If the claim of the labour is allowed, then a day will come when a citizen of this country has to seek his employment in his own village, taluk or district. Such a claim would run counter to the rights guaranteed under the Constitution of India. therefore the right now claimed by the respondents on the basis of some practice cannot be countenanced at all.

The court added that Section 18(1) of the Trade Unions Act, 1926 certainly prohibits the employer from breaking the contract of employment and gives immunity to an office bearer in respect of the act done by him. When the employer attempts to divide the striking workers, which is not lawful, it is certainly open to the union and its members to approach the inspector of factories or raise an industrial dispute by treating the same as unfair labour practice, and the immunity granted under section 18(1) of the Act cannot mean to say that the union must be permitted to achieve its object by resorting to the methods which are not permitted in law.

In *M/s Avtec Limited, Power Products Division Poonapally, Hosur* v. *Superintendent of Police, Krishnagiri District*,[25] the Madras High Court held that even thought Section 18 prohibits the employers from giving immunity to office bearer in respect of the act done by him but when there is violation of any law by the employer, it is open to the office-bearer of the union to approach the appropriate authority under the Factories Act, 1948 or to initiate proceedings for unfair labour practice. The court clarified that the immunity under Section 18(1) of the Trade Unions Act cannot mean that the union must be permitted to achieve its object by resorting to methods which are not permitted by law.

The Court also held that even if it is presumed that the strike resorted to by members of the union is valid in law, it does not mean that the union and its members can indulge in any violent activity. If there is any breach of contract by the employer, the appropriate provisions are available to be invoked under Industrial Disputes Act but not to increase pressure on employer by violent means.

[24] (1999) 1. LLJ 385.
[25] 2009 LLR 62.

III. ENFORCEABILITY OF AGREEMENTS

Section 19 grants protection to the agreement (between the members of a registered trade union) whose objects are in restraint of trade[26] notwithstanding anything contained in any other law for the time being in force declaring such agreement to be void or voidable. However, this provision shall not enable any civil court to 'entertain any legal proceedings instituted for the express purpose of enforcing or recovering damages for the breach of any agreement concerning the conditions on which any member of trade union shall or shall not' (*i*) sell their goods; (*ii*) transact business; (*iii*) work; (*iv*) employ; or (*v*) be employed.

The Act, however, like a 'closed shop' agreement, does not provide for enforceability of an agreement between the management and workers trade union.[27] The net effect of the section is to validate agreement which is invalid being in restraint of trade under Section 27 read with Sections 23 and 24 of the Contract Act, 1872.

IV. TERMINATION AT THE INSTANCE OF UNION

A trade union or a large number of employees cannot dictate to the employer to dispense with the services of an employee if they do not like or approve the presence of certain workman in the factory. Thus, in *A G Kher* v. *Atlas Copco (India) Ltd*[28], the management terminated the services of an employee because the union and majority of workmen did not like the shape of her nose or the colour of her hair and insisted that her services be terminated. The management defended the order of termination on the ground that the other workmen and the union had boycotted her and situation had gone to such a stage that the work of the factory was likely to be affected. While rejecting the plea of the management, the Bombay High Court held that (i) the contention is anamolous because the employer has no grievance against the petitioner and still the employee has been cast off to the wolves. (ii) there cannot be any justification for the order of dismissal of an employee merely because the other employees did not like the shape of the nose of the employee or the colour of her hair, (iii) the employee cannot be removed from service by stroke of pen because a large number of other employees do not approve of the presence of the employee in the factory premises, (iv) if such grounds are allowed for termination of services of an employee, it will open a floodgate of abuse and it would amount to closed-shop policy.[29]

[26] Section 27 of Indian Contract Act dealing with agreement in restrain of trade reads:
Every agreement by which any one is restrained from exercising a lawful profession, trade or business of any kind, is to that extent void.
Exception 1: One who sells the goodwill of a business may agree with the buyer to refrain from carrying on a similar business, within specified local limits, so long as the buyer, or any person deriving title to the goodwill from him, carries on a like business therein; provided that such limits appear to the Court reasonable, regard being had to the nature of the business.
[27] *Tulsidas Paul* v. *Second Labour Court*, AIR 1963 Calcutta 624.
[28] (1992) 1 LLJ 423.
[29] For details see chapter 4 Section VI closed shop/union shop.

CHAPTER

10

Recognition of Trade Unions

I. THE NEED FOR RECOGNITION OF TRADE UNIONS

Recognition of trade unions is the backbone of collective bargaining. It has been debated time and again. But, in spite of the government's stated policy to encourage trade unions, there is no enforced central legislation on the subject. There are, however, voluntary codes of discipline and legislation in some states. In the absence of any central legislation, management in several states (except where legislation on recognition is in force) have refused to recognize trade unions mainly on five grounds: (*i*) most of the office-bearers of the union were outsiders,[1] (*ii*) the trade union keeps outsiders disapproved by management —particularly politicians and ex-employees,[2] (*iii*) the union consists of only small number of employees, (*iv*) there were many rival unions in existence, (*v*) the trade union was not registered under the Trade Unions Act, 1926.[3] However, none of these objections are maintainable because to accept the same would amount to interference in the functioning of the trade unions. Be that as it may, the refusal by employers to recognize or bargain with unions has been a major obstacle to the healthy growth of trade unions and collective bargaining.[4]

II. RECOGNITION OF TRADE UNIONS IN RETROSPECT

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

---

1 *Paramount Films India Ltd* v. *Their Workmen*, (1950) LLJ 690.
2 *Report of the Royal Commission on Labour*, (1931) 325.
3 *Id*. at 326.
4 Suresh C Srivastava, 'Trade Unionism in India", *Review of Contemporary Law*, Brussels and Paris, (1970), 83.

A. Appointment of the Royal Commission

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

B. Legislative Action on the Royal Commission's Recommendation

Legislative attempt was, however, not made until 1943 for compulsory recognition of trade unions by employers when the Indian Trade Unions (Amendment) Bill, 1943, was placed before the Central Legislative Assembly. The bill was opposed by the management and, therefore, it could not be passed. The bill was revised in the light of discussion made in the assembly and a new bill, namely, the Indian Trade Unions (Amendment) Bill, was introduced three years later in 1946 in the Central Legislative Assembly. This bill was referred to the Select Committee which suggested certain amendments. The bill was passed in November 1947 and received the assent of the Governor General on 20 December 1947. But the Trade Unions (Amendment) Act was never brought into force. Subsequently in 1950, Trade Unions Bill also incorporated provisions for recognition of trade unions. The bill was moved in the legislature but it could not be made into an Act.

C. International Labour Organization Convention

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

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

D. Plans and Recognition of Trade Unions

Immediately after India became a sovereign democratic republic, the Trade Unions Bill, 1950, concerning the recognition of trade unions through planning was accepted and a

Planning Commission was constituted.[5] In the evolution of labour policy during the plan, recognition of trade union has been accorded due importance by the planners. Thus, the Second Five-Year Plan (1956–61) paid considerable attention to the problems of recognition of trade unions. In view of the fact that 'recognition has strengthened the trade union movement in some states' the plan recommended that 'some statutory provisions for securing recognition should be made, where such recognition does not exist at present. In doing so, the importance of one union for one industry in a local area requires to be kept in view'. The Third Five Year Plan (1961–66) envisaged a marked shift in the policy of recognition of trade unions. It was stated in the plan that 'the basis for recognition of unions, adopted as a part of the Code of Discipline will pave the way for the growth of strong and healthy trade unionism in the country. A union can claim recognition if it has a continuing membership of at least 15 per cent of the workers in the establishment over a period of 6 months and will be entitled to be recognized as a representative union for an industry or a local area, if it has membership of at least 25 per cent of workers. Where there are several unions in an industry or establishment, the union with the largest membership will be recognized. Once a union has been recognized, there should be no change in its position for a period of 2 years, if it has been adhering to the Code of Discipline.'

E. First National Commission on Labour

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

F. Industrial Relations Bill, 1978

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

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

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

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

---

[5] Govt. of India, *Report of the Committee on Labour Welfare* (1969), 15.

III. LAW AND PRACTICE RELATING TO RECOGNITION OF TRADE UNIONS

A. Constitution and Recognition of Trade Unions

Is the right to grant recognition to trade unions a fundamental right within the meaning of Article 19 (1) (*c*) of the Constitution? This has been answered in negative[6] because the right to form an association does not carry with it the concomitant right[7] that the association should be recognized by the employers. Hence, neither withdrawal of recondition[8] of the union nor the discontinuance of recognition[9] infringes on the fundamental rights guaranteed under Article 19(1) (*c*) of the Constitution.

B. Legislative Measures

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

1. Trade Unions Act, 1926

The Trade Unions Act does not make any provision for recognition of such a union. Any recognition of union, even if it is a union relating to the employees of the Central Government, is governed by some departmental circulars. Those circulars are administrative in nature and not statutory. Therefore, those circulars also cannot be enforced in a writ petition.[10]

2. Trade Unions (Amendment) Act, 1947

In India, it has been observed earlier, that there is no central enactment governing recognition of 'trade unions'. The Trade Unions (Amendment) Act, 1947, however, provided for recognition of unions: (*i*) by agreements; and (*ii*) by order of the court on satisfying the conditions laid down in relevant sections of the act. But the Act, as stated earlier, has not been enforced.

a. ***Machinery for Determination of Representative Unions:*** Section 28E of the Trade Unions (Amendment) Act, 1947, empowers the labour court to grant recognition where a registered trade union having applied for recognition to an employer fails to obtain the same within a period of 3 months.

b. ***Conditions for Recognition.*** Section 25D provides that a trade union shall not be entitled for recognition by order of a labour court under Section 25E unless it fulfils the following conditions, namely:

---

[6] *A C Mukerjee* v. *Union of India*, (1972) 2 LLJ 1978 (Calcutta); *M A David* v. *KSE Board*, (1973) 2 LLJ 466, (Kerala) 1973; *Tamil Nadu Electricity Board Accounts Executive Staff Union* v. *Tamil Nadu Electricity Board, Madras*, (1980) 2 LLJ 246.

[7] *All India Bank Employees Association* v. *National Industrial Tribunal*, (1961) I LLJ 375; *Raghubir Dayal Jai Prakash* v. *Union of India*, AIR 1962 SC 363; *DAV College Jullunder* v. *State of Punjab*, AIR 1971 SC 1737.

[8] *M A David* v. *KSE Board*, *op. cit.*, supra note 6.

[9] Tamil Nadu Electricity Board, *op. cit.*, supra note 6.

[10] *K V Sridharan* v. *S Sundamoorthy*, 2009 LLR 414.

(*a*) that all its ordinary members are workmen employed in the same industry or in industries closely allied to or connected with another;

(*b*) that it is representative of all the workmen employed by the employer in that industry or those industries;

(*c*) that its rules do not provide for the exclusion from membership of any class of workmen referred to in clause (*b*);

(*d*) that its rules provide for the procedure for declaring a strike;

(*e*) that its rules provide that a meeting of its executive shall be held at least once in every 6 months;

(*f*) that it is a registered trade union and that it has complied with all provisions of this Act.

The aforesaid provisions of the Act raise various problems: (*i*) Can an employer voluntarily recognize a union which is not registered under the Act and which is in fact a majority union? (*ii*) Can an employer be compelled to recognize more than one union? Notwithstanding the relative importance of these questions and rather unsatisfactory answer that we get from the statute, the significance of Trade Unions (Amendment) Act, 1947, must not be overlooked. But, even this could not be put into force.

c. ***Rights of Recognized Trade Unions:*** The recognized trade unions have been conferred the right to negotiate with employers in respect of matters connected with employment, non-employment, the terms of employment or the conditions of labour of all or any of its members, and the employer is under an obligation to receive and send replies to letters sent by the executive and grant interviews to them regarding such matters.

d. ***Withdrawal of Recognition of Trade Unions:*** Under Section 28G of the Trade Unions (Amendment) Act, 1947, the Registrar or the employer is entitled to apply to the labour court in writing for the withdrawal of recognition on any one of the following grounds:

(*a*) that the executive or the members of the trade union have committed any unfair practice set out in Section 28 J within 3 months prior to the date of the application;

(*b*) that the trade union has failed to submit any return referred to in Section 281;

(*c*) that the trade union has ceased to be representative of the workmen referred to in Clause (*b*) of Section 28 D.

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

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

e. ***Re-recognition of Trade Unions:*** Section 28H of the Trade Unions (Amendment) Act, 1947, permits the registered trade union whose recognition is withdrawn under sub-section (3) of Section 28G to make an application for re-recognition after 6 months from the date of withdrawal of recognition.

3. The Trade Unions Bill, 1950

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

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

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

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

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

4. State Legislation

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

(*a*) ***Maharashtra*:** The Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practice Act, 1972, provides for the recognition of trade unions for facilitating collective bargaining for certain undertakings and confers certain rights and obligations upon recognized trade unions and also confers certain powers on unrecognized trade unions.[11] The Act is applicable in every undertaking employing 50 or more employees on any day of the preceding 12 months.[12] The application of the Act can be extended by the state government even in undertakings employing less than 50 employees.[13] In order to be registered as recognized trade union (*i*) the trade union must have a total membership of 30 per cent in the said undertaking; (*ii*) it must be in existence for the last 6 months; and (*iii*) it must make an application in the prescribed form to the industrial court.[14]

When such an application is made and is found to be in order, a notice shall be issued and after considering the objections and holding enquiries, if any, the union would be recognized and a certificate would be issued. On the contrary, if a counter claim is put forward by any other union and it is found that union has the largest number of employees employed in the undertaking, and if that other union also fulfils the requirements which the applicant-union also fulfils for being recognized, then the industrial court is empowered

[11] See the Preamble of the Act.
[12] Section 10(1).
[13] Proviso to Section 10(1).
[14] Section 11.

to grant recognition and issue a certificate not to the applicant union but to the other union which has the largest number of employees employed in the undertaking.[15]

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

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

(*ii*) The union has for the whole of the period of 6 months next preceding the date of application, membership of not less than between 15 and 20 per cent as the state government may prescribe for that local area of the employees employed in the industry in that area;

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

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

C. Tribunal's Response

The attempt of the union to bring the question of its recognition by management within the purview of 'industrial dispute' proved futile. The industrial tribunal has consistently rejected the union's claim for its recognition by the management on the grounds that: (*i*) the refusal to recognize the union was not an 'industrial dispute' within the meaning of the Industrial Disputes Act, 1947,[16] (*ii*) the specific remedy was provided in the Trade Unions (Amendment) Act, 1947, (unenforced); and (*iii*) the tribunal cannot take the task which the labour courts are required to perform.[17]

D. Non-statutory Code of Discipline in Industry

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

1. Where there is more than one union, a union claiming recognition should have been functioning for at least one year after registration. Where there is only one union, this condition would not apply;
2. The membership of the union should cover at least 15 per cent of the workers in the establishment concerned. Membership would be counted only of those who had paid their subscription for at least 3 months during the period of 6 months immediately preceding the reckoning;
3. A union may claim to be recognized as a representative union for an industry in a local area if it has a membership of at least 25 per cent of the workers of that industry in that area;
4. When a union has been recognized, there should be no change in its position for a period of 2 years;

[15] *Pfizer Employees' Union* v. *Mazdoor Congress*, (1980) 1 LLJ 65 (Bombay).
[16] *Premier Automobiles Ltd.* v. *K S Wadke*, (1975) 2 LLJ, 445; *TCC Thozhilali Union* v. *TCC Ltd*, *(1982) 1 LLJ* 425; *Premier Construction Co. Ltd* v. *Their Workmen*, (1949) ICR 708, *Beedi Factory* v. *Their Employees*, (1950) LIJ 207; *Nellimarla Jute Mills Co. Ltd* v. *Their Staff*, (1950) LLJ 394.
[17] *Ibid.*

5. Where there are several unions in an industry or establishment, the one with the largest membership should be recognized.
6. A representative union for an industry in an area should have the right to represent the workers in all the establishments in the industry, but if a union of workers in a particular establishment has membership of 50 per cent or more of the workers of that establishment, it should have the right to deal with matters of purely local interest such as, for instance, the handling of grievances pertaining to its own members. All other workers who are not members of that union might either operate through the representative union for industry or seek redress directly.
7. In the case of trade union federations which are not affiliated to any of the four central organizations of labour, the question of recognition would have to be dealt with separately.
8. Only unions which observed the Code of Discipline would be entitled to recognition.

The code, however, has not been effectively implemented and it is respected more in its breach than in its observance. The failure of enforcement machinery of the code is revealed by the fact that during 1960–70,10,402 cases of breach of Code of Discipline were reported. In addition to this, there are numerous unreported cases as well. The Central Implementation and Evaluation Division has done much work in this regard. The division secured recognition to 24 unions during 1968–70.[18] Faced with the problem of infringement of the Code of Discipline, the committee took certain decisions:

(1) When a union is recommended for recognition by the implementation machinery after proper verification of its membership, the employer should recognize it within a month. If he fails to do so, he should be considered responsible for infringement of the Code of Discipline and action should be taken against him by the central organization concerned;

(2) A union which is not affiliated to any of the four central organizations of workers should wait for a period of one year after it has accepted the Code of Discipline before its claim for recognition can be considered;

(3) When the breach of the code by a union has been established by the appropriate implementation machinery, it would be open to the employer concerned to de-recognize the union.

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

The division bench of the Madras High Court in *Tamil Nadu Electricity Board* v. *Tamil Nadu Electricity Board Accounts and Executive Staff Union*[19] gave a helping hand in strengthening provisions for recognition of trade union under the voluntary Code of Discipline. In this case, the name of the petitioner was changed from Tamil Nadu Electricity Subordinates Union to Tamil Nadu Electricity Board Accounts and Executive Staff Union. Originally, the membership was open to all workmen who were engaged in clerical, accounting and other work. The coverage was extended to employees covered under Section 2 (i) of the

[18] Government of India, *Annual Report of the Ministry of Labour and Employment of Relevant Years.*
[19] 1981 Lab. IC 1138.

Industrial Employment (Standing Orders) Act, 1946. This change was communicated to the management with a request to accord recognition to the changed name of the trade union but the management withdrew recognition without giving a notice on the ground that the recognition granted to it was for clerical workmen and not to workmen covered by Section 2 (i). Aggrieved by this order, the union preferred a writ petition in the Madras High Court; single judge of the High Court allowed the petition. It was submitted by the management that the writ petition was not maintainable because recognition was not granted under any statute. Rejecting the contention, Chief Justice Ismail, observed:

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

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

Do principles of natural justice apply in the de-recognition of a trade union recognized under the Code of Discipline by the management? This issue was raised in *Secretary, Meters Staff Association* v. *Union Electrical Industries Ltd.*[20] Here, the staff association was recognized by a government company wholly owned and controlled by the government under the Code of Discipline. After some time, the recognition enjoyed by the association was withdrawn. Thereupon, the association filed a writ petition before the Kerala High Court. The questions arose: (*i*) whether the discretion exercised by the management to derecognize the association could be interfered with under Article 226? and (*ii*) whether the management is bound to apply the principles of natural justice in derecognizing a union? While dealing with these questions, the court observed:

> Recognition certainly confers a status on the union to represent the workers and as a bargaining agent, unions have come to enjoy various facilities by virtue of such status. De-recognition involves deprivation of such status, right and facilities. It certainly involves serious adverse consequences. No doubt the decision to de-recognize a particular union can be regarded as an administrative decision or order. Nevertheless, since it involves serious adverse consequences to the union and the employees organized under the union, their right to hearing before the decision is taken has certainly to be recognized, as part of the principle of fair play in action. If the decision is taken without giving a hearing to the union, it has to be regarded as violative of principles of natural justice and must be treated as void.[21]

[20] (1984) 2 LLJ 446.
[21] *Id.* at 449.

In the absence of any statutory recognition of trade unions, the question has arisen whether a civil suit is maintainable on an action by a trade union under the voluntary Code of Discipline? This issue was answered in the negative in *T C C Thozhilali Union* v. *TCC Ltd.*[22] In this case, the management and workers represented by six unions arrived at a settlement over the then existing differences and drew up a memorandum of settlement. The settlement *inter alia*, provided that the management recognized all the six unions as the collective bargaining agents of the workmen. The settlement was operative for 4 years and was to be governed by the Code of Discipline. When the period of 4 years was about to expire, the company refused to allow the plaintiffs union to enter into a 'Long Term Settlement'. The union then filed a civil suit praying that the management be restrained from entering into any settlement or agreement with other unions. The trial court dismissed the suit. The lower appellate court, on appeal by the union upheld the findings of the court below. The union thereupon filed a second appeal before the Kerala High Court which observed:

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

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

E. Claim of Trade Union for Recognition Based on Circulars—Not Maintainable

In *K V Sridharan* v. *S Sundaramoorthy*[23], the division bench of the Madras High Court held that the Trade Unions Act, 1926 does not make any provision for recognition of a union based on circular. Any recognition of union, if it is a union relating to the employees of the Central Government, is governed by some departmental circulars. These circulars are administrative in nature and not statutory. Therefore, these circulars cannot be enforced in a writ petition.

The aforesaid view was reiterated in *Port and Dock Labour Union affiliated to Bharatiya Mazdoor Sangh* v. *Union of India*[24]. In this case, the petitioner-trade union sought a declaration by Chennai Port Trust that it was a recognized trade union entitled to statutory benefits under a circular issued by the government. The Madras High Court rejected the claim and held that in the absence of any law relating to trade union recognition in the state of Tamil Nadu, the claims of the union can be based only upon the circulars and various communications issued by the ministry. In fact, as per the communication issued by the registry, pending finalization of policy by the ministry, the first seven unions alone have to be recognized and as rightly held by the Port Trust, those seven unions even as per the check-off verification conducted during 2010, are having more membership than the petitioner union.

[22] *TCC Thozhilali Union* v. *TCC Ltd*, (1982) 1LLJ 425 at 428–29.
[23] (2009) 3 MLJ 1320.
[24] (2012) 1 LLJ 650.

F. Secret Ballot Method for Determining the Representation Character of Trade Union

In *Food Corporation of India Staff Union* v. *Foods Corporation of India*[25], the Food Corporation of India (FCI) and the union representing the workmen agreed to follow the secret ballot method for determining the representative character of the trade union. They approached the Supreme Court to lay down as to how the method of secret ballot should be tailored to yield the correct result. Keeping in view the importance of the matter, the Court issued notice to all the major all India trade union organizations on this aspect. Pursuant to this notice, some trade union organizations appeared and were heard by the Court. The Supreme Court, after perusing various documents and records, directed that the following norms and procedure shall be followed for assessing the representative character of the trade unions by the secret ballot system:

(*i*) As agreed to by the parties, the relative strength of all the eligible unions by way of secret ballot be determined under the overall supervision of the Chief Labour Commissioner (Central) (CLC).

(*ii*) The CLC will notify the returning officer who shall conduct the election with the assistance of the FCI. The returning officer shall be an officer of the Ministry of Labour, Government of India.

(*iii*) The CLC shall fix the month of election while the actual date/dates of election shall be fixed by the returning officer.

(*iv*) The returning officer shall require the FCI to furnish sufficient number of copies of the lists of all the employees/workers (Categories III and IV) governed by the FCI (Staff) Regulations, 1971 borne on the rolls of the FCI as on the date indicated by the CLC. The list shall be prepared in the proforma prescribed by the CLC. The said list shall constitute the voters list.

(*v*) The FCI shall display the voters list on the notice board and other conspicuous places and shall also supply copies thereof to each of the unions for raising objections, if any. The unions will file the objection to the returning officer within the stipulated period and the decision of the returning officer shall be final.

(*vi*) The FCI shall make necessary arrangement to:

(*a*) give wide publicity to the date/dates of election by informing the unions and by affixing notices on the notice boards and also at other conspicuous places for the information of all the workers;

(*b*) print requisite number of ballot papers in the proforma prescribed by the CLC incorporating therein the names of all the participating unions in an alphabetical order after different symbols of respective unions;

(*c*) the ballot papers would be prepared in the proforma prescribed by the CLC in Hindi/English and the regional language concerned;

(*d*) set up requisite number of polling stations and booths near the premises where the workers normally work; and

(*e*) provide ballot boxes with requisite stationary, boards, sealing wax, etc.

[25] 1995 Supp (1) SCC 678 (SC).

(*vii*) The returning officer shall nominate a presiding officer for each of the polling stations/booths with requisite number of polling assistants to conduct the election in an impartial manner. The presiding officers and the polling assistants may be selected by the returning officer from amongst the officers of the FCI.

(*viii*) The election schedule indicating the nominators, scrutiny of nomination papers, withdrawal of nomination, polling, counting of votes and the declaration of results shall be prepared and notified by the returning officer in consultation with the FCI. The election schedule shall be notified by the returning officer well in advance and at least one month's time shall be allowed to the contesting unions for canvassing before the date of filing the nominations.

(*ix*) To be eligible for participating in the election, the unions must have valid registration under the Trade Unions Act, 1926 for one year with an existing valid registration on the first day of filing of nomination.

(*x*) The presiding officer shall allow only one representative to be present at each polling station/booth as observer.

(*xi*) At the time of polling, the polling assistant will first score out the name of the employee/workman who comes for voting, from the master copy of the voters list and advice him thereafter to procure the secret ballot paper from the presiding officer.

(*xii*) The presiding officer will hand over the ballot paper to the workman/employee concerned after affixing his signatures thereon. The signatures of the workman/employee casting the vote shall also be obtained on the counterfoil of the ballot paper. He will ensure that the ballot paper is put inside the box in his presence after the voter is allowed to mark on the symbol of the candidate with the inked rubber stamp in camera. No employee/workman shall be allowed to cast his vote unless he produces his valid identity card before the presiding officer concerned. In the event of non-production of identity card due to any reason, the voter may bring in an authorization letter from his controlling officer certifying that the voter is the *bona fide* employee of the FCI.

(*xiii*) After the close of the polling, the presiding officer shall furnish detailed ballot paper account in the proform prescribed by the CLC indicating total ballot papers received, ballot papers used, unused ballot papers available, etc., to the returning officer.

(*xiv*) After the close of the polling, the ballot boxes will be opened and counted by the returning officer or his representative in the presence of the representatives of each of the unions. All votes which are marked more than once, spoiled, cancelled or damaged, etc., will not be taken into account.

(*xv*) The contesting unions through their representatives present at the counting place may be allowed to file applications for re-counting of votes to the returning officer. The request would be considered by the returning officer and in a given case, if he is satisfied that there is reason to do so, he may permit re-counting. However, no application for re-counting shall be entertained after the results of the poll are declared.

(*xvi*) The result of voting shall be compiled on the basis of valid votes polled in favour of each union in the proforma prescribed by the CLC and signatures obtained thereon from the representatives of all the unions concerned as a proof of counting having been done in their presence.

(*xvii*) After declaring the result on the basis of the votes polled in favour of each union by the returning officer, he will send a report of his findings to the CLC.

(*xviii*) The union/unions obtaining the highest number of votes in the process of election shall be given recognition by the FCI for a period of 5 years from the date of the conferment of the recognition.

(*xix*) It would be open to the contesting unions to object to the result of the election or any illegality or material irregularity which might have been committed during the election. Before the returning officer such objection can only be raised after the election is over. The objection shall be heard by the CLC and disposed of within 30 days of the filing of the same. The decision of the CLC shall be final, subject to challenge before a competent court, if permitted under law.

The Court also held that it would be open to the CLC to deal with any situation not covered by the procedure detailed above. He may do so in consultation with the returning officer and the FCI. The Court accordingly directed the CLC and the FCI to hold election in accordance with the procedure prescribed by this order on the date specified therein.

G. Method of Recognizing a Trade Union

In *M R P Workers Union* v. *Govt of Tamil Nadu*[26], it was held in the absence of specific statutory provisions in the Trade Unions Act, 1926 for recognition of trade union as representative body of workmen in the industry, the same would be determined by state government and labour commissioner. On receipt of such an application, the concerned labour commissioner will issue notice to the two unions, within 2 weeks from the date of receipt of the application, calling upon them to submit their membership registers and the necessary supportive documents under the Code of Discipline within 2 weeks from the date of receipt of the notice by them. The notice will call upon them to produce their records as per the Code of Discipline during the period of 6 months prior to the date of notice. The labour commissioner shall thereafter proceed to decide as to which union is the representative union of the workmen: The Court observed that we cannot permit the management to say that:

> The union which shows larger membership at the end of the exercise will not be recognized by the management. Recognition is for the purpose of representing the causes of the workmen in various forum before the management and various authorities under the labour law. It is not a determination available for the sole satisfaction of the management. It is a factual determination and the determination leads to a status. The union which establishes larger membership at the end of the aforesaid exercise, shall be recognized as the representative union.

In *Petrolium Employee's Union* v. *Chief Labour Commissioner*[27], the Court ruled that once a trade union has given its consent for verification of membership by secret ballot, it is estopped from challenging the same in a writ petition.

H. Rights of Unrecognized Unions

The management is obliged to hear a trade union registered though not recognized and resolve its dispute as far as possible without resorting to conciliation or adjudication processes. Though the management is not obliged to recognize a trade union but at the

[26] (2009) 4 LLJ 685.
[27] 2010 LLR 214.

same time, it cannot refuse to hear grievances voiced by it in respect of service conditions or its members. There is no provision in the Industrial Disputes Act or Trade Unions Act prohibiting the management from negotiating, discussing or entering into settlement with an unrecognized union. It is only in case where the demands of unrecognized union are already seized of by the recognized union, such demand would not be maintainable. Direction can be given to management falling under Article 12 of the Constitution.[28]

The Supreme Court, in *Chairman, State Bank of India* v. *All Orissa State Bank Officers Association*[29] delineated the rights of recognized and unrecognized trade unions, while interpreting the provision of Rule 24 of the verification of membership and recognition of Trade Union Rules, 1974 framed by the state of Orissa which is as follows:

> 22(a) Rights of Unrecognized Union—to meet and discuss with the employer or any person appointed by him in that behalf the grievances of any individual member relating to his service conditions.
>
> 22(b) To appear on behalf of its members employed in the establishment in any domestic or departmental enquiry held by the employer and before the conciliation officer/labour court/industrial tribunal or arbitrator.

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

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

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

I. Response of the First National Commission on Labour

(*a*) *Scheme for recognition:* The First National Commission on Labour has recommended compulsory recognition of trade unions by the employers under the central legislation in industrial undertakings employing 100 or more workers or where the capital invested is above the stipulated size. In order to claim recognition by the individual employer, the union must have the total membership of 30 per cent of

[28] *See Indian Airlines Ltd* case, 1997 FLR 489.
[29] 2000 Lab. I.C. 2153.

the plant or establishment. The industry-wise union in local area may, however, be recognized if the minimum membership is 25 per cent. The commission has recommended that where recognition is sought by more than one union, the larger union should be recognized. But the commission was in favour of recognition of industry-wise union over plant or unit union. The commission's recommendations are open to several objections: *First*, recognition of either industry-wise union or unit-wise union may lead to industrial unrest and rivalry. *Second*, the two alternative choices given to Industrial Relations Commission may also lead to confusion and thus, no uniform method may be followed. It may, in effect, affect industrial peace and harmony.

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

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

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

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

J. Trade Unions and Industrial Disputes (Amendment) Bill, 1988.

The bill seeks to provide for the constitution of a bargaining council to negotiate and settle industrial disputes with the employer. Thus, under Chapter II-D, every employer is required to establish a bargaining council for the industrial establishment for which he is the employer consisting of representatives of all the trade unions having membership among the workmen employed in the establishment, not being trade unions fenced on the basis of craft or occupation; each trade union being called a bargaining agent.

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

The trade union with the highest membership of workmen employed in that establishment and having in no case, less than 40 per cent of the total membership among the workmen shall be known as the principal bargaining agent.

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

The chairman of the bargaining council shall be a person chosen by the principal or sole bargaining agent from amongst its representatives. However, if there is no trade union having membership of at least 40 per cent of the total membership of the trade unions of workmen in an industrial establishment, the one with the highest membership among the workmen employed in the establishment shall have the right to nominate one of its representatives as the chairman of the bargaining council.

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

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

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

The Central Government is also empowered to set up, in consultation with the state government concerned, a council at the national level to be called the National Bargaining Council in respect of a class of industry or a group of central public sector undertakings in relations to which the appropriate government is the state government.

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

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

The term of office of bargaining council registered under this chapter shall be 3 years.

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

(*a*) to raise industrial disputes with the employer or employers;

(*b*) to settle industrial disputes with the employer or employers;

(*c*) to sign on behalf of the workmen the documents settling industrial disputes;

(*d*) to represent the workmen in any industrial dispute; and

(*e*) to exercise such other powers as may be prescribed.

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

K. Response of the Second National Commission on Labour

The (Second) National Commission on Labour which submitted its report to the Government of India on 29 June 2002 has recommend that the negotiating agent should be selected for recognition on the basis of the check off system. A union with 66 per cent membership be entitled to be accepted as the single negotiating agent, and if no union has 66 per cent support, then unions that have the support of more than 25 per cent should be given proportionate representation on the negotiating college. The commission also suggested that recognition once granted, should be valid for a period of 4 years, to be coterminus with the period of settlement. The individual workers' authorization for check off should also be coterminus with the tenure of recognition of the negotiating agent or college.

L. An Appraisal

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

CHAPTER 11

Collective Bargaining

I. THE PERSPECTIVE

In the era of *laissez faire*, employers enjoyed unfettered right to hire and fire. They had vastly superior bargaining power and were in a position to dominate over workmen in every conceivable way. They naturally preferred to settle terms and conditions of employment of workmen and abhored statutory regulation thereof unless, of course, it was to their advantage. However, this tendency brought to the surface the potentialities of collective bargaining. The only way to improve the situation was to do away with the domination of any one class over another. The emergence of legal recognition of united power is based upon the strong bargaining power of management as against weak and unorganized workmen. Collective bargaining 'is the foundation of this movement and it is in the interest of labour that statutory recognition has been accorded to trade unions, and their capacity to represent workmen, who are members of such bodies. But, of course, there are limits to this doctrine, for otherwise, it may become tyranny, stifling the freedom of an individual worker. It is not the law that every workmen must necessarily be a member of the trade union, and that outside its fold, he cannot exercise any volition or choice in matters affecting his welfare... The representative powers of organization of labour, with regard to enactments, such as the Industrial Disputes Act, will have to be interpreted in the light of the individual freedoms guaranteed in the Constitution and not as though such freedoms did not independently exist, as far as organized labour is concerned.'[1]

The system of collective bargaining as a method of settlement of industrial disputes has been adopted in industrially advanced countries like the United States of America and United Kingdom and has also recently been adopted in some Asian and African countries. India, which has adopted compulsory adjudication system, has also accepted in principle the system of collective bargaining but has hardly taken any steps, legislative or otherwise, to apply it in practice.

[1] *Tamil Nadu Electricity Workers Federation* v. *Madras Electricity Board*, AIR 1965 Mad. 111.

II. ILO PRINCIPLES ON THE RIGHT TO COLLECTIVE BARGAINING

The standards and principles emerging from the ILOs conventions, recommendations and other instruments on the right to collective bargaining, and the principles set forth by the Committee and the Freedom of Association may be summarized as follows :

a. The right to collective bargaining is a fundamental right endorsed by the members of the ILO in joining the organization, under which they have an obligation to respect, to promote and to realize, in good faith (ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up) the right to collective bargaining.

b. Collective bargaining is a right of employers and their organizations, on the one hand, and organizations of workers, on the other hand (first-level trade unions, federations and confederations); only in the absence of these latter organizations, may representatives of the workers concerned conclude collective agreements.

c. The right to collective bargaining should be recognized throughout the private and public sectors and it is only the armed forces, the police and public servants engaged in the administration of the state who may be excluded from the exercise thereof (Convention No. 98).

III. CONCEPT AND MEANING OF COLLECTIVE BARGAINING

The expression 'collective bargaining' was coined by Sydney and Beatrice.[2] This was widely accepted in the United States of America.

The meaning of the expression 'collective bargaining' has been the subject matter of controversy and it is defined in a variety of ways. Harbison defines 'collective bargaining' as:

> a process of accommodation between two institutions which have both common and conflicting interests.[3]

In 1960, in the manual published by the International Labour Office, 'collective bargaining' has been defined as:

> negotiations about working conditions and terms of employment between an employer, a group of employers or one or more employers' organization on the one hand, and one or more representative workers organizations on the other, with a view to reaching agreement.[4]

Golden, however, treats collective bargaining:

> as a measure to distribute equitably the benefits derived from industry among all the participants including the employees, the unions, the management, the customers, the suppliers and the public.[5]

The aforesaid definitions of collective bargaining indicate that there is no unanimity among the authors regarding the meaning of collective bargaining. Be that as it may,

---

[2] *Sydney and Beatrice, Industrial Democracy*, (1897).
[3] F H Harbison, *Goals and Strategy in Collective Bargaining*, (Harper and Bros, 1951).
[4] International Labour Office, *Collective Bargaining* (A Worker's Education Manual), Geneva (1960), 3.
[5] C S Golden, *Causes of Industrial Peace under Collective Bargaining*, USA, the National Planning Association, 1949.

collective bargaining is a process by which the terms of employment and conditions of service are determined by agreement between management and the union. In effect, 'it is a business deal (which) determines the price of labour services and the terms and conditions of labour's employment.'[6]

The Supreme Court in *Karnal Leather Karmachari Sangathan* v. *Liberty Footwear Co.*[7] defines collective bargaining as:

> A technique by which disputes as to conditions of employment are resolved amicably, by agreement, rather than by coercion. The dispute is settled peacefully and voluntarily, although reluctantly, between labour and management.

An analysis of 'collective bargaining' requires the description of: (*i*) parties to collective bargaining; (*ii*) subject-matter of collective bargaining; and (*iii*) objects of collective bargaining. Let us discuss them.

A. Parties to Collective Bargaining

Collective bargaining involves two parties, namely, management represented either alone or through employers' association or federation of employers on the one hand and workers represented either through a union or workers' federation, on the other hand. The latter, where provisions exist under law are known as bargaining agents. These two parties are directly involved in the process of collective bargaining. It has, however been debated time and again that a representative of the public should also be included to represent the interests of public at the bargaining table, but has not yet been used much.[8]

B. Subject Matter of Collective Bargaining

The International Labour Organization has divided the subject matter of collective bargaining into two categories:

(*i*) Those which set out standards of employment which are directly applicable to relations between an individual employer and worker;

(*ii*) Those which regulate the relations between the parties to the agreement themselves and have no bearing on individual relations between employers and workers.

The first category includes subjects like wages, working hours (including overtime), holidays with pay and period of notice for termination of contract. The second category, according to ILO, includes eight items viz., (*i*) provisions for enforcement of collective bargaining; (*ii*) methods of settling individual dispute; (*iii*) collective disputes including grievance procedure and reference to conciliation and arbitration; (*iv*) recognition of a union as bargaining agent for the workers; (*v*) giving of preference in recruitment to union members seeking employment; (*vi*) duration of the agreement; (*vii*) undertaking not to resort to strike or lockout during the period; and (*viii*) procedures for negotiation of new agreements.[9]

---

[6] James J Healy (Ed.), *Creative Collective Bargaining*, Prentice Hall, 1965, 9.
[7] 1990 Lab IC 301 (SC).
[8] Bartram F Willlcox, 'A Sketch of the Federal Law of Labour in the United States' *Aligarh Law Journal*, (1965) 39.
[9] *Id.* at 46.

C. Objectives of Collective Bargaining

The International Confederation of Free Trade Union called collective bargaining 'A Workers's Bill of Rights'. It enumerated the following objects of the union in collective bargaining:

1. to establish and build union recognition as an authority in the work place;
2. to raise workers' standard of living and win a better share in company's profits;
3. to express in practical terms the workers' desire to be treated with due respect and to achieve democratic participation in decisions affecting their working conditions;
4. to establish orderly practices for sharing in these decisions and to settle disputes which may arise in day-to-day life of the company;
5. to achieve broad general objectives such as defending and promoting the workers' interests throughout the country.[10]

The ILO also states that:

> In collective bargaining, the object is to reach agreement on wages and other conditions of employment about which the parties begin with divergent viewpoints but try to reach a compromise. When a bargain is reached, the terms of the agreement are put into effect.[11]

Thus, it is evident that the prime object of collective bargaining is to resolve the differences between the parties in respect of employment, non-employment, terms of employment and conditions of service of the members of the union.

D. Duration of Collective Bargaining

The duration of collective bargaining agreements vary from agreement to agreement. There is a general tendency on the part of the union to have the contract of short duration, but management on the other hand prefers agreements of long duration:

> In the United States, many of the contracts are for a period of one to three or more years, with options to renew. In the United Kingdom, 'open end' contracts which can be renegotiated on notice at any time, are the rule. In the Scandinavian countries, one-year contracts with renewal clauses are usual.[12]

IV. PREREQUISITES FOR COLLECTIVE BARGAINING

A. Freedom of Association

In order to achieve collective bargaining, it is essential to ensure that the denial of such freedom negates collective bargaining. In this respect, it is significant to note that the

[10] Referred in Mary Sur, *Collective Bargaining* (1965), 4.
[11] International Labour Office, *Collective Bargaining* (A Workers' Education Manual), Geneva (1960), 5.
[12] Mary Sur, *supra note* 10, 34.

International Labour Organization adopted the 'Convention No. 87 concerning freedom of association and protection of the right to organize' which seeks to provide for freedom of association. India has, however, not formally ratified this convention perhaps due to administrative and constitutional problems. However, Article 19(1) (c) of the Constitution of India guarantees 'the right to form associations or unions'. Earlier the Trade Unions Act, 1926 impliedly concedes the freedom of association by conferring certain rights, duties and immunities upon members of registered trade unions. However, there is a need to ratify the ILO Convention.

B. Strong and Stable Trade Unions

For the success of collective bargaining, it is also essential that there should be strong, independent, democratic and well organized trade unions. Unorganized labour is the hurdle in its success. In India, however, the unions are generally weak. Rivalry on the basis of caste, creed, religion is another characteristic of Indian trade unions which comes in the way of successful collective bargaining. Further, division on the basis of political ideologies further retards the growth of trade unions. Moreover, most of the workers are illiterate. Lastly, the financial position of trade unions is weak and some of them are even unable to maintain a proper office.

C. Recognition of Trade Unions

Recognition of trade unions as bargaining agents is the backbone of collective bargaining. We have already discussed the problems relating to recognition of trade unions in the previous chapter.

D. Willingness to Give and Take

The mutual trust and appreciation of the viewpoints of the management and union is also essential. Said the ILO:

> The fact of entering into negotiations implies that the differences between two parties can be adjusted by compromise and concession in the expectation that agreement can be reached. Obviously, if one or both sides merely make demands when they meet, there can be no negotiation or agreement.[13]

E. Absence of Unfair Labour Practices or Victimizations

Statutory provisions for unfair labour practice or victimization are another prerequisite of collective bargaining. We will discuss in Chapter 12 unfair labour practices and victimizations.

[13] *ILO Collective Bargaining*, A Worker's Education Manual, Geneva, (1960) 128.

V. ADVANTAGES AND DISADVANTAGES OF COLLECTIVE BARGAINING

A. Advantages of Collective Bargaining

Collective bargaining has been preferred over compulsory adjudication system for several reasons;

(*i*) it is a system based on bipartite agreements and as such is superior to any arrangement involving third party intervention in matters which essentially concern employers and workers;[14]

(*ii*) it is a quick and efficient method of settlement of industrial disputes and avoids delay and unnecessary litigation;[15]

(*iii*) it is a democratic method of settlement of industrial disputes.[16]

B. Disadvantages of Collective Bargaining

According to Willcox, it has two vital defects: One of these defects is that there are situations in which a serious strike and a prolonged strike simply cannot be tolerated.[17] The second great flaw in collective bargaining as a solver of labour disputes is the lack of representation of the public interest at the bargaining table. Whether prices can be raised without affecting the ability to sell goods or services, unions and companies are in a position to agree on wage increase that will cause higher prices; then the consumer must shoulder the full burden of their agreement.[18]

VI. COLLECTIVE BARGAINING IN INDIA

Collective bargaining as a method of settlement of industrial disputes is comparatively a recent development. However, it has been debated ever since the days of the Royal Commission of Labour. The planners paid considerable attention to the adoption of the system of collective bargaining to solve labour disputes in India.

A. Plans and Collective Bargaining

The First Five-Year Plan recognized the workers' right of association, organization and collective bargaining as a fundamental basis of peaceful industrial relations. It added that, 'collective bargaining can derive reality only from the organized strength of workers and a genuine desire on the part of the employer to cooperate with their representatives.' It pointed out that the endeavour of the state had been to encourage collective bargaining and mutual settlement of industrial disputes in order to minimize governmental intervention in labour management relations.

The Second Five-Year Plan, 1956 recognized the need for mutual settlement for resolution of industrial disputes:

[14] Government of India, *Report of the National Commission on Labour* (1969), 325.
[15] Bartram F Willcox and other (Ed.) *Labour Law and Labour Relations: Cases and Materials* (1967), 29.
[16] *Ibid.*,
[17] Bartram F Willcox : *op. cit.*
[18] *Ibid., Id* at 37.

> For the development of an undertaking or an industry, industrial peace is indispensable. Obviously, this can best be achieved by the parties themselves. Labour legislation... can only provide a suitable frame-work in which employers and workers can function. The best solution to the common problems, however, can be found by mutual agreement.[19]

Another step in building strong unions is to recognize them as representative unions under certain conditions.

The Third Five-Year Plan encouraged voluntary arbitration and pleaded for its adoption in place of compulsory adjudication:

> Ways will be found for increasing the application of the principle of voluntary arbitration... The same protection should be extended to proceedings in this case as is now applicable to compulsory adjudication... Employers should show much greater readiness to submit disputes to arbitration than they have done hitherto. This has to be the normal practice in preference to a recourse to adjudication as an important obligation adopted by the parties under the Code.

The Fourth Five-Year Plan stressed that 'greater emphasis should be placed on collective bargaining and on strengthening the trade union movement for securing better labour-management relations, supported by recourse in large measures to voluntary arbitration.'[20]

B. Response of the [First] National Commission on Labour

The National Commission on Labour which was appointed by the Government of India in 1966 made comprehensive investigation of almost all the problems relating to labour. It also made a series of recommendations to promote collective bargaining. Important among them are:

> We have to evolve satisfactory arrangements for union recognition by statute as also to create conditions in which such arrangements have a chance to succeed. Apart from this, we have to indicate the place which strike/lockout will have in the scheme we propose. Collective bargaining cannot exist without the right to strike/lockout.[21]

Earlier it observed:

> Collective bargaining as it has developed in the West may not be quite suitable for India, it cannot appropriately co-exist with the concept of a planned economy where certain specified production targets have to be fulfilled. Though we are not convinced that collective bargaining is antithetical to consumer interests even in a sheltered market, we envisage that in a democratic system, pressure on government to intervene or not to intervene in a dispute may be powerful. It may hardly be able to resist such pressures and the best way to meet them will be to evolve a regulatory procedure in which the State can be seen in the public eye to absolve itself of possible charges of political intervention. The

[19] Government of India, *Second Five-Year Plan* (1956), 574.
[20] Government of India, *Fourth Five-Year Plan:* A Draft Outline (1966), 387.
[21] Government of India, *Report of the National Commission on Labour* (1969), 327.

requirements of national policy make it imperative that state regulation will have to co-exist with collective bargaining. At the same time, there are dangers in maintaining status quo. There is a case for shift in emphasis and this shift will have to be in the direction of an increasing greater scope for, and reliance on, collective bargaining. But, any sudden change replacing adjudication by a system of collective bargaining would neither be called for nor practicable. The process has to be gradual. A beginning has to be made in the move towards collective bargaining by declaring that it will acquire primacy in the procedure for settling industrial disputes.

C. Factors Affecting Successful Collective Bargaining in India

Labour laws have effected the formation of trade unions in two ways. *First*, it has weakened the protest movement. *Second*, it has failed to give adequate protection to the members of a union for their trade union activities.

History of trade union movement in different countries of the world shows that economic dependence on industrial employment, oppressive conditions of work in industrial undertakings, economic exploitation of workers and impersonal handling of their personal problems have generally built up the protest movement and the urge to form unions to combat the management's superior powers. However, in India, minimum standard statutes like Factories Act, 1948, Mines Act, 1952, Minimum Wages Act, 1948, Payment of Wages Act, 1936, Payment of Bonus Act, 1965 and Social Security Statutes like Employees' State Insurance Act, 1948, Workmen's Compensations Act, 1923, Employees' Provident Fund and Miscellaneous Provisions Act, 1952, and Payment of Gratuity Act, 1972, which are not only far in advance of the level dictated by the strength of workers but also of those dictated by the significant protest movement. Moreover, institutions such as a works committees and adjudication system, have in general, tended to minimize the value of trade unions. Further, the institution of standing orders, the procedure for their certification and the provisions regarding the adjudication, disputes relating to their interpretation and application mitigate against the necessity of forming trade unions.

Members of trade unions need as much protection from the common law doctrines of criminal conspiracy and restraint of trade as from employers' wrath. However, it has to be noted that the Trade Unions (Amendment) Act, 1947, which prohibited certain forms of unfair practices on the part of management, have not yet been enforced.

Even the protections granted against common law doctrine of criminal conspiracy, civil conspiracy and restraint of trade under Sections 17, 18 and 19 of the Trade Unions Act are hardly sufficient. If the expression 'unless the agreement is an agreement to commit an offence' renders Section 17 almost meaningless. The expression 'on the ground only' severely curtails the benevolent aspect of Section 18.

Further, law relating to labour management relations and adjudication system prevalent in our country reveals that the labour law had not been to a great extent responsive to the bargaining power of Indian workers. Thus, the Industrial Disputes Act, 1947, restricts the striking power of Indian workers. It regulates the use of instruments of economic coercion. Of course, Article 19 (1) (c) of the Constitution guarantees 'the right to form associations or unions' but after the Supreme Court decision in *All India Bank Employees case*[22] that the

[22] (1962) SCR 17 1.

Article merely guarantees the 'right to form associations or unions' and, in particular does not guarantee the right to strike, the usefulness of the Article is extremely limited.

Moreover, Section 7 of the Criminal Law (Amendment) Act, 1932, renders it impossible for the workers to indulge in several kinds of labour activities. It, adversely affects the workmen's right to picket. It prohibits obstruction of access and intimidation of persons or employees or loitering at places of residence or business with the intent of deterring others from entering or approaching or dealing at such place. The Bombay High Court in *Damodar Ganesh* v. *State*[23] has, however, held that Section 7 prohibits even peaceful picketing. It has, therefore, severely affected the bargaining power of trade unions.

Moreover, the surplus labour market (which exists in India) affects the bargaining power of Indian labour. It will be observed that 'the backlog of unemployed which stood at 3 million at the commencement of the First Five Year Plan, was estimated to be above 10 million in 1968. This is in spite of 31 million jobs created during the first three plans which is almost equivalent to the size of the entire economically active population of a number of countries like West Germany, United Kingdom, and Pakistan.'[24] In addition, about 18 to 19 million job opportunities were created during the Fourth Five-Year Plan.[25] They further estimated that even if the entire plan projects were successfully implemented, over 4 million would represent the backlog at the end of the Fourth Five-Year Plan.[26]

Further, the absence of any statutory provisions at central level for the recognition of a representative trade union by an employer also affects the bargaining power of trade unions. Again, the right of unions has jeopardized the striking power of unions. Moreover, the government's unfettered discretion in referring a dispute for adjudication and for issuing of prohibitory order under Section 10 of Industrial Disputes Act has adversely affected the labour's interests.

Labour laws have also not given any special status to a trade union. Section 36 of the Industrial Disputes Act, 1947, enables a worker, if he so desires, to be represented by a union, but it does not enable a union to represent its members. Indeed, apart from the general law of agency, a union cannot bind by its decision, its own member, far less the non-union member in the establishment.

[23] *Damodar Ganesh* v. *State*, (1961) 2 LLJ 385.
[24] The statement was made by Shri Jaisukh Lal Hathi, Union Minister of Labour and Employment and Rehabilitation in a broadcast on 'employment' dated 17 January, 1968. See *Northern India Patrikla*, dated 19 January, 1968.
[25] Government of India, *Fourth Five-Year Plan:* A Draft Outline, 108.
[26] *Ibid.*

CHAPTER

12

Unfair Labour Practices and Victimizations

I. UNFAIR LABOUR PRACTICES ON THE PART OF EMPLOYERS UNDER THE TRADE UNIONS (AMENDMENT) ACT, 1947

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

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

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

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

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

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

II. UNFAIR LABOUR PRACTICES ON THE PART OF TRADE UNIONS UNDER THE TRADE UNIONS (AMENDMENT) ACT, 1947

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

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

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

(*c*) for an officer of the trade union not to submit any return required by or under this Act containing false statements.

III. JUDICIAL DELINEATION OF 'UNFAIR LABOUR PRACTICE'

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

A. Narrow View

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

B. Extensive View

A few of the earlier decisions and later decisions generally emphasize extensive view. For instance, Shri A G Gupta in *Alexandra Jute Mills Ltd* v. *Their Workmen*[1] illustrated unfair labour practice:

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

There are other illustrations, *e.g.*, hasty action of company without giving the employee any notice or holding an inquiry provided that the refusal by an employer to permit his workmen to engage in trade union activities during their hours of work shall not be deemed to be unfair practice on his part. And Section 32A of the Trade Unions (Amendment) Act, 1947 prescribed the penalty for committing unfair labour practices. Thus it provides that '(1) any employer who commits any unfair practice set out in Section 28 K shall be punishable with fine which may extend to ₹1,000. (2) Where a criminal court imposes a fine, or confirms in appeal, revision or otherwise a sentence of fine imposed on an employer for committing an unfair labour practice set out in clause (c) or clause (d) of Section 28 K, it may when passing judgement, order the whole or any part of the fine to be applied in the payment to any person as compensation for lessor injury caused by the unfair practice.'

IV. CODE OF DISCIPLINE IN INDUSTRY

The Code of Discipline, 1958 contains a list of unfair labour practices to be avoided by unions and management:

(1) Management agrees... not to support or encourage any unfair labour practice such as:

[1] *Alexandra Jute Mills Ltd* v. *Their Workmen*, (1950) I LLJ 1261.

(*a*) interference with the rights of employees to enrol or continue as union members;

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

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

(2) Unions agree to discourage unfair labour practices such as:

(*a*) negligence of duty;

(*b*) careless operation;

(*c*) damages to property;

(*d*) interference with or disturbance to normal work, and

(*e*) insubordination.

V. RESPONSE OF THE [FIRST] NATIONAL COMMISSION ON LABOUR

The [First] National Commission on Labour has also recommended that the law should enumerate various unfair labour practices on the part of employers and on the part of workers' unions, and provide for suitable penalties for committing such practices. Complaints relating to unfair labour practices will be dealt with by the labour courts. They shall have the power to impose suitable punishments/penalties which may extend to de-recognition in case of unions and heavy fine in case of an employer found guilty of such practices.[2]

VI. UNFAIR LABOUR PRACTICES ON THE PART OF EMPLOYERS AND TRADE UNIONS OF EMPLOYERS UNDER THE INDUSTRIAL DISPUTES (AMENDMENT) ACT, 1982

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

1. To interfere with, restrain from, or coerce, workmen in the exercise of their right to organize, form, join or assist a trade union or to engage in concerted activities for the purposes of collective bargaining or mutual aid or protection, that is to say:
   (*a*) threatening workmen with discharge or dismissal, if they join a trade union;
   (*b*) threatening a lockout or closure, if a union is organized;
   (*c*) granting wage increase to workmen at crucial periods of trade union organization, with a view to undermining the efforts of the trade union organization.
2. To dominate, interfere with or contribute support, financial or otherwise, to any trade union, that is to say:
   (*a*) an employer taking an active interest in organizing a trade union of his workmen; and
   (*b*) an employer showing partiality or granting favour to one of several trade unions attempting to organize his workmen or to its members, where such a trade union is not a recognized trade union.
3. To establish employer-sponsored trade unions of workmen.

[2] Government of India, *Report of the National Commission on Labour* (1969) 336.

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 pa-t in any strike (not being a strike which is deemed to be an illegal strike under this Act);
   (*c*) changing seniority rating of workmen because of trade union activities;
   (*d*) refusing to promote workmen to higher posts on account of their trade union activities;
   (*e*) giving unmerited promotions to certain workmen with a view to 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 colourable exercise of the employer's rights;
   (*c*) by falsely implicating a workman in a criminal case on false evidence or on concocted evidence;
   (*d*) for patently false reasons;
   (*e*) on untrue or trumped up allegations of absence without leave:
   (*f*) in utter disregard of the principles of natural justice in the conduct of domestic inquiry or with undue haste;
   (*g*) for misconduct of a minor or technical character, without having any regard to the nature of the particular misconduct or the past record or service of the workman, thereby leading to a disproportionate punishment.
6. To abolish the work of a regular nature being done by workmen, and to give such work to contractors as a measure for breaking a strike.
7. To transfer a workman *mala fide* from the one place to another, under the guise of following management policy.
8. To insist upon individual workmen, who are on a legal strike, to sign a good conduct bond, as a pre-condition to allowing them to resume work.
9. To show favouritism or partiality to one set of workers regardless of merit.
10. To employ workmen as 'badlis', casuals or temporaries and to continue them as such for years, with the object of depriving them of the status and privileges of permanent workmen.
11. To discharge or discriminate against any workman for filing charges or testifying against an employer in any inquiry or proceeding relating to any industrial dispute.
12. To recruit workmen during a strike which is not an illegal strike.
13. Failure to implement award, settlement or agreement.
14. To indulge in acts of force or violence.
15. To refuse to bargain collectively, in good faith with the recognized trade unions.
16. Proposing or continuing a lockout deemed to be illegal under this Act.

And Section 25 T of the Act prohibits employers (whether registered under the Trade Unions Act, 1926 or not) to commit any of the aforesaid unfair labour practices. Violation of the provision is punishable with imprisonment for a term which may extend to 6 months or with fine which may extend to ₹1,000 or with both.

A perusal of item 7 of the Fifth Schedule read with Section 25 T of the Act reveals that there is a statutory prohibition engrafted in the Industrial Disputes Act prohibiting transfer of a workman *mala fide* from one place to another under the guise of management policy. Thus, a valued right has been created by the statute in favour of the workman from being subjected to by his employer to transfers *mala fide* under the guise of following the management policy. This is a right which has been created by the Industrial Disputes Act in favour of the workmen restricting the unfettered right of the management in the matter of effecting transfers of his employees. The obligation not to transfer a workman *mala fide* from one place to another under the guise of management policy was not recognized under common law. That right it now created by the statute.[3] The remedy has been provided in Section 10 of the Act. There are several conditions which are to be satisfied for invoking the remedy provided under Section 10 of the Act. When the statute prescribes a remedy and also prescribes the conditions for availing of that remedy, if the conditions for invoking the remedy cannot be complied with, it does not mean that the statute has not provided the remedy.[4] Thus, the right as well as the remedy have been provided by the Industrial Disputes Act in the matter of transfer by the management. In such a case, the jurisdiction of the civil court is by necessary implication barred.[5]

From the above, it is clear that (i) management is not expected to interfere with the rights of the workmen to organize themselves into a trade union. (ii) The management is also not supposed to dominate, interfere with or support, financial or otherwise, to any trade union. (iii) The management is not expected to establish employer-sponsored trade unions of workmen, and it is also not supposed to encourage or discourage membership to any union by taking the various steps which are mentioned above, clearly speaks of a recognized trade union. (iv) To refuse to bargain collectively even in good faith with a recognized trade union is an unfair labour practice.[6]

Discouragement of Badli workmen to join a trade union—an unfair labour practice. In *Panyam Cement Employees Union affiliated to INTUC, Kurnool District* v. *Commissioner of Labour, Hyderabad*[7], the High Court of Andhra Pradesh held that a reading of clause 4 of Part 1 of the Fifth Schedule reveals that any action on the part of the employer/workmen to discourage a workman from participating in a trade union activity is unfair labour practice. *Badli* workmen are workmen and, therefore, if any employer disapproves of a 'trade union of *badli* workers' or discourages *badli* workers to join a trade union or denies voting right to *badli* workers, the same would amount to unfair labour practice.

Temporary appointment for successive fixed tenure with artificial breaks—an unfair labour practice. The Supreme Court in *Regional Manager, SBI* v. *Raja Ram*[8] ruled that when

---

[3] *Kerala Rubber and Reclaims Ltd* v. *P A Sunny*, (1989) Lab. IC 964 at 967 (Kerala).
[4] *Id.* at 968.
[5] *Id.* at 969.
[6] *MRF United Workers Union Rep. by its General Secretary* v. *Government of Tamil Nadu*, 2010 LLR 165 (HC Madras).
[7] (2004) I LLJ 915.
[8] (2005) I LLJ 12 at 14–15.

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

(I) on the part of the employer and trade unions of employers; and

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

> 'to employ workmen as '*badlis*', casuals or temporaries and to continue them as such for years, with the object of depriving them of the status and privileges of permanent workmen,' is an unfair labour practice.

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

The aforesaid view was reiterated in *Krishna Lal* v. *General Manager, Haryana Roadways, Rohtak*[9]. The Punjab and Haryana High Court held that where the services of a workman are terminated before the expiry of 240 days in order to give artificial break for a few days and after some time, he is again re-employed, it amounts to unfair labour practice under Section 2(ra) of the Industrial Disputes Act, 1947.

Contravention of Model Standing Orders — an unfair labour practice. In *R P Sawant* v. *Bajaj Auto Ltd.*[10], the Bombay High Court held that the contravention of the Model Standing Order is an unfair labour practice within meaning of item 9 of Schedule IV in respect of which industrial court was competent to grant relief to the complainants.

VII. UNFAIR LABOUR PRACTICES ON THE PART OF WORKMEN AND TRADE UNIONS OF WORKMEN UNDER THE INDUSTRIAL DISPUTES (AMENDMENT) ACT, 1982

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

1. To advice or actively support or instigate any strike deemed to be illegal under this Act.
2. To advice workmen in the exercise of their right to self-organization or to join a trade union or refrain from joining any trade union, that is to say:

[9] 2011 LLR 359.
[10] 2001 LLR 935.

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

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

3. For a recognized union to refuse to bargain collectively in good faith with the employer.
4. To indulge in coercive activities against certification of a bargaining representative.
5. To stage, encourage or instigate such forms of coercive actions as wilful 'go slow', squatting on the work premises after working hours or '*gherao*' of any of the members of the management or other staff.
6. To stage demonstrations at the residences of the employers or the managerial staff members.
7. To incite or indulge in wilful damage to employer's property connected with the industry.
8. To indulge in acts of force or violence or to hold out threats of intimidation against any workman with a view to prevent him from attending work.

The commission of aforesaid unfair labour practices are prohibited under Section 25 T and whosoever commits any such unfair labour practice is punishable under Section 25 U of the Industrial Disputes (Amendment) Act, 1982 with imprisonment which may extend to 6 months or with fine which may extend to ₹1,000 or with both.

Proof of Unfair Labour Practice

The charge of unfair labour practice should be specifically levelled so that the employer is able to meet it. It should also be proven by clear evidence. It is undoubtedly correct that sometimes, the facts may speak for themselves and it may be possible to infer that the employer was acting unfairly but there should be some evidence which should indicate an improper motive so as to enable the court to arrive at a finding of unfair labour practice.[11]

VIII. VICTIMIZATION

Victimization and unfair labour practice are 'like twins who cling together'. According to some, unfair labour practice can stand by itself, but victimization must always keep company with unfair labour practice. For instance, where the employer interferes with employees' right to self organization or with the formation of any labour organization, or where the employer bangs the door on any settlement by negotiation, there may be unfair labour practice. In such cases, no punishment need be inflicted on any employee. It cannot be said that there is any victimization. Thus, separate existence of unfair labour practice is conceivable. 'In other words, the dividing line between victimization and unfair labour practice is very thin and what is unfair labour practice may also be a victimization and *vice versa*.'[12]

Like unfair labour practice, the word 'victimization' has not been defined either in the Trade Unions Act, 1926 or in the Industrial Disputes Act, 1947. The Supreme Court in *Bharat*

[11] *Gurdaspur Central Co-operative Bank Ltd* v. *Labour Court*, (1999) Lab. IC 192.
[12] *Everyday Flash Light Co.* v. *Labour Court*, (1962) 2 LLJ 204 (Allahabad).

Bank Ltd v. *Employees of Bharat Bank Ltd*[13], has, however, defined the word 'victimization' to mean:

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

The aforesaid meaning was followed in *Bharat Iron Works* v. *Bhagubhai Balubhai Patel*[14], wherein the Supreme Court observed that a person is victimized, if he is subjected to persecution, prosecution or punishment for no real fault or guilt of his own, in the manner, as it were a sacrificial victim. The Supreme Court said that victimization may partake various types. For example, pressurizing an employee to leave the union or union activities, treating an employee unequally or in an obviously discriminatory manner for the sole reason of his connection with union or his particular union activity; inflicting a grossly monstrous punishment which no rational person would impose upon an employee and the like.

The Supreme Court in *Workmen of M/s Williamson Magor and Co. Ltd* v. *M/s Williamson Magor and Co. Ltd*,[15] accepted the normal meaning of 'victimization', namely, being the victim of unfair and arbitrary action, and held that there was 'victimization of the superseded workmen. The tendency of the Court to safeguard the interest of workmen, is also evident from the observation of the Court, that whenever, the word 'victimization' can be interpreted in two different ways, the interpretation which is in favour of the labour should be accepted as they are the poorer section of the people compared to that of management.[16]

Justice Dhawan in *L H Sugar Factories & Oil Mills (P) Ltd*,[17] expressed the view that what are unfair labour practices or victimizations is a question of fact to be decided by the tribunal upon the circumstance of each case. However, from the mere fact that the concerned workmen were office-bearers of the union, it cannot be inferred that the company was actuated by any improper motive to victimize them when the charge of misconduct was proved against them.[18]

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

In *RBS Jain Rubber Mills*[19], the tribunal listed the following as outward manifestation to be taken into account for victimization or unfair labour practice:

1. Discrimination between workers
2. Singling out union leaders or members
3. Anti-union statement made at the time of discharge or shortly prior thereto
4. Relative significance of the alleged infraction

[13] *Bharat Bank Ltd* v. *Employees of Bharat Bank Ltd* (1950) LLJ 921.
[14] *Bharat Iron Works* v. *Bhagubhai Balubhai Patel* AIR 1976 SC 98.
[15] *Workmen of M/s Williamson Magor and Co. Ltd*, v. *M/s Williamson, Magor and Co., Ltd*, (1982) 1 LLJ 33 (SC).
[16] *Id.* at 38.
[17] *LH Sugar Factories & Oil Mills (P) Ltd* v. *State of UP*, (1961) 1 LLJ 686.
[18] *Brown Co. Ltd* v. *Their Workmen*, (1959) 1 LLJ 450.
[19] *RBS Jain Rubber Mills'* (1968) 1 LLJ vii (Journal Section).

5. Whether others ever committed the same infraction without similarly being punished to the extent of discharge
6. Failure without explanation to introduce specific evidence in support of a general accusation or reason for discharge or to call witnesses who have personal knowledge of the basis of denial
7. Failure of the employer to hold an investigation
8. Failure to afford an employee the opportunity to defend himself
9. Uneven application of the company's rule

A. Proof of Victimization

Victimization 'is a serious charge by an employee against an employer, and, therefore, it must be properly and adequately pleaded, giving all particulars upon which the charge is based, to enable the employer to fully meet them. The charge must not be vague or indefinite, being as it is an amalgamation of facts as inferences and attitudes. The fact that there is a union espousing the cause of the employees in legitimate trade union activity and an employee is a member or active office-bearer thereof, is *per se* no crucial instance.'[20]

B. Burden of Proof

The onus of establishing a plea of victimization will be upon the person pleading it. Since a charge of victimization is a serious matter reflecting to a degree, upon the subjective attitude of the employer evidenced by acts and conduct, these have to be established by safe and sure evidence. Mere allegations, vague suggestions and insinuations are not enough. All particulars of the charge brought out, if believed, must be weighed by the tribunal and a conclusion should be reached on a totality of the evidence produced.[21]

Again, victimization must be directly connected with the activities of the concerned employee inevitably leading to the penal action without the necessary proof of a valid charge against him... A proved misconduct is antithesis of victimization as understood in industrial relations.[22]

IX. SCOPE OF INTERFERENCE BY INDUSTRIAL TRIBUNAL

It was established in *Indian Iron and Steel Co.* v. *Their Workmen*[23] that industrial tribunal can interfere, *inter alia*, in management's order when there is victimization or unfair labour practice.

Again, in *Ananda Bazar Patrika* v. *Their Employees*[24], the Supreme Court dealt with the extent of jurisdiction of a labour court or an industrial tribunal and observed as follows: If on the one hand, in terminating the services of the employee, the management has acted maliciously or vindictively or has been actuated by a desire to punish the employee for

[20] *Bharat Iron Works* v. *Bhagubhai*, AIR 1976 SC 98.
[21] *Id.* at 102.
[22] *Ibid.*
[23] *Indian Iron and Steel Co.* v. *Their Workmen*, AIR 1958 SC 130.
[24] *Ananda Bazar Patrika* v. *Their Employees*, 1963 2 LLJ 429.

his trade union activities, the tribunal would be entitled to give adequate protection to the employees by ordering his reinstatement, or directing in his favour the payment of compensation. But if the inquiry has been proper and the conduct of the management in dismissing the employee is not *mala fade*, then the tribunal cannot interfere with the conclusions of the inquiry officer, or with the orders passed by the management after accepting the said conclusions.

In Bengal Bhatdee Coal Co. v. *Singh*[25], the Supreme Court ruled:

> [T]here is no doubt that though in a case of proved misconduct, normally the imposition of a penalty may be within the discretion of management, there may be cases where the punishment of dismissal for the misconduct proved may be so unconscionable or so grossly out of proportion to the nature of offence that the tribunal may be able to draw an inference of victimization merely from the punishment inflicted.

The Supreme Court in *Hind Construction and Engineering Co. Ltd* v. *Their Workmen*[26] has put the position of law as follows:

> It is now settled law that the tribunal is not to examine the finding or the quantum of punishment because the whole of the dispute is not really open before the tribunal as it is ordinarily before a court of appeal. The tribunal's powers have been stated by this court in a large number of cases and it has been ruled that the tribunal can only interfere if the conduct of the employer shows lack of *bona fides* or victimization of employee or employees or unfair labour practices. The tribunal may, in a strong case, interfere with a basic error on a point of fact or a perverse finding, but it cannot substitute its own appraisal of the evidence for that of the officer conducting the domestic inquiry though it may interfere where the principles of natural justice or fair play have not been followed or where the inquiry is so perverted in its procedure as to amount to no inquiry at all. In respect of punishment it has been ruled that the award of punishment for misconduct under the Standing Orders, if any, is a matter for the management to decide and if there is any justification for the punishment imposed, the tribunal should not interfere. The tribunal is not required to consider the propriety or adequacy of the punishment or whether it is excessive or too severe. But where the punishment and the past record are such, as no reasonable employer would ever impose in like circumstances, the tribunal may treat the imposition of such punishment as itself showing victimization or unfair labour practice.

---

[25] *Bengal Bhatdee Coal Co.* v. *Singh*, (1962–63) 24 FJR 406.

[26] *Hind Construction and Engineering Co. Ltd* v. *Their Workmen*, AIR 1965 SC 917: (1965) 1 LLJ 462.