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INDUSTRIALDISPUTE ACT,1947

APPROPRIATE GOVERNMENT

DEFINITIONS: Section2(a)"appropriateconcerninganyindustrycarriedonbyor under the authority of the Central Government, or by a railway government" means —

(i) in relation to any industrial disputes company [or concerning any such controlled industry as may be specified in this behalf by the Central Government] or in relation to an industrial dispute concerning a Dock Labor Board established under section 5A of the Dock Workers (Regulation of Employment) Act, 1948 (9 of 1948), or the [the Industrial Finance Corporation of India Limited formed and registered under the Companies Act, 1956], or the Employees' State Insurance Corporation established under section 3 of the Employees' State Insurance Act, 1948 (34 of 1948), or the Board of Trustees constituted under section 3A of the Coal Mines Provident Fund and Miscellaneous Provisions Act, 1948 (46 of 1948), or the Central Board of Trustees and the State Boards of Trustees constituted under section 5A and Section 5B, respectively, of the Employees' Provident Fund and Miscellaneous Provisions Act, 1952 (19 of 1952)], or the Life Insurance Corporation of India established under section 3 of the Life Insurance Corporation Act, 1956 (31 of 1956), or [the Oil and Natural Gas Corporation Limited registered under the Companies Act. 19561, or the Deposit InsuranceandCreditGuaranteeCorporationestablishedundersection3oftheDeposit

Insurance and Credit Guarantee Corporations Act. 1961 (47 of 1961), or the Central Warehousing Corporation established under section 3 of the Warehousing Corporation Act, 1962 (58 of 1962), or the Unit Trust of India established under section 3 of the Unit Trust of India Act, 1963 (52 of 1963), or the Food Corporation of India established under section 3,or a Board of Management established for two or more contiguous States under section 16 of the Food Corporation Act, 1964 (37 of 1964), or [the Airports Authority of India constituted under section 3 of the Airports Authority of India Act, 1994], or a Regional Rural Bank established under section 3 of the Regional Rural Banks Act, 1976 (21 of 1976), or the Export Credit and Guarantee Corporation Limited or the Industrial Reconstruction Corporation of India Limited, [the National Housing Bank established under section 3 of the National Housing Bank Act, 1987 (53 of 1987)], or the Banking Service Commission established under section3 of the Banking Service Commission Act, 1975 or [an air transport service, or a banking or an insurance company], a mine, an oil-field.] [a Cantonment Board,] or a major port, the Central Government, and]

(ii) in relation to any other industrial dispute, the State Government;

In amendment in 2010,thisscopehasbeenexpandedtoincludecompanies—

i) In which not less than 51% of the paid up share capital is held by Central Government or any corporation(excluding those mentioned in sub-clause(i) set-up by Central law or held by central public sector undertakings or by subsidiaries of principal undertakings owned by or controlled by the Central Government.

ii) Another important amendment made to clause (a) of Sec.2 is to define appropriate government with regard to disputes between contractor and the contract labour. It now depends up on the question whether the industrial establishment which employs the contract labour in which such dispute arises, falls under the control of Central Government or State Government. If it falls under the control of Central Govt., central govt. will be the appropriate government otherwise, the State Govt.

In ***Tata Memorial Hospital Workers Union v. Tata Memorial Centre, (2010)*** 2 SCC (L&S) 649, the concept of appropriate Government has been discussed by the Supreme Court with reference to its earlier decisions. The basic question in this case was as to whether or not the State Government was the appropriate Government for the purposes of application of Section 2
(3)ofMaharashtraRecognitionofTradeUnionsandPreventionofUnfairLabourPractices Act, 1971.

Section 2(a)of the Industrial Disputes Act, 1947 defines “appropriate Government” and it is clear that under the Industrial Disputes Act, the Central Government is the ‘appropriate Govern-ment’inrelationtoindustrialdisputesconcerningtheindustriesspecifiedunder

Section 2(a) (i) and for the industries carried on by or under the authority of the Central Government. Excluding these two categories of industries in relation of any other industrial dispute, it is the State Government which is the appropriate Government. The Court observed that it becomes necessary to examine as to how the concept of appropriate Government has been explained by the judiciary in the leading decisions and takes note of cases one by one for clarity and precision.

As a general rule, in respect of an Industrial Disputes relating to an industry carried on by or under the authority of Central Government like most of the public corporations etc., Central Government is declared as appropriate Government and in respect of Industrial Disputes concerning industries other than those falling within the jurisdiction of Central Government the State Government is declared as appropriate Government.

AveragePay

Section2(aaa)"Average Pay" means the average of the wages payable to a workman—

(i) In the case of monthly paid workman, in the three complete calendar months,

(ii) In the case of weekly paid workman, in the four complete weeks,

(iii) in the case of daily paid workman, in the twelve full working days, preceding the date on which the average pay becomes payable if the workman had worked for three complete calendar months or four complete weeks or twelve full working days, as the case may be, and where such calculation cannot be made, the average pay shall be calculated as the average of the wages payable to a workman during the period he actually worked;

In ***Guru Jambhaswar University v. Dharampal, (2007)*** 1 SCC (L&S) 792, it has been held that sub-section (b) of Section 25-F requires payment of retrenchment compensation to a workman which shall be equivalent to 15 days average pay for every completed year of service or any part thereof in excess of six months. Average pay has been defined in Section 2(aaa) of the Act and, therefore, average pay has to be determined strictly in accordance with the aforesaid provision and not on the basis of some hypothetical calculation. Section 2(aaa) contemplates four different kinds of wage period for payment of wages. Clause (i) speaks of monthly paid workman and here wage has to be calculated by arriving at the average or mean of three complete calendar months. Clause (ii) refers to weekly paid workman where the average pay would be the average or mean of four complete weeks. Clause (iii) deals with daily wage workman and in this case the average pay would be average or mean of wages in 12 full working days. The fourth category would be a case where it is not covered by way of sub-clauses (i), (ii), or (iii) and in this case average pay shall be calculated as the average of wages payable to a workman during the period he had actually worked.

Award

Section 2(b) "Award" means an interim or a final determination of any industrial dispute or of any question relating thereto by any Labor Court, Industrial Tribunal or National Industrial Tribunal and includes an arbitration award made under section 10A;

The definition of award falls in two parts. The first part covers a determination, final or interim, of any interim dispute. The second part takes in a determination of any question relating to an industrial dispute. But the basic postulate common to both the parts of definition is the existence of an industrial dispute, actual or apprehended.

Awardincludesfinalaswellasaninterimdetermination.Thetribunalcangrantonlysuch interim awards which they are competent to grant at the time of final award, because the relief, which the Tribunal has no right to grant at the time of final determination, shall be outside its authority at any stage of the proceedings.

Controlled Industry

Section2(ee)"ControlledIndustry"meansanyindustrythecontrolofwhichbytheUnion has been declared by any Central Act to be expedient in the public interest.

Therefore, a controlled industry implies an industry which is controlled by the union, i.e. the Central Government. But that is not enough. Any industry in order to be controlled industry must not only be controlled by the Central Government but must also be declared by the Central Act to be controlled by the Union and that such control by the Central Government be expedient in the public interest.

Therefore, for the application of this clause the following equisitiesare necessary:

(i) Any industry which is actually under the control of the Central Government.

(ii) It should have been declared by a Central Act to be an industry the control of which by the Central Government is expedient in public interest.

Any industry in order to be a controlled industry within the scope of the definition has to satisfy a dual test. Firstly the Central Government should declare such industry to be within its control and secondly, the Central Government should acquire such control on the ground of expediency in the public interest.

Employer

Section2(g)"Employer" means—

(i) in relation to an industry carried on by or under the authority of any department of [the CentralGovernmentoraStateGovernment,]theauthorityprescribedinthisbehalf,orwhere no authority is prescribed, the head of the department;

(ii) inrelationtoanindustrycarriedonbyoronbehalfofalocalauthority,thechief executive officer of that authority;

The employer means, in relation to an industry carried on by or under the authority of any department of the Central Government or State Government the authority prescribed in this be-half, or where no such authority is prescribed the head of the department. So also the employer means in relation to an industry carried on by or on behalf of a local authority, the Chief Executive Officer of that authority.

Industrial Establishment or Undertaking.

Section(ka)"Industrialestablishmentorundertaking"meansanestablishmentor undertaking in which any industry is carried on :

PROVIDEDthatwhereseveralactivitiesarecarriedoninanestablishmentorundertakingandonl yoneorsomeofsuchactivitiesisorareanindustryorindustries,then,

—

(a) if any unit of such establishment or undertaking carrying on any activity, being an industry, is severable from the other unit or units of such establishment or undertaking, such unit shall be deemed to be a separate industrial establishment or undertaking;

(b) if the predominant activity or each of the predominant activities carried on in such establishment or undertaking or any unit thereof is an industry and the other activity or each of the other activities carried on in such establishment or undertaking or unit thereof is not severable from and is, for the purpose of carrying on, or aiding the carrying on of, such predominant activity or activities, the entire establishment or undertaking or, as the case may be, unit thereof shall be deemed to be an industrial establishment or undertaking.

Public Utility Service.

It has been defined in Section 2(n)of the Act to mean—

(i) any railway service or any transport service for the carriage of passengers or goods by

air; (ia) any service in, or in connection with the working of , any major port or dock;

(ii) any section of an industrial establishment, on the working of which the safety of the establishment or the workmen employed therein depends;

(iii) any postal, telegraph or telephone service;

(iv) any industry which supplies power, light or water to the public;

(v) any system of public conservancy or sanitation;

(vi) any industry specified in the 42[First Schedule] which the appropriate government may, if satisfied that public emergency or public interest so requires, by notification in the Official Gazette, declare to be a public utility service for the purposes of this Act, for such period as may be specified in the notification:

PROVIDED that the period so specified shall not, in the first instance, exceed six months but may, by a like notification, be extended from time to time, by any period not exceeding six months, at any one time if in the opinion of the appropriate government public emergency or public interest requires such extension;

The industries enumerated in the First Schedule are as under :— [Section 2(n)(vi)] 1. Trans-port (other than railways) for the carriage of passengers or goods, by land or water. 2. Banking. 3. Cement. 4. Coal. 5. Cotton textiles, 6. Foodstuffs, 7. Iron and Steel, 8. Defense establishments. 9. Service in hospitals and dispensaries. 10. Fire Brigade Service. 11. India Government Mints. 12. India Security Press. 13. Copper Mining. 14. Lead Mining. 15 Zinc Mining, 16. Iron Ore Mining.
17. Serviceinanyoilfield.19.ServiceintheUraniumIndustry.20.PyritesMiningIndustry.
21. Security Paper Mill, Hoshangabad. 22. Service in the Bank Note Press, Dewas. 23.Phosphorite Mining. 24. Magnesite Mining. 25. Currency Note Press. 26. Manufacture or production of mineral oil (crude oil), motor and aviation spirit, diesel oil, kerosene oil, fuel oil, diverse hydrocarbon oils and their blends including synthetic fuels, lubricating oils and the like. 27. Service in the International Airports Authority of India. 28. Industrial establishment, manufacturing or producing nuclear fuel and components, heavy water and allied chemicals, and atomic energy.

It may be observed that the Government is authorized to issue declaration only in respect of the industries enumerated in First Schedule and there must be proved necessity for doing so.

It has been observed by the Supreme Court in ***The Management of Safdar Jung Hopspital, New Delhi v. Kuuldeep Singh Sethi***, AIR 1950 SC 1407, that the intention behind the provision of Section 2(n) of the Industrial Disputes Act is to classify certain services as public services in the definition answer the test o an industry run on commercial lines to produce some-thing which the community can use. The heading of the First Schedule and the words of clause

(vi)of Section 2(n) pre-suppose the existence of an industry which may be notified as a public utility service for special protection under the Act. It is hardly to be thought that notificationscanbeissuedinrespectofenterpriseswhicharenotindustriestostartwith.Itis only industries which may be declared to be public utility services. All terms in the Schedule must first be demonstrated to be industries and then the notification will apply to them.

Settlement

Section 2 (p) : "Settlement" means a settlement arrived at in the course of conciliation proceeding and includes a written agreement between the employer and workmen arrived at other-wise than in the course of conciliation proceeding where such agreement has been signed by the parties thereto in such manner as may be prescribed and a copy thereof has been sent to an officer authorized in this behalf by the appropriate government and the conciliation officer;

(1)It is a settlement arrived at in the course of conciliation proceeding. A conciliation proceeding may be held by a conciliation officer or Board of Conciliation under this Act.

(2)

(3)It also includes a written agreement between the employer and workman arrived at other-wise than in the course of conciliation proceeding. Such a written agreement must be signed by the parties to the agreement in the prescribed manner. A copy of the agreement must also be sent to an officer authorised in this behalf by the Appropriate Government and the Conciliation Officer.

In ***P. Virudhachalam and Others v. Management of Lotus Mills and Another***, 1998SCC (L&S) 342, held that the settlement indicates the agreement arrived at either in the conciliation proceedings or otherwise between employer and the workmen.

Wages

Section 2(rr) : Wages means all remuneration capable of being expressed in terms of money, which would, if the terms of employment, expressed or implied, were fulfilled, be payable to a workman in respect of his employment, or of work done in such employment and includes-

(i) suchallowances(includingdearnessallowance)astheworkmanisforthetimebeing entitled to;

(ii) the value of any house accommodation, or of supply of light, water, medical attendanceorotheramenityorofanyserviceorofanyconfessionalsupplyoffoodgrainsor other articles;

(iii) any traveling concession;

(iv) anycommissionpayableonthepromotionofsalesorbusinessorboth;butdoesnot include

—

(a) any bonus;

(b) anycontributionpaidorpayablebytheemployertoanypensionfundorprovident fund or for the benefit of the workman under any law for the time being in force;

(c) any gratuity payable on the termination of his service;

The term 'wages' as contained in the Act means all remuneration which can be expressed in terms of money which is paid to a workman in respect of his employment or of work done by him to his employment according to terms and conditions of his employment. It includes all allowances including D.A. to which workman is entitled to get value of any house accommodation or supply of amenities such as water, light, medical attendance or concessional supply of food grains or any other articles of the kind or supply of any service. It also includes any travelling concession paid to the workman or any commission on the promotion or sales or business or both.

But the Act expressly excludes any bonus any contribution paid or payable by the employer to any pension fund or P.F. or for the benefit of the workman under any law in force for time being.

Thegratuitypayableontheterminationofserviceisalsoexcludedfromtheambitor "wages".

Industry

Section2(j)ofIndustrialDisputeAct,1947,definestheterm"Industry"as follows:

Section 2(j) "Industry" means any business, trade, undertaking, manufacture or calling of employers and includes any calling, service, employment, handicraft, or industrial occupation or a vocation of workmen;

Substituted definition of Industry of the Industrial Dispute (Amendment) Act of 1982. (The definition has not been brought into force as a date has not yet been notified by the Central Government for enforcement).

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

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

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

(a) Any activity of the Dock Labor Board established under section5Aof the Dock Workers (Regulation of Employment) Act, 1948 (9 of 1949);

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

(1) any agricultural operation except where. such agricultural operation is carried on in an integrated manner with any other activity (being any such activity as is referred to in the foregoing provisions of this clause) and such other activity is the predominant one.

Explanation : For the purposes of this sub-clause, "agricultural operation" does not include any activity carried on in a plantation as defined in clause (f) of section 2 of the Plantations Labor Act, 1951 (69 of 1951); or

(2) hospitals or dispensaries; or

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

(4) institutionsownedormanagedbyorganizationswhollyorsubstantiallyengagedin any charitable, social or philanthropic service; or

(5) Khadi or village industries; or

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

(7) any domestic service; or

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

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

An industry exists only when there is relationship between employers and employees, the former is engaged in business, trade, undertaking, manufacture or calling of employers and the latter is engaged in the calling, service, employment, handicraft or industrial occupation and avocation.

The definition of industry is in two parts. One part defines industry from the view point of the employer and the other part from the stand point of employees. If an activity falls under either part of the definition, it would be an industry within the meaning of this Act. The first part says that it means any business, trade, undertaking, manufacture or calling of employers and then it goes on to say in the second part that it includes any calling, service, employment, handicraft, or industrial occupation or avocation of workmen. The Supreme Court sought to expand the concept of industry by a process of judicial interpretation to meet the changing requirements of modern currents of socio-economic thought by laying down working principle that an activity systematically or habitually undertaking for the production or distribution of goods or for rendering of material service to community at large or a part of such community with the help of employees is an undertaking.

The question ‘what is an ‘industry’?’ has continuously baffled the courts ever since the enactment of the Industrial Disputes Act, 1947. Though the Act provides a definition of 'industry' in Section 2(j), the definition is not very precise and has defied consistent interpretation. As a result, judicial effort has been directed at evolving tests by reference to characteristics regarded as essential for regarding an activity as an 'industry'. The cases decidedbythecourts,however,showthatthesetestshavenotbeenuniform.Thecourtshave been guided by an empirical rather than a strictly analytical approach: sometimes the tests have been liberally conceived, at other times narrowly. The Industrial Disputes(Amendment) Bill, 1982 seeks to put an end to the floating state of the definition of 'industry'. In the process it has narrowed the concept of 'industry' and opened up a debate on the curtailment of the benefits and protection available to employees under the earlier definition.

Under these confusing state of affairs the Supreme Court has critically examined the earlier decisions and has interpreted the term “industry” so as to cope with the modern socioeconomic currents and to keep pace with the industrial developments in our country in Bangalore Water Supply and Sewerage Board v. A. Rajappa AIR 1978 SC 548. It was observed that an industry is continuity, is an organized activity, and is a purposeful pursuit – not any isolated adventure, desultory excursion or casual, fleeting engagement of motiveless undertaken. Such is this common feature of a trade, business, calling, manufacture - mechanical or handicraft, service, employment, industrial occupation or avocation. The expression 'undertaking' cannot be torn off the words whose company it keeps. In Bangalore Water Supply vs. A. Rajappa case a seven judge's bench of the Supreme Court exhaustively considered the scope of industry and laid down the following test which has practically reiterated the test laid down in Hospital Mazdoor Sabha case:

Triple Test: where there is systematic activity, organized by cooperation between employerandemployeefortheproductionand/ordistributionofgoodsandservices

calculated to satisfy human wants and wishes, prima facie, there is an "industry" in that enterprise. This is known as triple test.

The effect of definition has wide import.

(a) Where (i) systematic activity, (ii) organized by co-operation between employer and employee (the direct and substantial element is commercial), (iii) for the production and/or distribution of goods and services calculated to satisfy human wants and wishes(not spiritual or religious but inclusive of material things or services geared to celestial bliss i.e. making, on a large scale Prasad or food) prima facie, there is an industry in that enterprise.

(b) Absentofprofitmotiveorgainfulobjectiveisirrelevant,betheventureinthepublic, joint,

Private or other sector.

(c) Thetruefocusisfunctionalandthedecisivetestisthenatureoftheactivitywith special emphasis on the employer-employee relations.

(d) Iftheorganizationisatradeorbusinessitdoesnotceasetobeonebecauseof philanthropy animating the undertaking.

Hospital:— Whether is an Industry?

In this specific area there has been a state of uncertainty due to contrary rulings till the decision of the Supreme Court in ***Bangalore Water Supply and Sewerage Board v. A. Rajappa***, AIR 1978 SC 548.

In ***State of Bombay v. Hospital Mazdoor Sabha*** AIR 1960 SC 610, the Supreme Court held the State is carrying on an 'undertaking' within Sec. 2(j) when it runs a group of hospitals for purpose of giving medical relief to the citizens and for helping to impart medical education. The court observed as follows :

 An activity systematically or habitually undertaken for the production or distribution of goods or for the rendering of material services to the community at large or a part of such community with the help of employees is an 'undertaking'.

 It is the character of the activity in question which attracts the provisions of Sec. 2 (j), who conducts the activity and whether it is conducted for profit or not, do not make a material difference.

Thus, activities that have no commercial implications, such as hospitals carried on with philanthropic motives would be covered by the expression 'undertaking'. The mere fact that Government runs such activity is immaterial. In case an activity is industry if carried on by a private person, it would be so, even if carried on by the Government. Therefore, the hospitals were held to be industry but in the ***Management of Safdarjung Hospital v.Kuldeep Singh Sethi*** AIR 1960 SC 1407, the Supreme Court over ruled the earlier case and held that hospital is not an industry

In ***Dhanrajgiri Hospital v. Workmen AIR*** 1975 SC 2032, the main activity of the hospital was imparting of training in nursing and the beds in the hospital were meant for their practical training. It was held not to be an industry, as it was not carrying on any economic activity in the nature of trade or business.

In ***Bangalore Water Supply v A. Rajappa***, AIR 1978 SC 548, the Supreme Court overruled Safdarjung Hospital and Dhanrajgiri Hospital cases, and approved the law laid down in Hospital Mazdoor Sabha case. It was held that hospital facilities are surely services and hence industries. As it has been already mentioned that the industrial Disputes (Amendment) Act, 1982 has been passed by Parliament substituting the definition of Industry which expressly excludes hospitals or dispensaries. The position has thus been changed by legislative measure. But as the definition has not been brought into force so far, therefore the principles of 'triple test' laid down in Bangalore Water Supply case still hold good and hospital is an industry.

Liberal Professions like Solicitors, Legal Firm-Whether Industry?

The liberal professions render service of vital importance to the community, individual special-izedskillandknowledgearedistinctivefeatures.Inthiscategorytherearemany

special areas of services such as solicitors, tax advisors, counsels, architects, physicians etc. The question is whether services rendered by these experts are within the scope of Industry. There is a very important case on the point. In ***National Union ofCommercial Employees v. Industrial Tribunal***, (1962)

Supp. (3) SCR 157 AIR 1962 SC 1080, popularly known as Solicitors case, the point of contest was whether a firm of solicitors rendering services with the help of certain employees is Industry. The Supreme Court held it not to be industry.

In ***Rabindra Nath Sen and others v. First Industrial Tribunal, West Bengal*** AIR 1963 Cal 310 also it has been held that services rendered by physicians, counsels and based on their individual skill and experience do not satisfy the description of industry and therefore they are outside the scope of the expression 'industry'.

But Solicitors case has been overruled by the Supreme Court in Bangalore Water Supply case expressing contrary reasoning that a solicitors' firm or lawyer's firm becomes successful not merely by the talent of a single lawyer but by the co-operative operations of several specialists, juniors and seniors. Likewise the ancillary services of competent stenographers, paralegal supportive services are equally important. The triple test applies to other professions. Therefore, a solicitors firm employing persons to help in catering to the needs of the clients is an industry.

Education or Educational Institutions-Whether Industry?

Does the badge of industrialism. Broadly understood, banish, from its fold, education? The question was raised in ***Delhi University v. Ram Nath***, AIR 1963 SC 1873, and was answered in negative in the favour of employers by the Supreme Court.

The Supreme Court critically examined and overrules ***Delhi University v. Ram Nath*** in Bangalore Water Supply case.

The Supreme Court advanced contrary arguments and in consequence overrule Delhi University case in view of the triple test laid down in Bangalore Water Supply case holding that education can be and is, in its institutional form an industry. In ***Christian Medical College v. Govt. of India***, (1983) 2, LLJ 372 (Mad), Christian Medical College Hospital asaneducationalinstitu-tionwasheldtobeindustryonthisbasis.In***SureshChandraMathe v. Jiwaji University***, 1994 IILLJ 462 (M.P.), it has been held that a clerk in the university is a workman and the university is industry unless re-drafted definition of industry is enforced.

Municipal Corporation-Whether is anIndustry?

For the first time such a situation arose in the case of ***BudgeBudgeMunicipalityVsP.R. Mukerjee*** 1953, I. LLJ 195, Supreme Court was asked to decide whether the Municipality is an industry within the meaning of the Industrial Disputes Act, 1947, and Municipal Corporation was held to be an industry. Subsequently in ***Baroda Borough Municipality vs. Its Workmen***, AIR 1957 SC 110, also the corporation was held to be an industry.

It has been held in ***Abdul Sabir Khan v. Municipal Council, Bhandhara***, 1970 Lab IC 488 (Bom), that the activity of the Octroi department of Municipality is not an industry. But it has been held in Workmen of Fire Brigade Section of the **Municipal Committee, Faridabad v. K. I. Gosain**, AIR 1970 Punj 287, that the Fire Brigade service maintained by municipal committee is a "service" and also an 'undertaking' and therefore, an 'industry' within the meaning of section 2(j) of the Act. Thus it is clear that all department of the municipal corporation are not industry. The above test has to be applied which is laid down by the Supreme Court for the purposes of determining which departments are industry and which are not.

However, after the ***Bangalore Water Supply and Sewerage Board v. A. Rajappa*** AIR 1978 SC 548, which department of Municipality is an industry and which is not, is to be deter-mined by applying the triple test as laid down by the Supreme Court in Bangalore Water Supply case.

Statutory Corporations, Government Departments, Local Bodies etc. Whether Industry?

The leading case on the point is ***D. N. Banerjee v. P. R. Mukherjee*** AIR 1953 SC 58, where the Budge Budge Municipality dismissed two employees on complaint against them for negligence, insubordination and indiscipline. The tribunal directed reinstatement but the municipality challenged the award before the High Court and ultimately before the Supreme Court on the grounds that a Municipality in discharging its normal duties connected with local-self-government was not engaged in any industry.

Having considered the definitions of employer, industry, industrial dispute, workman, the aims and objects that legislature had in view and the nature, variety and range of disputes that occur between the employers and the employees, and foreign rulings the Supreme Court's concluding remarked that the definition in the Act includes also disputes that might arise between municipalities and their employees in branches of that work and be said to be analogous to the carrying out of trade or business. The parity is in the modus operandi, in the working not in the purpose of the venture, including the relations between the two limbs viz. labour and management. If the mutual relation, the method of employment and the process of co-operation in the carrying out of the work bear close resemblance to organization, method, remuneration, relationship of employer and employees and the like then it is industry, otherwise not. This is the kernel of decision in Bangalore Water Supply case.

In ***H. K. Makwana v. State of Gujrat and others*** 1995 I LLJ 801 (Guj), the question for decision was whether the relief undertakings carries out by the State Government to provide sustenance to persons affected by natural calamities is an industry. It has been held that the employment offered to the person on the scarcity relief works as undertaken by the state cannot be said to be employment in industry because (a) it is a primary and inalienable function of the state to provide livelihood to the person who are affected by the natural calamities such as famine, earthquake, epidemic, flood, scarcity etc. and (b) admittedly, the activity is not analogous to trade or business or that it is not a systematic activity but is carried out casually at different places depending on the calamities in a particular area.

In the light of triple tests in Bangalore Water Supply it may not be incorrect to say that several departments of the Government and much statutory incorporation have come within the canvass of the industry. In such circumstances the Corporation of Cochin, Bihar Khadi Gramodyog Sangh, Karnataka State Road Transport Corporation have been held to with in the scope of industry. Similarly activities carried on by the Department of Telephone & Telegraph have been held to be covered within the fold of industry. The Allahabad High Court held “Door Darshan” to be covered within the scope of industry in ***Doordarshan Karmachari Congress v. Union of India*** (1988) II LLJ 83.

It was held in ***Chief Conservator of Forest & Another v. Jagannath Moruti Kandhare*** (1996) I LLJ 1223 (SC), that the scheme of work under taken by the Forest Department could not be regarded as a sovereign function of the State. Therefore, Forest Department is an industry.

It was held in ***All IndiaRadio v. Santosh Kumar***, AIR 1998 SC 941,thatAll India Radio andDoorshancarryoncommercialactivityforprofitbygettingcommercialadvertisements

telecast or broadcast. These functions carried on by them cannot be said to be of purely sovereign nature and hence these industries within the definition of this Act.

Thus it is clear that all the department of Corporation, Government, local bodies etc are not industry. Which department is an industry and which is not, is to be determined by applying the triple test as laid down by the Supreme Court in Bangalore Water Supply case.

Club –Whether Industry?

Clubs speaking generally, are social institutions enlivening community life and are fresh breath of relaxation in a faded society. They are open to the public for membership subject to their own bye-laws and rules.

In ***Cricket Club of India vs. Bombay Labour Union*** AIR 1969 SC 276; the question was whether the Cricket Club of India, Bombay which was a member club and not a proprietary club, although it was incorporated as a company under the Companies Act was a industry or not. The club had membership of about 4800 and was employing 397 employees. It was held that the club was a self-service institution and not an industry and "it was wrong to equate the catering facilities provided by the club to its members or their guests with a hotel". The catering facility also was in the nature of self-service by the club to its members.

Madras Gymkhana Club Employees Union vs. Management AIR 1968 SC 554; is another case on this point. This was a member's club and not a proprietary club with a member-ship of about 1200. Its object was to provide a venue for sports and games and facilities for recreation and entertainment. It was running a catering department which provided food and refreshment not only generally bur also on a special occasion. It was held that the club was a member's self-serving institution and not an industry. No doubt that the material needs or wants of a section of the community were catered but that was not enough as it was not done as part of trade or business or as an undertaking analogous to trade or business. This case has also been overruled.

In ***Bangalore Water Supply v A. Rajappa***, AIR 1978 SC 548, case Mr. Justice Krishna Iyer has critically examined these leading cases in the light of principles laid down in this case namely triple tests and has given very fine reasoning. The gentlemen's club, proprietary clubs, service clubs, military clubs or other brands of recreational association when X-rayed from the industrial angle, project a picture on the screen typical of employers hiring employees for wages for rendering services and/or supplying goods on a systematic basis at specified hours. There is co-operation, the club management providing the capital, the raw material, the appliances and auxiliaries and the cooks, waiters, bell boys, pickers, bar maid or other servants making available enjoyable eats, pleasures and other permissible services for price paid by way of subscriptions or bills charged. Even test after hired for high wages, or commercial art groups or games teams remunerated fantastically, enjoy company taste, travel and games but elementally, they are workmen with employers above and together constitute not merely entertainment groups but industries under the Act.

Both Cricket Club of India and Madras Gymkhana are now 'industry' as they fulfill the tripletestaslaidinBangaloreWaterSupplycase.Botharesystematicallyorganizedwiththe cooperation of employer and employee for distribution of service to satisfy human wishes.

Co-operatives-Whether industry?

Co-operative society ordinarily cannot fall outside the definition of industry. After all the society, a legal person is the employer. The members and/or others are employees and the activity partakes of the nature of trade. Merely because Co-operative enterprises deserve State encouragement the definition cannot be distorted. Even if the society is worked by the members only, the entity is an industry because the member-workers are paid wages and

there can be disputes about rates and different scales of wages among the categories, i.e., workers and workers or between workers and employer.

In Bangalore Water Supply case the Supreme Court examined the question whether the cooperative are industries. It may be recalled that Bangalore Water Supply case was decided and the principles were laid down and the cases which were tagged with this case left to be decided

individually on merit in accordance with these principles. The Supreme Court after careful analysis of earlier decisions such as Safdarjung Hospital, Gymkhana Club, Cricket Club of India, Hos-pital Mazdoor Sabha, Indian Standard Institution. D. N. Banerjee and many other India cases and also foreign rulings came to the conclusion that the co-operatives are industries.

Charitable Institutions-Whether industry?

The Supreme Court in Bangalore Water Supply case has examined this question. For this purpose it analysed the elements of charitable economic enterprises, established and maintained for satisfying human wants and indicated three broad categories and made brief survey of judicial precedent of the point and discussed the leading case of ***Bombay Pinjrapole v. Workmen*** (1972) I SCR 202, and held that such institutions from the view point of workers are industries as they share business like orientation and operation, on the basis of triple tests laid down in this case.

Tirumala Tirupoti Devasthanam v. Commissioner of Labour (1979) I LLJ 801 has been held to be an industry. Similarly in ***Suresh Kumar v. Union of India*** (1989) 2 LLJ 110, it has been observed by the High Court of Delhi that applying the test the Supreme Court laid down in Bangalore Water Supply case, the Central Institution of Yoga would be regarded as an industry, especially when most of its employees and persons who are working for wages.

These fall into three categories—

(a) Those that yield profit, but the profits are not siphoned off for altruistic purposes;

(b) Those that make no profit but hire the service of employees as in any other business, but the goods/ services which are the output, are made available at a low or no cost to the indigent poor; and

(c) Those that are oriented on a human emission fulfilled by men who work, not because they are paid wages, but because they share the passion for the cause and derive job satisfaction.

The first two categories are industries ,but not the third, on the assumption that they all involve co-operation between employers and employees.

Industrial Dispute

The purpose of the Industrial Disputes Act has been to harmonise the relations between the employer and the employees and thereby to restore and maintain industrial peace. The object of the enactment of the Industrial Disputes Act as indicated in the object and reasons was to provide effective machinery for settlement of industrial disputes, to prohibit and restrict strikes and lock outs, to provide retrenchment compensation to retrenched employees, to provide certain rules regarding lay off. The Industrial Disputes Act is a legislation calculated to ensure social justice to both employers and employees and advance the progress of industry by bringing about the existence of harmony and cordial relationship between the parties.

Section 2(k) of the Industrial Disputes Act, 1947 defines “industrial dispute” means any dispute or difference between employers and employers, or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labor, of any person;

The term ‘industrial dispute’ was the subject-matter of the consideration in ***Workmen of Dimakuchi Tea Estate v. The Management of Dimacuchi Tea Estate*** (1956) SCR 1156,

The question for decision in this appeal was whether a dispute raised by the workmen' relating to a person who was not a workman could be an industrial dispute as defined by S. 2(k) of the Industrial Disputes Act, 1947, as it stood before the amendments of 1956. Both the Tribunal and

the Appellate Industrial Tribunal took the view that as Dr. Banerjee was not an workman within the meaning of the Act, the dispute was not an industrial dispute as defined by S. 2(k).

The question for decision in this appeal was whether a dispute rose by the workmen' relating to a person who was not a workman could be an industrial dispute as defined by S. 2(k) of the Industrial Disputes Act, 1947.

Supreme Court analysed the definition of industrial dispute and observe that it falls easily and naturally into three parts:

(i) There must be a dispute or difference;

(ii) Thedisputeordifferencemustbebetweenemployersandemployers,orbetween employ-ers and workmen, or between workmen and workmen;

(iii) The dispute or difference must be connected with the employment or non-employmentorthetermsofemploymentorwiththeconditionsoflabourofanyperson.

The first part obviously refers to the factum of a real or substantial dispute; the second part to the parties to the parties to the dispute; and the third part to the subject-matter of the dispute. That subject-matter may relate to any of two matters- (1) employment or non-employment and (2) terms of employment or conditions of labour of any person.

It was held that a little careful consideration will show, however, that the expression 'any per-son' occurring in the third part of the definition cause cannot mean anybody and everybody in this wide world, because a person in respect of whom the employer-employee relation never existed or can never possibly exist cannot be the subject-matter of a dispute between employers and work-men.

The expression ‘any person’ in section 2(k) of the Act must be read subject to such limitations and qualifications as arise from the context of two crucial limitations are —

(i) The dispute must be a real dispute between the parties to the dispute as indicated in the first two parts of the definition clause, so as to be capable of settlement or adjudication by one party to the dispute giving necessary relief to the other, and

(ii) The person regarding whom the dispute is raised must be one in whose employment, non-employment, terms of employment, or conditions of labour (as the case may be) the parties to the dispute have a direct or substantial interest.

The person regarding whose employment, non-employment, terms of employment or conditions of labour the dispute is raised need not be strictly speaking a workman within the meaning of the Act but must be one in whose employment, non-employment, terms of employment or conditions of labour the workmen as a class have a direct or substantial interest.

Thus the term industrial dispute connotes a real and substantial difference having some element of persistency and continuity till resolved and likely if not adjusted to endanger the industrial peace of the undertaking or the community in ***Shambhu Nath Goyal v. Bank of Varoda*** (1978) I LLJ 484, followed in ***C. Manual V. Management N. Indus (India) Ltd.*** (1981) II LLJ 102. It was observed when the parties are at variance and the dispute or difference is connected with the employment or non-employment or terms of employment or with the conditions of labour there comes into existence and industrial dispute.

It may be submitted that the decision of the Supreme Court in ***Bangalore Water Supply and Sewerage Board v. A. Rajappa***, AIR 1978 SC 548, is relevant on the point in which the concept of industry has been exhaustively considered and clear principles have been laid downinthisregard.Itmaybeobservedthatthepersonsengagedintheestablishmentswhich are covered

in the definition of industry as defined in Section 2(j) of the Act become workmen if they satisfy the requirements of the definition of workmen as contained in Section 2(s) and the disputes on various matters among them or the disputes between employers and workmen or between work-men and workmen and workmen are all disputes within the meaning of the Act provided they are connected with the conditions of labour. Thus after the multicoloured decision in the Bangalore Water Supply case the definition of industrial dispute will cove many more disputes on the ground that the definition of the industry in the case had been given wide import.

In ***Mamtaj Gaffar Mulla and others v. M/s. Vilas Beedi Factory and others*** (1988) II LLJ 128, where the home workers through their applications sought for computation of the leave wages and the national and festival allowances etc. and the Labour Court held that home workers cannot invoke the provisions of the Industrial Disputes Act, for readdressed. It was contended that manufacture of Beedi being an industry, any dispute that arises between employer and employees must necessarily be adjudicated by the Labour Court as it squarely falls within the definition Section 2(k) of the Industrial Disputes Act.

When an individual dispute becomes an industrial dispute?

Section 2(k) defines 'industrial dispute'. This definition may include within its ambit a dispute between a single workman and its ambit a dispute between a single workman and his employer, because the plural in the context, will include the singular. However, having regard to the broad policy which underlies the Act and in order to safeguard the working class in this country, the Supreme Court and indeed majority of Industrial Tribunals are inclined to take the view that dispute raised by a dismissed employee provided it is supported either by his Union or in the absence of a Union, by number of workmen, can become an industrial dispute.

In ***Newspapers Limited v. State Industrial Tribunal*** (1957), II LLJ I SC, it was again held that an individual dispute cannot per se be an industrial dispute, but it becomes one when supported by a union, support of a union to an individual worker's grievances, cannot convert a grievance into an industrial dispute by the workers' union.

However, the effect of these judgments has been greatly eroded by an amendment to the Indus-trial Dispute Act, by which Section 2-A has been inserted by Act 35 of 1965 which provides that where any employer discharges, dismisses, retrenches or otherwise terminates theservicesofanyindividualworkman,anydisputeordifferencebetweenthatworkmanand his employer connected with or arising out of such discharge, dismissal, retrenchment or termination shall be deemed to be an industrial dispute not withstanding that no other workman not any union of workmen is a party to the dispute.

Section2A.Dismissal,etc.,of an individual workman to be deemed to be an industrial dispute.

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

Thus an individual dispute in connection with discharge, dismissal, retrenchment or termination of services of the individual workman is an industrial dispute within the meaning of this Act by virtue of this deeming clause i.e. Section 2-A of the Industrial Disputes Act even if no other workman or union of workmen is a party to this dispute.

In a case, ***Rajasthan State Road Transport Corp. v. Krishna Kant*** 1995 SCC (L & S) 1207, it has been observed by the Supreme Court that it is well settle by several decisions of this

court that a dispute between the employer and an individual workman does not constitute an industrial dispute unless the cause of the workman is espoused by a body of workmen. Of course, where the dispute concerns the body of the workers as a whole or to a section thereof, it is an industrial dispute. It is precisely for this reason that section 2-A was inserted in 1965. By virtue of this provision, the scope of the concept of industrial dispute has been widened, which not embraces not only section 2(k) but also section 2-A. Section 2-A however,coversonlycasesofdischarge,dismissal,retrenchmentorterminationotherwiseof services of an individual workman and not other matters, which mean that to give an example-if a workman is reduced in rank pursuant to a domestic enquiry, the dispute raised by him does not become an industrial dispute within the meaning of section 2-A. However ,if the union or body of workmen espouses his cause, it does become an industrial dispute.

Strike,Lock out and Closure

In any industrial endeavour co-operation of labour and capital is quite essential for its success, although they have interests contrary to each other. They have different strategies and weapons to ventilate their grievances and safeguard their interests. These democratic weapons often used by them are strikes and lock-outs. Just as strike is a weapon available to employee, a lock out is the weapon available to employer to persuade by a coercive process to see his point of view and to accept his demands.

Strike

Strike is one of the oldest and the most effective weapons of labour in its struggle with capital for securing economic justice. The basic strength of a strike lies in the labour's privilege to quit work and thus brings a forced readjustment of conditions of employment. Strike is not constitutional right. It is democratic and fundamental right.

The term 'strike' has defined in wide variety of branches of human knowledge viz. etymology, sociology, political economy, law and political science.

Strike has been defined inSection2(q) of the Industrial Disputes Act as under :—

"Strike means a cessation of work by a body of persons employed in any industry acting in combination, or a concerted refusal, of a refusal under a common understanding, of any number of persons who are or have been so employed to continue to work or to accept employment".

The analysis of the definition would show that there are following essential requirements for the existence of strike:

(1) There must be cessation of work;

(2) The cessation of work must be by a body of persons employed in any industry;

(3) The strikers must have been acting in combination;

(4) The strikers must be working in any establishment which can be called industry which the meaning of Section 2(j); or

(5) There must be a concerted refusal; or

(6) Refusal under a commonunderstandin go f any number of persons who are or have been so employed to continue to work or to accept employment;

(7) Theymuststopworkforsomedemandsrelatingtoemployment,non-employmentor the terms of employment or the conditions of labour of the workmen.

Itwasheldin***IndianIronandSteelCo.Ltd.v.itsWorkmen***,(1967)ILLJ381(Pat),that mere cessation of work does not come within the purview of strike unless it can be shown that

Such cessation of work was a concerted action for the enforcement of an industrial demand.

The most important ingredient of strike need consideration in detail.

Cessation of work

This is most significant characteristic of the concept of strike. It has been variedly expressed as 'abandonment', 'stoppage', 'omission of performance of duties of their posts', 'hampering or reducing normal works', hindrance to the working or suspension or failing to return to or resume employment or refusing or failing to accept engagement for any work which they are usually employed for. Thus what required for strike is that there must be stoppage of work or there must be refusal to continue to work or to accept employment by any number of persons employed for the work but the refusal must be concerted or under a common understanding.

A mere apprehension or threat of a strike is not a strike as well as a resolution to go on strike on some future date is not a strike because it falls short of actual cessation of work. Cessation of work need not be for any particular duration. Hundreds of token strikes are staged these days where cessation of work is only for an hour or for few minutes. The leading case on the point is

Buckingham and Camatic Company Ltd. v. Workers of the Buckingham and Camatic Co. Ltd., AIR 1953 SC 47, where the action of the workers on the solar eclipse night of the 1st Nov. 1948 clearly fell within the definition of the expression 'strike' in Section 2(q) of the Industrial Disputes Act.

Concerted Action

Another important ingredient of the strike is a concerted action. The workers must act under a common understanding. The cessation of work by a body of persons employed in any industry in combination is a strike. Thus in a strike it must be proved that there was cessation of work or stoppage of work under a common understanding or it was a concerted action of the workers or there was cessation of work by workers acting in combination. Stoppage of work by workers individually does not amount to strike.

Strike as result of industrial dispute —

Cessation of work must be preceded by an industrial dispute. In ***Model Mills v. Dharam Das*** AIR 1958 SC 311, where the management asked two persons to work on a calendar machine instead of three in the Model Mills Ltd., Nagpur, whereas the workers requested to depute three persons, the workers refused to work. It was held that this was a dispute or difference connected with an industrial matter and the stoppage of work amounted to strike. Since the strike is a weapon to be used by the workers for pressing their demands so in order that a stoppage may amount to strike there must be dispute or demands for which the workers are pressing. If there is stoppage of work for any other reason or natural events such as breakdown of machinery, short-age of power or shortage of raw material etc., it would not amount to strike.

The objects of strike must be connected with the employment, non-employment, terms of employment or terms and conditions of labour because these are prominent issues on which the workers may go on strike for pressing their demands and such objects include the demands for codification of proper labour laws in order to abolish unfair labour practices prevalent area of industrial activity.

Kinds of Strikes

Mainly there are three kinds of strike, namely—

(1) **General Strike :—** A General Strike is one, where the workmen join together for common cause and stay away from work, depriving the employer of their labour needed to run his

factory. Token strike is also a kind of general strike. Token strike is for a day or a few hours or for a short duration because its main object is to draw the attention of the employer by demonstrating the solidarity and co-operation of the employees.

(2) **Stay-in-Strike :—** A 'Stay-in-Strike' is also known as 'tool-down-strike' or 'pens-down-strike'. It is that form of strike where the workmen report to their duties, occupy the premises but do not work. The employer does prevent from employing other labour to carry on his business. In ***Punjab National Bank Ltd. v. Their Workmen***, AIR 1960 SC 160, the Supreme Court has held that refusal under common understanding the employees entered the premises of the Bank and refused to take their pens in their hands that would no doubt be a strike under Section 2(q).

(3) **Go-Slow Strike :—** In a 'go-slow strike' the workmen do not stay away from work, they do come to their work and work also but with a slow speed in order to lower down the production and thereby cause loss to the employer. In ***Sasa Musa Sugar Works (Private) Ltd. v. Shobrati Khan and others***, AIR 1959 SC 923, it has been held that Go-slow strike is not a "strike" within the meaning of the term in the Act, but is serious misconduct which is insidious in its nature and cannot be countenanced.

In addition to these three forms of strike which are frequently resorted to by the industrial workers, a few more may be cited although some of them are not strike within the meaning of section 29(q).

(i) **Sympathetic Strike —** A sympathetic strike is resorted to in sympathy of other striking workmen. Its aim is to encourage or to extend moral support to or indirectly to aid the striking workmen. The sympathizers resorting to such strike have no demand or grievance of their own. It was held in ***Kambalingam v. Indian Metallurgical Corporation, Madras***, (1964) I LLJ 81, that when the workers in concert absent themselves out of sympathy to some cause wholly unrelated to their employment or even in regard to condition of employment of other workers in service under other management, such absence could not be held to be strike as the essential element of the intention to use it against the management is absent. The Management would, therefore, be entitled to take disciplinary proceedings against the workmen for their absence on the ground of breach of condition of service.

(ii) Hunger Strike-In hunger strike a group of workmen resort to fasting on or near the place of work or the residence of the employer with a view to coerce the employer to accept their demands. In ***Piparaich Sugar Mills Ltd. v. Their Workmen***, AIR 1960 SC 1258,certain employees who held key positions in the Mill resorted to hunger strike at the residenceoftheManagingDirector,withtheresultthateventhoseworkmenwhoreportedto their duties could not be given work. It was held that the concerted action of the workmen who went on hunger strike amounted to strike within the meaning of the Section 2(q).

(iii) Work to rule-The employees in case of "work to rule" strictly adhere to the rules while performing their duties which ordinarily they do not observe.Thus strict observance of rules results in slowing down the tempo of work causes inconvenience to the public and embarrassment to the employer. It is no strike because there is no stoppage of work at all.

<u>Lock Out</u>

LockoutisdefinedinSection2(l)oftheIndustrialDisputesActwhichhasbeenamended in 1982 and has come into force with effect from 21.8.1984. Now it stands as follows :—

"Lock out means the temporary closing of a place of employment; or the suspension of work'or the refusal by an employer to continue to employ any number of persons employed by him".

The analysis of the definition would show that there are following requirements of lock out.

(1) Temporary closing of place of employment.

(2) Theelementofademandforwhichtheindustrialestablishmentislockedoutmustbe present.

(3) Theintentiontore-openortaketheworkersbackiftheyacceptthedemandsmust exist.

(4) Theemployerandtheemployeesmustbeengagedinanindustrialprocesscarriedon in an institution failing within the meaning of industry as defined in section 2(j).

(1) **Temporary Closing of Place of Employment :**In lock out the essential feature is the temporary closing of place of employment by the employer concerned. Sometimes he closes the place of employment, sometimes he suspends work carried on in the industrial establishment and sometimes he refuses to continue to employ any number of persons employed by him so far. The amendment made in 1982 adding the term 'temporary' before the expression 'closing the place of employment' clearly brings the cases of closing of place of employment for temporary period within the lock out.

Lock out can be described as the antithesis of strike. Just as a strike is a weapon available to employees for enforcing their industrial demands, a lock out is a weapon available to the employer to persuade by a coercive process the employees to see his point of view and to accept his demands.

(2) **The element of demand for which the industrial establishment is locked out must exist —** As indicated above another important ingredient of the lock out is that there is always an element of demand for which the industrial establishment is locked out. The employer puts certain demands before the workers in response to their demands on the basis of which they go on strike. As a matter of fact lock out is adopted by the employer as a counter move so that he may settle the dispute on concessional terms. In strike the demands are put by the workers on the other hand in lock out demands are put by the employer. In both the concepts there are demands on the acceptance of which the strike or lock out comes to an end.

(3) The intention to re-open or take the workers back if they accept the demands must exist.-As it has been made clear buy referring decided cases that in lock out the intention of the employer is to re-open the place of employment or place of work or to take back the workers in services if they accept the demands or terms of the employer. While in closure there is no such intention because in that case the employer intends to close down the business on permanent basis.

(4) The employer and the employees must be engaged in an industrial process.-The lock out, like strike refers to an industrial process wherein the employer and the workmen co-operate for production and/or distribution of goods and services. The establishment unless falls within the scope of section 2(j) the provisions of lock out shall not apply to the persons involved in any process.

In the case of ***Shri Ramachandra Spinning Mills v. State of Madras***, AIR 1956 Mad241, Madras High Court observed whatever be the strength of the agencies which forced on him the step and however impotent he may be to avoid the result, if an employer closes the place of employment or suspends work on his premises, a lock out would come into existence.

In***KairbettaEstateKotagiriv.RajaManickam***,AIR1963SC893,lockouthasde- scribed by the Supreme Court as the antithesis of strike.

Closer

Section 2 (cc) "Closure" means the permanent closing down of a place of employment or part thereof;

Distinctionbetweenlockoutandclosure-Thecloserandlockouthavesomefeatures which so

resemble that both the concepts are confused. However, the following are the distinguishing features.

Firstly, in closure there is severance of employment relationship while in lock out there is no severance of such relationship but there is only suspension.

Secondly, lock out is caused by the existence or apprehension of an industrial dispute. A closure nee be in consequence of an industrial dispute.

Thirdly, a lock out is intended for the purpose of compelling the employees to accept any terms or conditions of or affecting employment. In other words a lock out is tactic in bargaining. While the closure is shutting employment and thereby ending bargaining. It is irrelevant what the intention in closing is.

Prohibition of Strike and Lockouts in Public Utility Services:

The strikes and lockouts are subject to certain rules as contained in provisions of Sections 22 and 23 of the Industrial Disputes Act. The Act prohibits lock outs and strikes in the industries so that there may not be scarcity of goods or services in the society for satisfaction of human desire of course, material and needs of the people.

Prohibition of strike:

Section 22 of the Industrial Disputes Act provides that no person employed in a public utility service shall go on strike, in breach of contract.

(a) Without giving to employer notice of strike,as hereinafter provided within six weeks before striking; or

(b) Within14days of giving such notice; or

(c) Before the expiry of the date of strikes specified in any such notice as aforesaid; or

(d) During the pendency of any conciliation proceedings before a ConciliationOfficer and seven days after the conclusion of such proceedings.

It may be pointed out that if the above conditions are fulfilled the strike by the workers engaged in any public utility service shall be legal strike. What required is that a notice of the strike must be given to the employer by the workmen in accordance with the provisions of Section 22(1) of the Act. On the other hand if the workers go on strike without giving notice of strike or in violation of the provisions of Section 22(1) of the Act, the strike becomes illegal.

Mineral Miner's Union v. Kendramukh Iron Ore. Co. Ltd. (1989) I LLJ 277 Karn., is very important case where the requirement of notice under section 22(1) of the Act has been considered in detail. In this case the Union issued a notice of strike on 1st September, 1984 intimating its intention to go on one day token strike any day after 20th September, 1984. Conciliation proceedings commenced and took place in terms of Section 20(1) of the Industrial Disputes Act, 1947 on 19th September 1984. On 1st October, 1984 conciliation failed and report about failure of conciliation was submitted to the State Government on 12th Oct. 1984. The members of the Union went on strike on 10th December, 1984. The management informed the Union that the workman are not entitled to wages from 10th Dec. 1984 and therefore they were deducting 8 days wages under Section 9(2)of Payment of

Wages Act ,for the workmen having gone on illegal strike .The action of the management was challenged by the Union by filing a writ petition.

TheHighCourtanalyzingtheprovisionsofSection22heldthatthepurportofclauses(a) to (d) Of sub-section(1) of Section 22is as follows :

(i) Issue of a notice of strike is mandatory;

(ii) The date of strike must be within six weeks from the date of issue of strike notice;

(iii) The day of strike must not be within14 days from the date of notice;

(iv) There can be no strike on any day before the date specified in the strike notice;

(v) Therecanbenostrikeduringthependencyofconciliationproceedingsand7days after the conclusion of said proceedings.

It was observed that counsels on both sides agree that the above are the conditions prescribed by clauses (a) to (d) of section 22(1). The controversy however, was on the following two points:

(i) If the conciliation fails and concludes after six weeks from the date of issue of strike notice whether fresh notice is necessary, and

(ii) Whether specification of date of strike is mandatory.

It concludes that in a public utility service the workmen are required under law to give notice of strike to the employer specifically intimating the date of intended strike and must not resort to strike before 14 days from the date of issue of notice and if the conciliation proceedings commenced and ended in failure and period of sex weeks has expired on the date on which intimation of failure is given by State Government to the workmen, a fresh notice is required to be given for resorting to strike in a legally recognized manner.

It was held in Management, ***Essorpe Mills Ltd. v. Presiding Officer Labor Court and others***, 2008 III L.L.J. 614 (SC), that Section 22 of the Industrial Disputes Act, 1947 presupposes a notice before the workmen resorted to strike. In this case notice was given on March 14, 1991 and the proposed strike was on or after March 24, 1991. The inevitable conclusion is that notice cannot be treated to be one under Section 22. The expression "such notice" refers to 6 weeks advance notice. Earlier illegal strike cannot be remedied by subsequent strike as provided under Section 22 of the Act. The view taken by the High Court that a valid notice was given and conciliation proceedings were pending at the time of dismissal of workman is not tenable. Hence, the order of reinstatement is not justified.

Prohibition of lockout :

In the similar circumstances the lock out has been prohibited in the public utility service. Section 22(2) of the Act provides that no employer carrying on any public utility service shall lock out any of his workmen:

(a) Without giving them notice of lockout as hereinafter provided, within six weeks before lock out; or

(b) Within14 days of giving notice; or

(c) Before the expiry of the day of lock out specified in any such notice as aforesaid; or

(d) During the pendency of any conciliation proceedings before a Conciliation Officer and seven days after the conclusion of such proceedings.

It makes clear that the employer has to comply with the same conditions before he declares lock out in his industrial establishment which the workmen are required to comply with before they go on strike. The conditions for both the parties are same. If the above conditions are complied with, the employer has authority to declare lock out and that lockout so declared shall be legal.

However, if the conditions are not complied with, the lock out becomes illegal. But the notice of lock out or strike is not necessary where there is already in existence a strike or, lock out as the case may be, in the public utility service but in that case the employer is required to send intimation of such lock out or strike on the day on which it is declared, to such authority as may be

specified by the appropriate Government either generally or for a particular area or for a particular class of public utility services.

It means that if there is already in existence a strike the notice of lock out is not necessary and if there is already in existence a lock out the notice of strike is not necessary. In such cases the parties concerned have to send intimation of such lock out or strike to such authority as may be specified in this behalf by the appropriate Government on the day on which it is declared.

General prohibition strike and lockouts :

The prohibition against strikes and lock outs contained in Section 23 is general in nature applies to both public utility as well as not-public utility establishments. A strike is breach of contract by workmen and lock out by the employer is prohibited in the following cases :

(i) During the pendency of conciliation proceedings before a Board and seven days after he conclusion of such proceeding;

(ii) During the pendency of proceedings before a Labour Court,Tribunal or National Tribunal and two months after the conclusion of such proceedings;

(iii) During the pendency of arbitration proceedings before an arbitrator and two months after conclusion of such proceedings, where a notification has been issued under sub-sec. (3-A) of Section10-A, or

(iv) During any period in which a settlement or award is in operation in respect of the matters covered by such settlement or award.

The object of these provisions seems to ensure a peaceful atmosphere to enable a conciliation or adjudication or arbitration proceeding to go on smoothly. This section because of its general nature of prohibition covers all strikes and lockouts irrespective of the subject matters of dispute pending before the authorities.

Illegal Strikes and Lockouts :

Section 24 of the Industrial Dispute Act provides that a strike or a lock out shall be illegal in the following circumstances :

(i) If it is commenced or declared in contravention of Section22; or

(ii) If it is commenced or declared in contravention of Section23; or

(iii) If it is continued in contravention of an order made under Section 10(3); or

(iv) If it is continued in contravention of an order made under Section 10-A (4-A).

The strike or lock out in contravention of Section 22 and 23 shall be illegal. In ***Ballarpur Collieries Co. v. The Presiding Officer, Central Government Industrial Tribunal, Dhanbad***, AIR 1972 SC 1216, where the reference was made in May, 1960, the award was published on 22nd November, 1960. The workmen went on strike on 4th October, 1960 which was clearly during the pendency of those proceedings. The Supreme Court held that the impugned workmen's strike was illegal being in violation Section 23(b) of the Act.

Similarly if the strike or lock out is continued in contravention of an order made under Section 10(3) and Section 10-A (4-A) it shall be illegal.

Section 10 of the Industrial Disputes Act provides that where the appropriate Government is of opinion that any industrial dispute exists or is apprehended, it may at time; refer it to

authorities under this Act for adjudication of such an industrial dispute. Section 10(3) provides that where an industrial dispute has been referred to a Board, Labour Court, Tribunal or National Tribunal

under this Section the appropriate Government may by order prohibit the continuance of any strike or lock out in connection with such disputes which may be in existence on the date of the reference. So if an industrial dispute is referred and an order prohibiting any strike or lock out has been made by the appropriate Government the strike or lock out shall be illegal if it is continued after the order has been made.

SimilarlySection10A(4-A)providesthatwhereanindustrialdisputehasbeenreferredto arbitration and a notification has been issued under sub-section (3-A), the appropriate Government may by order, prohibit the continuance of any strike or lock out in connection with such dispute which may be in existence on the date of the reference. So if the dispute is referred to the arbitration and an order is made by the appropriate Government prohibiting any strike or lock out, the strike or lock out shall be illegal if it is continued thereafter.

It shows that the provision is intended to restore peace and peaceful relations between the employer and the employees employed in his establishment. It would be quite in appropriate to continue further the strike or lock out if the appropriate Government has taken propersteps to deal with the industrial disputes on the basis of which strike or lock out is resortedto.

Effect of illegal strikes:

The effect of an illegal strike is that the workmen cannot claim wages for period during which an illegal strike continues.

It has been observed by the Supreme Court in ***Crompton Greaves Ltd. v. The Workmen*** AIR1978SC1489,that it is well settled that in order to entitle the workmen to wages for the period strike the strike should be legal as well as justified. A strike is legal if it does not violate any provision of the statute. Again a strike cannot be said to be unjustified unless the reasons for it are entirely perverse or unreasonable. Whether a particular strike was justified or not is a question off act which is to be judged in the light of the facts and circumstances of each case. It is also well settled that the use of force or violence or acts of sabotage resorted to by the workmen during a strike disentitles them to wages for the strike period.

PunishmentforillegalStrike-Theworkershavearightifnotafundamentalright,togoon strike. If a strike is illegal the party guilty of the illegality is liable to punishment under Section 26 of the Act. Even in case of illegal strikes a distinction has been attempted to be made between (i) illegal but justified strike; and (ii) illegal and unjustified strike. How can strike, which is illegal, be at the same time justified? It is said that a strike may be technically illegal because it is in contravention of the provision of this Act but because the causes that lead to a strike are often mixed question of legal and illegal demands, a strike may not be unjustified but the conduct of workmen may be objectionable, or their behaviour may be violent. On the other hand a strike may be illegal but it might have been taken recourse to for good reasons and carried on in an orderly and peaceful manner. It is for these reasons that even illegal strikes are classified as justified and unjustified by those who administer industrial law.

Crompton Greaves v. The Workmen, AIR 1978 SC 1489, is a leading case on this point. In this case it was held that in order to entitle the workmen to wages for the period of strike, the strike should be legal as well as justified. A strike is legal if it does not violate any provision of the statute. A strike cannot be said to be unjustified unless the reasons for it are

entirely perverse or unreason-able. The use of force or violence or acts of sabotage resorted to by the workmen during a strike disentitle them to wages for the strike period. Where, before the conclusion of the talks for conciliation which were going on through the instrumentality of Assistant Labour Commissioner, the company retrenched as many as 93of its workmen without even intimating to the Labor Commissioner that it was carrying out its proposed plan of effecting retrenchment of the workmen, the

strike cannot be said to be unjustified.

In ***Bharat Petroleum Corporation Ltd. v. Petroleum Employees Union and others***, (2003) III LLJ 229 (Mad.), the High Court of Madras held that it appeared from the record that the appellant and respondents had participated in conciliation proceedings which were pending. Therefore ,the parties were bound by those conciliation proceedings and had to wait for decision thereon. The said proceeding related to the issue for which notice of strike was given by the respondent union. As the conciliation proceedings were pending the prohibition in Section 22(1)(d) of the Industrial Dispute Act, 1947, came into operation and as such the strike by the respondents was illegal in view of Section 24.

Lay-Off and Retrenchment

The terms 'lay-off'and retrenchment have been defined under the provisions of the Act in Section 2(kkk) and (oo) respectively. It is the employer who takes the actions of lay-off and retrenchment in respect of his workmen employed by him for work in the industrial establishment.

Lay-Off:

Section 2(kkk) "lay-off" (with its grammatical variations and cognate expressions) means the failure, refusal or inability of an employer on account of shortage of coal, power or raw materials or the accumulation of stocks or the break-down of machinery 39[or natural calamity or for any other connected reason] to give employment to a workman whose name is borne on the muster rolls of his industrial establishment and who has not been retrenched;

Explanation : Every workman whose name is borne on the muster rolls of the industrial establishment and who presents himself for work at the establishment at the time appointed for the purpose during normal working hours on any day and is not given employment by the employer within two hours of his so presenting himself shall be deemed to have been laid-off for that day within the meaning of this clause :

PROVIDED that if the workman, instead of being given employment at the commencement of any shift for any day is asked to present himself for the purpose during the second half of the shift for the day and is given employment then, he shall be deemed to have been laid-off only for one-half of that day :

PROVIDED FURTHER that if he is not given any such employment even after so presenting himself, he shall not be deemed to have been laid-off for the second half of the shift for the day and shall be entitled to full basic wages and dearness allowance for that part of the day;

It is the short term removal from service of employees, whose names are borne on the muster rolls of the industrial establishment by the employer of their employment on account of shortage of coal, power, raw materials or because of accumulation of stock or break down of machinery or any other similar reasons. Thus if an employer fails to provide work or he refuses or he is unable to give work although he desire to give work to the workmen whose names are on the muster rolls due to aforesaid reasons, it is lay off.

The analysis of Section 2(kkk)brings out following essentials of a lay-off:—

1. There must be (i)the failure,(ii)refusal or(iii)inability of the employer to give employment to a workman.

2. Thenamesoftheworkmenlaidoffmustbeonthemusterrollsoftheindustrial establishment on the date on which they have been laid off.

3. Thefailure,refusalorinabilitytogiveemploymentmustbeonaccountofoneormore of the following reasons :

(a) Shortage of coal,

(b) Shortage of power,

(c) Shortage of raw materials,

(d) Accumulation of stocks,

(e) Breakdown of machinery, or

(f) Natural calamity or for any connected reason.

4. The workman in question must not have been retrenched.

The workmen are not given work on a particular time because the employer is compelled to put aside the workmen due to reasons or causes beyond his control such as the shortage of raw material, shortage of power, coal or breakdown of the machines or any other natural calamity where the workmen were engaged. The employer has no intention to refuse work but he is compelled to do so because of such reasons. While he has every intention to give work in future.

The most important essential ingredient of lay-off is that the refusal or inability of the employer to give employment to such persons whose names are on the muster rolls of the industrial establishment must because of an account of reasons specified in Section2(kkk)of the Industrial Disputes Act.

The Supreme Court has observed in ***Management of Kairbette Estate, Kotagiri v. Rajamanickam***, AIR 1960 SC 893, that the 'lay-off' takes place for one of more of the reasons specified in definition of 'lay-off' under 2(kkk) of the Act. It may be due to —

(a) Shortage of coal,

(b) Shortage of power,

(c) Shortage of raw materials or accumulation of stocks,

(d) Breakdown of machinery, or

(e) Any other reason.

The expression ‘any other reason’ to which the definition refers must be a reason which is allied or analogous to reasons already specified in Section 2(kkk). The expression 'any other person' should be construed to mean reason similar to the preceding reasons specified in the definition. The provisions has been made very clear by substituting the expression 'natural calam- ity or for any other connected reasons' in the definition in 1982.

Classification of lay offs :— In view of definition of lay off as contained in Sec. 2(kkk) the lay offs may be classified on the basis of duration as follows :—

(i) Lay off for a day occurring when works denied within two hours of his presenting himself for work.

(ii) Lay off for one half of day occurring when works denied in the first half of the shift but the workman is called in the second half of the shift for doing work.

(iii) Lay off for more than a day but not amounting to retrenchment.

Provisions governing lay off :— Chapter V-A containing Section 25-A to 25-J was in serted by Act 43 of 1953. These provisions have an overriding effect on other laws including standing orders made under the industrial Employment(Standing Orders)Act,1946.The

relevantprovisionsofthisChapterarebeinggiveninordertomakeclear therightsofthe workmen laid off and the duties of the employer in such circumstances.

Right of workmen laid off for compensation:—Section25-C provides that whenever

a workman (other than badly workman or a casual workman) whose name is borne on the muster rolls of an industrial establishment and who has completed not less than one year of continuous service under an employer is laid off whether continuously or intermittently, he shall be paid by the employer for all days during which he is so laid off, except for such weekly holidays as may intervene compensation which shall be equal to fifty per cent of the total of the basic wages and dearness allowance that would have been payable to him had he not been so laid off.

Provided that if during any period of twelve months, a workman is so laid off for more that forty-five days, no such compensation shall be payable in respect of any period of thelay off after the expiry of the first forty-five days, if there is an agreement to the effect between the workman and the employer.

Provided further that it shall be lawful for employer in any case falling within the foregoing proviso to retrench the workman in accordance with the provisions contained in Section 25-F at any time after the expiry of the first forty-five days of the lay off and whenhe does so, any compensation paid to the workman for having been laid off during the preceding twelve months may be set off against compensation payable for retrenchment.

Explanation :"Badli workman" means a workman who is employed in an industrial establishment in the place of another workman whose name is borne on muster roll of the establishment, but shall cease to be regarded as such for the purposes of this section, if he has completed one year of continuous service in the establishment.

Definition of continuous service-For the purpose of Chapter V-A Section 25-B provides as follows :

(1) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorized leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman;

(2) whereaworkmanisnotincontinuousservicewithinthemeaningofclause(1)fora period of one year or six months, he shall be deemed to be in continuous service under an employer-

(a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than-

(i) onehundredandninetydaysinthecaseofaworkmanemployedbelowgroundina mine; and

(ii) two hundred and forty days, in any other case;

(b) for a period of six months, if the workman, during a period of six calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than—

(i)ninety-fivedays,inthecaseofaworkmanemployedbelowgroundinamine;and (ii)one hundred and twenty days, in any other case.

Explanation: For the purposes of clause(2),the number of days on which workman has actually worked under an employer shall include the days on which —

(i) he has been laid-off under an agreement or as permitted by standing orders made under the Industrial Employment (Standing Orders) Act, 1946 (20 of 1946), or under this Act or under any other law applicable to the industrial establishment;

(ii) he has been on leave with full wages, earned in the previous year;

(iii) he has been absent due to temporary disablement caused by accident arising out of and in the course of his employment; and

(iv) in the case of a female ,she has been on maternity leave; so, however, that the total period of such maternity leave does not exceed twelve weeks.

Thus in order to determine whether a workmen has put in continuous service or not will be decided in accordance with the above provisions of Section 25-B of the Industrial Disputes Act. In Mohan Lal v. Bharat Electronics Ltd. AIR 1981 SC 1253, Supreme Court held that the appellant was on duty from December 8, 1973 to October 19, 1974. When his service was terminated he had rendered service for a period of 240 days within a period of twelve months calendar months preceding the date of closure excluding the period of illegal strike he will deemed to be in continuous service within the meaning of Section 25-B(2) immediately before the date of closure Sundays and other holidays for which the workmen are paid wages are to be included for calculating 240 days.

Badli Workman

Explanation to Section 25-C provides that a "Badli workman" means a workman who is employed in an industrial establishment in the place of another workman whose name is borne on the muster rolls of the establishment, but shall cease to be regarded as such for the purposes of this. section, if he has completed one year of continuous service in the establishment.

Thus it is clear that when some workman whose name is actually born on the muster rolls is absent, and such other person is called a Badli Workman. Any such person after completion of one year's continuous service shall cease to be a "badli workman". It means if a "badly workman" has completed one year's service and is available, the employer must either put him to work or provide lay-off compensation.

In ***K.S.R.T.C. and another v. S. G. Kotturappa and another***, (2005) II LLJ 161 (SC), the respondents were appointed as Badli conductors in substitute vacancy arising out of suspension pending inquiry by the appellant corporation. Their services having been found to be not satisfactory were terminated on November 11, 1983 and September 9, 1980. The industrial Dispute, having been raised regarding their termination, was referred for adjudication by Labor Court, Bangalore. The termination orders were held to be bad in law for non-compliance of natural justice and the workmen were directed to be reinstated with full back-wages. The appellant corporation filed writ before High Court which was dismissed, hence the present appeal before the Supreme Court. It was held by the Supreme Court that the services of these conductors as Badli workers gave them no status, their services were not protected by any statute and they did not hold any civil posts. These were not such cases as would require compliance with. Section 25-F of the Industrial Disputes Act, 1947 as the respondents had not completed 240 days service in the year preceding the termination. As to the question of compliance of principles of natural justice the Supreme Court observed that what was needed was to apply the objective criteria for arriving at the subjective satisfaction. The status of such Badli workman could not be better than a probationer.

In ***Bank of India and another v. Tarun Kumar Biswas and others***, 2007 III LLJ 359 (SC), the Supreme Court observed that the respondents had admitted in their writ

Duty of an employer to maintain muster rolls of workmen-Section25-E

:—No compensation shall be paid to a workman who has been laid-off-

(i) if he refuses to accept any alternative employment in the same establishment from which he has been laid off, or in any other establishment belonging to the same employer situate in the same

town or village or situate within a radius of five miles from the establishment to which he belongs, if in the opinion of the employer, such alternative employment does not call for any special skill or previous experience and can be done by the workman, provided that the wages which would normally have been paid to the workman are offered for the alternative employment also;

(ii) if he does not present himself for the establishment at the appointed time during normal working hours at least once a day;

(iii) if such laying-off is due to a strike or slowing-down of production on the part of workmen in another part of the establishment.

DIFFERENCE BETWEEN THE LAY-OFF AND LAID-OFF

LAID-OFF	**LAY-OFF**
A person who is temporarily removed for The work being attended	Temporary stoppage of the running factory by the owner of the establishment or factory.
A company which declares lay-off, worker/	Lay-off is implemented due to shortage of the
Workers shall be laid-off from the work	Raw material, break-down of machinery etc.
The laid-off compensation shall be payable toworkerfor45day only	After45daysoflay-off,managementcan retrench worker.

Retrenchment

Section 2(oo) :— "Retrenchments" means the termination by the employer of the service of a workman for any reason what so ever, otherwise than as a punishment inflicted by way of disciplinary action but does not include-

(a) voluntary retirement of the workman ; or

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

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

(c) termination of the service of a workman on the ground of continued ill-health.

The definition of the retrenchment as contained in Section 2(oo) shows that retrenchment means termination of service of a workman for any reason but termination of service must not be as a punishment inflicted by way of disciplinary action against the workman. It has been observed that prima facie it may appear from the definition of the word 'retrenchment' that it may include every kind of termination. In fact the exclusion of the cases falling within the purview of clauses (b) and (c) in the definition would suggest that surplus age of labour is not the test of retrenchment. However, in view of the decision of the Supreme Court in Hari Prasadv.A.D.Divalker1957(i)LLJ233,'retrenchment'should be understood in the

ordinary sense, that it is not every termination that can be retrenchment but the termination in order to be retrenchment should be of transferred. So far as the cases of closer and transfer are concerned subsequent legislation has pro-vided for compensation subject to certain conditions, factors and circumstances.

Essentials of retrenchment :— It follows that following are the essential ingredients of retrenchments defined in Section 2(oo) of the Act. —

1. There must be termination of services of workman by the employer,

2. The termination of service must be on the ground of surplus labour,

3. The service which is terminated must have been capable of being continued,

4. The termination of service may be any reason whatsoever but it should not be factuated by any motive or victimization or any unfair labor practice,

5. The termination of service must be of surplus or employee continuing industry. Thus termination of service of workmen on the closure of the business is not retrenchment,

6. The termination of service of the workmen must be for proper reasons such as for economy, rationalization in industry, installation of a new labour saving machinery or any other industrial or trade reasons.

7. The termination of service must not fall within the exclusion clause of the definition, such as voluntary retirement, retirement on reaching the age of superannuation and termination on the ground of continued ill health etc.

All cases of termination of service of the workmen would not amount to retrenchment within the meaning of this Act. The definition of retrenchment itself expressly excludes following cases from its scope :

(i) Termination of service of a workman as a punishment inflicted by way of disciplinary action such as discharge for inefficiency, or suspension for dishonesty or termination for behavior prejudicial to the concern. The termination on the ground of misconduct or continued ill-health of workman is not retrenchment because termination for misconduct is a punishment inflicted by way of disciplinary action and termination on the ground of continued ill-health have been excluded in section 2(oo) of the Act [***New India Assurance Co. Ltd. v. Dalbir Singh Khera*** (1982) I LLJ 39 (M.P.)]

(ii) If a person is engaged for a specific period, or for the execution of a specific work and a clear stipulation is made in the contract of employment that the services shall be terminated at the expiry of the work, the workman shall not be entitled to claim that he has been retrenched or that the action is violative of the provisions of the Act, [***The Municipal Committee v. The Presid-ing Officer, Labour Court***, 1994 LLR 206 (P&H)].

(iii) If the termination is meant to exploit an employee or to increase the bargaining power of the employer, then it has to be excluded from the ambit of clause (bb) and the definition of 'retrenchment' has to be given full meaning. [***Chief Administrator, Haryana Urban Develop-ment Authority's case***; 1994 LLR 454 (P&H) D.B.]

In ***Surendranagar Panchayat and another v. Jethabhai Pitambarbhai***, 2006 I LLJ 268 (SC), respondent who was a daily wager was terminated from service. The Labour Court held termination as illegal as it was without notice or payment in lieu thereof as well as it ignored his seniority.The award was also affirmed by the High Court. In appeal the Supreme Court observed that the Labour Court and High Court erred in placing the burden on the employer to prove that the workman had not worked for 240 days. Instead, the Supreme Court held that it was for the respondent claimant to lead evidence to show that he had worked for 240 days in a year preceding the termination of his service. In the absence of evidence to show 240 days work, the judgment of the High Court granting relief to respondent was set aside by the Supreme Court.

Conditions precedent to retrenchment of workmen : There are certain conditions prescribed which are to be followed or compelled with by the employer before he retrenched his employees. The conditions are contained in Section 25-F of the Industrial Disputes Act. Section
25-Fprovides that —

Now workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until-

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

(b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay [for every completed year of continuous service] or any part thereof in excess of six months; and

(c) notice in the prescribed manner is served on the appropriate government [for such author-it as may be specified by the appropriate government by notification in the Official Gazette.

TheanalysisofSection25-Fwouldshowthatfollowingaretheconditionswhichmustbe complied with before retrenchment.

1. The workman must be given notice before retrenchment;

2. The notice must be in writing;

3. The notice must contain reasons for retrenchment;

4. The period of notice must expire;

5. The period of notice must expire or the workman must be paid in lieu of the notice, wages for the period of notice. [***Suresh Kumar v. Band Box (P) Ltd.*** (1982) I LLJ 362 (Delhi)].

It means that the employer is under duty to give one month's notice before retrenchment and if he decides to retrench the workman at once in that case he has to give wages for the notice period that is for one month. It would be significant to note that prior to amendment made by Act. No. 49 of 1984 with effect from 18-08-1984 there was a proviso to Section 25-F(a) to the effect that "no notice shall be necessary if the retrenchment is under an agreement which specifies a date for the termination of service" but now it has been omitted by the said amendment, which would make it necessary to give such notice in all cases unless the employer gives wages in lieu of such notice. But the adjudicator has to remain very cautious in construing Section 25-F(a) and Section 2(oo) of the Act in view of the exclusion category inserted by recent amendment in Section 2(oo) of the Act and omission of proviso to Section 25-F(a) of the Industrial Dispute Act. Sometimes appointment is made for a fixed period and the date of termination of service is indicated in the contract of service in such cases no notice is required to be given by the employer because the workman knows it from the very beginning.

1. The workman must be paid retrenchment compensation at the time of retrenchment.

2. The compensation must be equivalent to fifteen days average pay for every completed year of continuous service not any part thereof in excess of six months.

3. He must be in continuous service as defined in Section 25-B for not less than one year. Before a workman can complain of retrenchment being not in consonance with Section 25-F he has to show that he has been in continuous service for not less than one year under that

employer who has retrenched him from service. (***Mohan Lal v. Bharat Electronics***, AIR 1981 SC 1251).

Sixty days notice to be given of intention to close down any undertaking :

(1) Where an undertaking is closed down for any reason whatsoever, every workman who has been in continuous service for not less than one year in that undertaking immediately before such closure shall, subject to the provisions of sub-section (2), be entitled to notice and compensation in accordance with provisions of Section 25-F, as if the workman had been retrenched.

But where the undertaking is closed down on account of unavoidable circumstances beyond the control of the employer, the compensation to be paid to the workman under clause (b) of Section 25-F shall not exceed his average pay for three months (Sec. 25-FFF(1)).

(2) Section 25-FFF(1-A) specifies conditions in which the workmen are not entitled to any notice or compensation. It provides that notwithstanding anything contained in sub-section (1) where any mining operation is being carried on and the minerals have exhausted in that area the undertaking has to be closed down because of such an important reason, the workmen engaged in the undertaking are not entitled to any compensation or to any notice if the employees engaged therein are given alternative employment, the employment is provided on the same conditions of service and who are given same remuneration for such work as they were entitled to get immediately before such closure of undertaking. It is also necessary that the employment must have been given from the date of closure. If any worker is not affected by the closure of undertaking there is no justification to provide compensation.

(3) Where any undertaking set-up for the construction of buildings ,bridges, roads, canals, dams or other construction work is closed down on account of the completion of the work within two years from the date on which the undertaking has been set-up, no workman employed therein shall be entitled to notice and compensation under that section for every completed year of continuous service or any part thereof in excess of six months. (Sec. 25-FFF(2)).

Penalty for closure without notice:—

Any employer who closes down any undertaking without complying with the provisions of Section 25-FFA shall be punishable with imprisonment up to six months with fine up to five thousand rupees or with both. (Sec. 30-A).

Distinction between layoff and retrenchment:—

The terms ‘lay off’ and ‘retrenchment’ has been defined under different provisions in entirely different manner. If the essentials of both the terms are compared the points of difference clearly come out. On these lines points of difference between these two concept are as under :

(1) The term ‘layoff’ has been defined in Section 2(kkk),while the term' retrenchment' has been defined in Section 2(oo) of the Industrial Disputes Act.

(2) In case of lay off there is failure, refusal or inability of the employer to give employment to a workman for a temporary period while in retrenchment the workman is deprived of his employment permanently by his employer.

(3) In lay off the failure, refusal or inability to give employment is on account of one or more of the reasons specified in Section 2(kkk) such as shortage of coal, shortage of power, shortage of raw material, accumulation of stocks or break down of machinery or natural calamity or for any other connected reason while in retrenchment the termination of service is on the ground of surplus labour. The ground of retrenchment and lay off are quite different.

(4) The reasons of lay off are entirely different as compared to reasons of retrenchment, the situation of surplus labour may arise due to economic drive, rationalization in industry, installation of a new labour may arise due to economic drive, rationalization in industry, installation of a new labour saving machinery or of any other industrial or trade reasons and if the services of workmen terminated on account of these reasons, it would amount to retrenchment. But in lay off reasons of non-employment are mainly non-ability of power,raw material, coal or break down of machinery or accumulation of stocks etc.

(5) In lay off the labor force is not surplus but in retrenchment labour force is surplus which is to be retrenched.

(6) In lay off employment relationship of employer and employees is not terminated while in retrenchment relationship is terminated.

(7) In lay off the employment relationship is merely suspended while in retrenchment it is terminated.

(8) Since the nature of two concepts is entirely different so the consequences of both the concepts are different and different set of norms govern them as contained in the provisions of Indus-trial Disputes Act.

Authorities under Industrial Disputes Act

Since the main purpose of codification of this Act was investigation and settlement of industrial disputes the machinery for adjudication has been made available. The Act makes available authorities for investigation and settlement of industrial disputes which are as follows :

1.Works Committee; 2.Conciliation Officer; 3.Boards of Conciliation; 4.Court of Enquiry; 5.Labour Court; 6.Industrial Tribunal; 7.National Tribunal and 8. Arbitration.

Section3.WorksCommittee:

(1) In the case of any industrial establishment in which one hundred or more workmen are employed or have been employed on any day in the preceding twelve months, the appropriate government may by general or special order require the employer to constitute in the prescribed manner a Works Committee consisting of representatives of employers and workmen engaged in the establishment, so however that the number of representatives of workmen on the Committee shall not be less than the number of representatives of the employer. The representatives of the workmen shall be chosen in the prescribed manner from among the workmen engaged in the establishment and in consultation with their trade union, if any, registered under the Indian Trade Unions Act, 1926 (16 of 1926).

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

Section 3 :— **Composition of Works Committee :** The appropriate Government is empowered under Section 3 of the Act to require the employer to constitute in the prescribed manner a Works Committee consisting of representatives of employers and workmen engaged in the industrial establishment where hundred or special order in this respect.

Such Works Committee consists of equal number of representatives of employers and work-men to ensure democratic spirit. The representatives of workmen are required to be chosen in the prescribed manner from among the workmen engaged in the establishment and in consultation with their trade union. If any, registered under the Indian Trade Unions Act, 1926. The total number of members of a Works Committee shall not exceed 20, The representatives of employers shall be nominated by the employer and shall as far as possible be officials in direct touch with or associated with the working of the establishment. The Industrial Disputes (Central Rules) 1957 contain provisions in respect of formation, conduct or hearings, elections, dissolution of Works Committee etc.

Duties and Functions of Works Committee:

(a) To promote measures for securing and preserving and amicable good relations between the employers and workmen;

(b) To achieve the above object ,it is the duty to comment upon matters of common interest or

Concern of employers and workmen;

(c) To Endeavour to compose any material difference of opinion in respect of matters of common interest or concern between employers and workmen.

The main purpose of creating the Works Committee is to develop a sense of a partnership between the employer and his workmen. It is a body which aims to promote good-will and measures of common interest. This section is applicable only to such industrial establishment in which a minimum of one hundred workmen have been employed, or to an establishment in which a minimum of one hundred workmen have been employed on any day in the preceding twelve months. The word 'workmen' in this section is used in the same sense in which it appears in Section 2(s) of the Act. It means there must be one hundred workmen and not one hundred employees working in establishment for many categories of employees are excluded from the definition of workmen.

In ***Kemp and Co. Ltd. v. Their Workmen*** (1955) I LLJ 48, it was held that the institution of the Works Committee has been provided in the rules framed under the Industrial Disputes Act, in order to look after the welfare and interest of the workmen. They are normally concerned with the problems arising in the day-to-day working of the concern and, function of the Works Committee is to ascertain the grievances of the employees and to arrive at some agreement when the occasion so arises. It is for that reason said that the Works Committee airs the grievances of workmen and endeavours to seek amicable settlement.

Section4.Conciliationofficers:

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

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

Duties of Conciliation Officers : The main duty of the conciliation officer is to mediate in and to promote the settlement of industrial disputes. Section 12 of the Act lays down following duties of conciliation officers in respect of settlement of industrial disputes:-

(1) Where any industrial dispute exists or is apprehended, the Conciliation Officer mayor where the dispute relates to a public utility service and a notice under Section 22 has been given, shall hold conciliation proceedings in the prescribed manner. It has been held by the High Court of Delhi in ***D.C.M. Chemical Employees' Lokhit Congress v. Delhi Administration***, (1983) I LLJ 306, that there is no legal duty cast on the conciliation officer to intervention in the matter till some action is taken against the workman and the workman has a grievance to that effect. Unless there is legal duty, the writ of mandamus does not lie. But where the contract of employment is terminated, the cause of action would arise leading to a dispute and in such a situation it is open to conciliation officer to initiate conciliation proceedings under Section 12(1) of the Act.

(2) The Conciliation Officer shall, for the purpose of bringing about a settlement of the dispute, without delay, investigate the dispute and all matters affecting the merits and the

right settlement thereof and may do all such things as he thinks fit for the purpose of inducing the parties to come to a fair and amicable settlement of the dispute.

(3) If a settlement of the dispute or of any of the matters in dispute is arrived at in the course of the conciliation proceedings the conciliation officer shall send a report thereof to the appropriate Government or an officer authorized in this behalf by the appropriate Government together with

A memorandum of the settlement signed by the parties to the dispute .The function and duties of the conciliation officer are crystal clear from the provisions of Section 12. Although wide powers are given under this section to a conciliation officer, depending upon his resourcefulness and power of persuasion to try to induce and persuade the parties to come to a fair and amicable settlement of the dispute, he has not power to decide anything at all.

(4) If no such settlement is arrived at the Conciliation Officer shall as soon as practicable after the close of the investigation, send to the appropriate Government a full report setting forth the steps taken by him for ascertaining the facts and circumstances relating to the dispute and for bringing about a settlement thereof, together with a full statement of such facts and circumstances and the reasons on account of which, in his opinion, a settlement could not be arrived at.

(5) If, on a consideration of the report referred to in sub-section (4) the appropriate Government is satisfied that there is a case for reference to a Board, Labor Court, Tribunal or National Tribunal it may make such reference. Where the appropriate Government does not made such a reference it shall record and communicate to the parties concerned its reasons therefore.

(6) A report under this section shall be submitted within fourteen days of the commencement of the conciliation proceedings or within such shorter period as may be fixed by the appropriate Government.

Provided that subject to the approval of Conciliation Officer the time for the submission of the report may be extended by such period, as may be agreed upon in writing by all parties to the dispute.

Procedure and powers of Conciliation Officers :A Conciliation Officer may for the purpose of enquiry, into any existing or apprehended industrial dispute, after giving reasonable notice, enter the premises occupied by any establishment to which the dispute relates.

It has been observed “under the Industrial Disputes Act, the Conciliation Officer is an indepen-dent agency created with a view to promote industrial peace by making available governmental facilities in the process of collective bargaining. The main task of the Conciliation officer is to go from one camp to the other and find out the greatest common measure of agreement. He has to investigate the dispute and do all such things as he thinks fit for the purpose of inducing the parties to arrive at a fair and amicable settlement of disputes”.

A Conciliation Officer may enforce the attendance of any person for examination or call for and inspect any document which he has ground for considering to be relevant to the industrial dispute or to be necessary for the purpose of verifying the implementation of any award or carrying out any other duty imposed on him under this Act, and for the aforesaid purposes, he shall have the same powers as are vested in a Civil Court under the Code of Civil Procedure, 1908 in respect of compelling the production of documents. All Conciliation Officer shall be public servants within the meaning of Section 21oftheIndian Penal Code.

Boards of Conciliation

Section 5. Boards of Conciliation:

(1) The appropriate government may as occasion arises by notification in the Official Gazette constitute a Board of Conciliation for promoting the settlement of an industrial dispute.

(2) A Board shall consist of a Chairman and two or four other members, as the appropriate government thinks fit.

(3) The Chairman shall be an independent person and the other members shall be persons appointed in equal numbers to represent the parties to the dispute and any person appointed to represent a party shall be appointed on the recommendation of that party:

PROVIDED that, if any party fails to make a recommendation as aforesaid within the prescribed time, the appropriate government shall appoint such persons as it thinks fit to represent that party.

(4) A Board, having the prescribed quorum, may act notwithstanding the absence of the Chair-man or any of its members or any vacancy in its number:

PROVIDED that, if the appropriate government notifies the Board that the services of the Chairman or of any other member have ceased to be available, the Board shall not act until a new Chairman or member, as the case may be, has been appointed.

In order to promote the settlement of an industrial dispute the appropriate Government may as occasion arises by notification in the official Gazette constitute a Board of Conciliation. A Board shall consist of a Chairman and two or four other members as the appropriate Government thinks fit. It is the discretion of the appropriate authority to decide number of members. The Chairman shall be an independent person and other members shall be persons appointed in equal numbers to represent the parties to the dispute and any person appointed to represent a party shall be appointed on the recommendation of that party. But if any party fails to make a recommendation as aforesaid within the prescribed time the appropriate Government is vested with the power consists of a Chairman and one or two representative of employer and workmen. The representatives are appointed on the recommendation of the party concerned.

It is to be noted that the Chairman must be an "independent person" which means a person unconnected with the industrial dispute or with the industry affected by such dispute. Of course the Appropriate Government is vested with the discretion to appoint the Board of Conciliation, whenever there is an occasion for such appointment on the arising of industrial dispute. The Board as stated above is appointed with a view to promote the settlement of industrial dispute.

The appointment of the Conciliation Board together with the names of the persons constituting the Board shall be notified in the Official Gazette. If the Central Government proposes to appoint a Board, it shall send a notice to the parties asking them to nominate within reasonable time persons to represent them on the Board, it shall send a notice to the parties asking them to nominate within reasonable time persons to represent them on the Board. The notice to the employer shall be sent to him personally or if the employer is an incorporated Company or a body Corporate, to the agent, manager, or other principal Officer of such company or body.

The notice to the workmen shall be sent :

(a) In the case of workmen who are member of Trade union, to the President or Secretary of the Trade Union; or

(b) in the case of workmen o are 'not members of a Trade Union to any one five representatives of the workmen who have attested the application made under Rule 3 and in this case a copy of the notice shall also be sent to the employer who shall display copies thereof on notice boards in a conspicuous manner at the main entrance to the premises of the establishment.

Quorum : Where the number of members including chairman is there the quorum would be complete if two are present. Where the number of members is five, the quorum would be complete if three are present out of those five. A Board, having the prescribed quorum, may act notwithstanding the absence of the Chairman or any of its members or any vacancy in its number. But if the appropriate government notifies the Board that the services of the chairman or of any other member have ceased to be available, the Board shall not act until a new chairman or member, as the case may be, has been appointed.

Duties of Board: Section 13 of the Act enumerate the following duties of the Board of Conciliation.

(1) Where a dispute has been referred to a Board under this Act, it shall be the duty of the Board to endeavor to bring about a settlement of the same and for this purpose the Board shall, in such manners it thinks fit and without delay, investigate the dispute and all matters affecting the merit and the right settlement thereof and may do all such things as it thinks fit for the purpose of inducing the parties to come to a fair and amicable settlement of the dispute.

(2) If a settlement of the dispute or of any of the matter in dispute is arrived at in the course of the conciliation proceedings, the Board shall send a report thereof to the appropriate government together with a memorandum of the settlement signed by the parties to the dispute.

(3) If no such settlement is arrived at, the Board shall, as soon as practicable after the close of the investigation, send to the appropriate government a full report setting forth the proceedings and steps taken by the Board for ascertaining the facts and circumstances relating to the dispute and for bringing about a settlement thereof, together with a full statement of such facts and circumstances, its findings thereon, the reasons on account of which, in its opinion, a settlement could not be arrived at and its recommendations for the determination of the dispute.

(4) If, on the receipt of a report under sub-section (3) in respect of a dispute relating to a public utility service, the appropriate government does not make a reference to a 86[Labor Court, Tribunal or National Tribunal] under section 10, it shall record and communicate to the parties concerned its reasons thereof .

(5) The Board shall submit its report under this section within two months of the date 87[on which the dispute was referred to it] or within such shorter period as may be fixed by the appropriate government:

PROVIDEDthattheappropriateGovernmentmayfromtimetotimeextendthetimefor the submission of the report by such further periods not exceeding two months in the aggregate:

PROVIDEDFURTHERthatthetimeforthesubmissionofthereportmaybeextended by such period as may be agreed on in writing by all the parties to the dispute.

ThedutiesoftheBoardaresimilartothoseofconciliationofficersbutthemembersof the Board of the Conciliation act in a judicial capacity and more powers than conciliation officers.

Court of Inquiry

Section 6.Courts of Inquiry :

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

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

(3) A court, having the prescribed quorum, notwithstanding the absence of the Chairman or any of its members or any vacancy in its number:

PROVIDED that, if the appropriate government notifies the court that the services of the Chairman have ceased to be available, the court shall not act until a new Chairman has been appointed.

The appropriate Government may as occasion arises by notification in the official Gazette constitute a court of inquiry for enquiring into any matter appearing to be connected with or relevant to an industrial dispute.

A court of inquiry consists of one independent person or such number of independent persons as the appropriate Government thinks fit. Where such court consists of two or more members, one of them is appointed as Chairman.

It shows that the appropriate Government occasion has arisen. The function of the Court of Inquiry into any matter which appears to be connected with or relevant to an industrial dispute in question.

Quorum : In case of a court where number of members is not more than two quorum is one and where the number is more than two but less than five the quorum is two. Where the number of members is five or more the quorum is three.

A court having the prescribed quorum, may act notwithstanding the absence of the Chairman or any of its members or any vacancy in its number. But if the appropriate Government notifies the court that the services of the Chairman have ceased to be available, the court shall not act until a new chairman has appointed.

Duties of Court of Inquiry :A court is under duty to enquire into the matters referred to it and report thereon to the appropriate Government ordinarily within a period of six months from the commencement of its inquiry. The report of a court shall be in writing and shall be signed by all the members of the court. Any member of the court can record any minute of dissent from a report or from any recommendation made therein.

Relevant section 22, 23 and 33 of the Act, relating to the Court, it may be seen that during the pendency of the proceeding before a Court of inquiry, the following rights remain unaffected, namely:

(i) The right of a workman to go on strike;

(ii) The right of a employer to lock-out his business; and

(iii) The right of employer to dismiss or otherwise to punish the workmen in certain cases under Section 33.

Labour Court

Section7.LabourCourts:

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

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

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

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

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

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

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

Since the Act was passed with the object of providing machinery for investigation and settle

ment of industrial disputes it make provision for constitution of adjudication machinery besides the authorities of investigation and settlement of industrial disputes. The Labour Courts, Industrial Tribunals and National Tribunals constitute adjudication machinery under the Industrial Disputes Act have been given specific jurisdiction for adjudication purposes.

Constitution of Labour Courts : The appropriate Government has been empowered under Section 7 of the Act to constitute one or more Labour Courts for the adjudication of indus-trial disputes relating to any matter specified in the Second Schedule and performing such other functions as may be assigned to them under the provisions of this Act. The notification in the Official Gazette is required to be issued by the Government as and when such Labour Courts are constituted.

A Labour Court consists of one person only to be appointed by the appropriate Government.

The persons so appointed are known as Presiding Officer of a Labour Court.

Jurisdiction of the Labour Court : The Labour Court is authorized to adjudicate indus-trial disputes relating to matters specified in the Second Schedule on the following matters :—

1. The propriety or legality of a order passed by an employer under Standing Orders.
2. The application and interpretation of Standing Orders.
3. Discharge or dismissal of workmen including statement of,workmen wrongfully dismissed.
4. Withdrawal of any customary concession or privilege;
5. Illegality or otherwise of a strike or lockout and
6. All matters other than those specified in the Third Schedule.

It lays down that where the dispute relates to any matter specified in the Third Schedule and is not likely to affect more than 100 workmen, the appropriate Government may, if it so thinks fit, make the reference to Labour Court.

It would be within the jurisdiction of a labour court to decide any matter other than those specified in the Third Schedule. If a workman is not confirmed by the employer due to some unfair labour practice the labor court has jurisdiction to direct the employer to confirm him.

Duties of Labour Courts : Where an industrial dispute has been referred to a labour court for adjudication, it shall hold its proceedings expeditiously and shall within the period specified in the order referring such industrial dispute or the further period extended under the second proviso to sub-section (2-A) of section 10, submit its award to the appropriate Government.

The award of a labour court is required to be in writing and shall be signed by its Presiding Officer.

Sec.7(3);Qualification of Presiding Officer.

The qualification of person who can be appointed as presiding officer of Labour Court :

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

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

(c) omitted.

(d) He had held any judicial office in India for not less than seven years; or

(e) He has been the presiding officer of a Labour Court constituted under any Provincial Act or

State Act for not less than five years; or

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

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

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

Section : 7C. Disqualifications for the presiding officers of Labour Courts, Tribunals and National Tribunals

No person shall be appointed to,or continue in, the office of the presiding officer of a Labour Court, Tribunal or National Tribunal, if —

(a) he is not an independent person; or

(b) he has attained the age of sixty-five years.

In the ***Statesman (P) Ltd. v. H.R. Deb***, AIR 1968 SC 1495, the question was whether a magistrate holds a judicial office. The fact that the duties of a magistrate are partly judicial and partly other does not detract from the position that while acting as a magistrate he is a judicial officer. The phrase 'holding a judicial office' postulates that there is an office and that office is primarily judicial. But where Registrar to Pensions Appeal Tribunal was appointed as presiding officer of a Labor Court it was held that the appointment was void ab initio because the office of the Registrar is administrative and not judicial in nature. The expression "holding a judicial office" in Section 7(3)(d) signifies more than discharge of judicial functions while holding some other office.

Industrial Tribunal

Constitution : Section 7A(1) provides that the appropriate government may, by notification in the Official Gazette, constitute one or more Industrial Tribunals for the adjudication of industrial disputes relating to any matter, whether specified in the Second Schedule or the Third Schedule and for performing such other functions as may be assigned to them under this Act.

An Industrial Tribunal shall consist of one person only who is required to be appointed by the appropriate Government. Such person so appointed by the appropriate Government is known as the Presiding Officer of the Industrial Tribunal.

Jurisdiction : The matters specified in the Second Schedule or in the Third Schedule are within the jurisdiction of the Industrial Tribunal.

THE SECOND SCHEDULE: Matters within the Jurisdiction of Labour Courts(Section 7)

1. The propriety or legality of an order passed by an employer under the standing orders;

2. The application and interpretation of standing orders;

3. Discharge or dismissal of workmen including reinstatement of, or grant to workmen wrongfully dismissed;

4. Withdrawal of any customary concession or privilege;

5. Illegality or otherwise of a strike or lock-out; and

6. All matters other than those specified in theThird Schedule.

THE THIRD SCHEDULE : Matters within The Jurisdiction of Industrial Tribunals (Section 7A)

1. Wages ,including the period and mode of payment;
2. Compensatory and other allowances;
3. Hours of work and intervals;
4. Leave with wages and holidays;
5. Bonus, profit sharing, providend fund and gratuity;
6. Shift working otherwise than in accordance with standing orders;
7. Classification by grades;
8. Rules of discipline;
9. Rationalization;
10. Retrenchment of workmen and closure of establishment; and
11. Any other matter may be prescribed.

It may be pointed out that industrial tribunal has jurisdiction to adjudicate any industrial dispute relating to any matter whether specified in the Second Schedule or in the third Schedule. The jurisdiction of the industrial tribunal has been extended by amendment in1982 with effect from 21-08-1984. Now it may perform any other function assigned to it under the provisions of this Act.

National Tribunal

For adjuration of industrial disputes of national importance or such industrial disputes in which industrial establishments situated in more than one State are likely to be interested in or affected by such disputes, nation tribunals are constituted by the Central Government.

Constitution : The Central Government is empowered under Section 7-B(1)of the Act to constitute one or more National Industrial Tribunal for the adjudication of industrial disputes which, in the opinion of the Central government involve questions of nation importance or are of such a nature that industrial establishments situated in more than one State are likely to be interested in or affected by, such disputes.

Jurisdiction : There is no specific mention of matters which may be considered to be within the jurisdiction of the nation tribunal. Since there is no limitation specified in respect of its jurisdiction like industrial tribunal and labour court. Its jurisdiction is wide enough to deal with any industrial dispute on any matter specified in Second or Third Schedules to the Act or any matter which is not specified therein. However, there are two conditions put under Section 7-B(1) which are required to be fulfilled before it acquires jurisdiction :

(i) Industrial Disputes must involve questions of national importance in the opinion of Central Government; or

(ii) Industrial Disputes must be of such a nature that industrial establishments situated in more than one State are likely to be interested in or affected by such disputes.

If one of the above conditions is fulfilled the nation tribunal acquires jurisdiction over such industrial disputes for adjudication. It may be pointed out that the National Tribunal also has limited jurisdiction in the sense that it can only decide matters which are referred to it for adjudication or matters which are connected with the dispute referred to it.

arbitrator

Where any industrial dispute exists or is apprehended the parties to the dispute ,the employer

and the workmen may make an agreement to the effect that their dispute may be referred to arbitration for adjudication. This would be a voluntary reference to such arbitration. Section 10-A under its different clauses contains following provisions regarding voluntary reference of industrial dispute.

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

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

(2) Anarbitrationagreementreferredtoinsub-section(1)shallbeinsuchformandshall be signed by the parties thereto in such manner as may be prescribed.

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

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

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

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

(5) NothingintheArbitrationAct,1940(10of1940),shall apply to arbitrations under this section.

Operation of Arbitration Award : In view of Section 18(2) of the Act an Arbitration award which has become enforceable shall be binding on the parties to the agreement whoreferred the dispute to arbitration. An arbitration award in a case where notification has been issued under sub-section (3-A) of Section 10-A which has become enforceable shall be binding on all parties to the industrial dispute and all other parties summoned to appear in the proceedings as parties to the dispute unless the arbitrator records the opinion that they were summoned without proper cause not only the employer as a party to the dispute relates

are bound by such an award. Similarly all workmen employed in that establishment on the date of dispute as well as persons who are subsequently employed in that establishment or part thereof are bound by the arbitration award.

Report and Award of Labour Courts,Tribunal and National Tribunals.

Form of Award : The award of the Labour Court or Tribunal or National shall be in writing and shall be signed by its Presiding Officer. Every arbitration award and every award shall, within a period of 30 days from the date of its receipt by the appropriate Government be published in such manner as the appropriate Government thinks fit. Non-publication of award in the Gazette as required by section 17 renders the award inoperative. Subject to the provisions of Section 17-A, the award published under Section 17(1) shall be final and shall not be called in question by any Court in any manner whatsoever from the date of its receipt by the appropriate Government be published in such manner as the appropriate Government thinks fit. Non-publication of award in the Gazette as required by section 17 renders the award inoperative. Subject to the provisions of Section 17-A, the award published under Section 17(1) shall be final and shall not be called in question by any Court in any manner whatsoever. According to Section 16 award must be signed by the presiding officer. An award signed by only two of the three members is void and inoperative.

Commencement of the Award : Section 17-A of the Act contains provisions in this regard. It provides under sub-section (1) that an award including arbitration award shall become enforceable on the expiry of 30 days from the date of its publication under Section 17: Provided that —

(a) If the appropriate Government is of opinion in any case where the award has been given by a Labour Court or Tribunal in relation to an industrial dispute to which it is a party or

(b) If the Central Government is of opinion,in any case,where the award has been given by a National Tribunal.

That it will be inexpedient on public grounds affecting national economy or social justice to give effect to the whole or any part of the award, the appropriate Government, or as the case may be, the Central Government may by notification in Official Gazette declare that the award shall not become enforceable on the expiry of the said period of thirty days.

Unfair Labour Practice :

A new Schedule -V, has been added by the Industrial Disputes (Amendment) Act, 1982. In this Schedule unfair labour practices have been defined. It contains a list of such practices as are treated unfair on the part of the employers or their Trade Unions, or on the part of workmen and their Trade Unions.

Section 2(ra) :**Unfair Labour Practices —** Unfair Labour Practice means any of the practice specified in Fifth Schedule. The definition of this expression has been inserted for the first time by the amendment made in 1982 which has come into force with effect from 21-08-1984. It contains a list of such practices as are treated unfair on the part of the employers or their Trade Unions, or on the part of workmen and their Trade Unions. The Fifth Schedule has also been inserted by the same amendment. It contains several practices. In category I, it contains 16 practices which are said to be unfair practices on the part of employers or their trade unions. For example 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 concerted activities for the purpose of collective bargaining or other mutual aid or protection to establish employer sponsored trade union of workmen to discharge or dismiss

workmen by way of victimization to recruit workmen during a strike which is not an illegal strike etc.

On the other hand category II of the Fifth Schedule contain eight practices which are said to be unfair labour practice some part of workmen or the trade union such as to advise or actually.

support or instigate any strike deemed to be under the Act, to stage demonstration at the residences of the employers or the managerial staff members, to incite or indulge in willful damage to employer's property connected with the industry, to indulge in acts of force or violence or to hold out threats of intimidation against any workmen with a view to prevent from attending work etc.

THE FIFTH SCHEDULE : Unfair Labour Practices[Section2(ra)]

I. <u>ON THE PART OF EMPLOYERS AND TRADEUNIONS OF EMPLOYERS</u>

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(5) To discharge or dismiss workmen-

(a) By way of victimization;

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

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

(d) For patently false reasons;

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

(f) In utter disregard of the principles of natural justice in the conduct of domestic enquiry or

with undue haste;

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

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

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

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

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

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

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

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

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

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

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

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

II. <u>ONTHEPART OFWORKMENANDTRADEUNIONSOF WORKMEN</u>

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

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

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

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

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

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

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

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

(7) Toinciteorindulgeinwillfuldamagetoemployer'spropertyconnectedwiththe industry.

(8) Toindulgeinactsofforceorviolenceortoholdoutthreatsofintimidationagainst any workman with a view to prevent him from attending work.

Prohibition and penalty-It would be pertinent to mention that these unfair labour practices have been prohibited. It has been clearly provided under Section 25-T that no employer or workman or a trade union, whether registered under the Trade Unions Act, 1926, or not shall commit

any unfair labour practice. The Act now contains a penal provision also. It provides under its 25-U that any person who commits any unfair labour practice shall be punishable with imprisonment for a term which may extend to six months or with fine which may extend to one thousand rupees or with both. The penal provision is intended to maintain industrial peace as it would be serving as check and balance upon both the parties engaged in the industries.

It is difficult to define and lay down exhaustive test unfair labour practice, but it may be said that any practice, but it may be said that any practice, which violates the directive principles of State policy contained in Article 43 of the Constitution and such other Articles as deal with the decent wages and living conditions for workmen amount to unfair practice.

Victimization-Victimization means one of two thins. One is when the workman concerned is innocent and yet he is punished because he has in some way displeased the employer. For ex-ample, by being an active member of a Union of workmen who were acting prejudicially to the interests of the employer. The second instance is where an employee has committed an offence simply because he has incurred the displeasure of the employer,or where the punishment is shockingly disproportion to the misconduct or is such as no reasonable employer would impose under the circumstances. If an employer punishes an employee for a wrong which some someone else has committed, it would be right to infer that the employee is victimized by being made a scapegoat to him.

Offences by companies, condition of service to remain unchanged under certain conditions.

Section32.Offence by companies,etc.

Where a person committing an offence under this Act is a company, or other body corporate, or an association of persons (whether incorporated or not), every director, manager, secretary, agent or other officer or person concerned with the management thereof shall, unless he proves that the offence was committed without his knowledge or consent, be deemed to be guilty of such offence.

It is significant to note that the expression company in this section includes—

(i) Any body corporate;or

(ii) Any association of persons whether incorporated or not.

This section makes a (i) director, (ii) manager, (iii) secretary, (iv) agent, or (v) other officer or person concerned with the management of the company, etc. liable for any of the offence unless he proves that the offence was committed without his knowledge or consent.

It shall be the duty of the prosecution to establish that a valid award has not been implemented and also that the persons are the officials as stated above. Once it is proved, the burden of proving the fact that the offence has been committed without his knowledge or consent shall be upon the accused. Thus the only defence available under this section to any of the accused person is to prove that the offence was committed without his knowledge or consent.

Section 33. Conditions of service, etc., to remain unchanged under certain circumstances during pendency of proceedings.

(1) During the pendency of any conciliation proceeding before a conciliation officer or a Board or of any proceeding before 2 an arbitrator or] a Labour Court or Tribunal or National Tribunal in respect of an industrial dispute, no employer shall —

(a) in regard to any matter connected with the dispute, alter, to the prejudice of the workmen concerned in such dispute, the conditions of service applicable to them immediately before the commencement of such proceeding; or

(b) for any misconduct connected with the dispute, discharge or punish, whether by dismissal or otherwise, any workmen concerned in such dispute, save with the express permission in writing of the authority before which the proceeding is pending.

(2) During the pendency of any such proceeding in respect of an industrial dispute, the employer may, in accordance with the standing orders applicable to a workman concerned in such dispute 2or, where there are no such standing orders, in accordance with the terms of the contract, whether express or implied, between him and the workman, —

(a) alter,inregardtoanymatternotconnectedwiththedispute,theconditionsofservice applicable to that workman immediately before the commencement of such proceeding; or

(b) foranymisconductnotconnectedwiththedispute,ordischargeorpunish,whetherby dismissal or otherwise, that workman:

Provided that no such workman shall be discharged or dismissed, unless he has been paid wages for one month and an application has been made by the employer to the authority before which the proceeding is pending for approval of the action taken by the employer.

(3) Notwithstanding anything contained in sub- section (2), no employer shall, during the pendency of any such proceeding in respect of an industrial dispute, take any action against any protected workman concerned in such dispute —

(a) byaltering,totheprejudiceofsuchprotectedworkman,theconditionsofservice applicable to him immediately before the commencement of such proceedings; or

(b) by discharging or punishing, whether by dismissal or otherwise, such protected workman, save with the express permission in writing of the authority before which the proceeding is pending.

Explanation — For the purposes of this sub- section, a "protected workman", in relation to an establishment, means a workman who, being 1 a member of the executive or other office bearer] of a registered trade union connected with the establishment, is recognised as such in accordance with rules made in this behalf.

(4) In every establishment, the number of workmen to be recognised as protected workmen for the purposes of sub- section (3) shall be one per cent. of the total number of workmen employed therein subject to a minimum number of five protected workmen and a maximum number of one hundred protected workmen and for the aforesaid purpose, the appropriate Government may make rules providing for the distribution of such protected workmen among various trade unions, if any, connected with the establishment and the manner in which the workmen may be chosen and recognised as protected workmen.

(5) Where an employer makes an application to a conciliation officer, Board, an arbitrator, a labour Court, Tribunal or National Tribunal under the proviso to sub-section (2) for approval of the action taken by him, the authority concerned shall, without delay, hear such application and pass, within a period of three months from the date of receipt of such application, such order in relation thereto as it deems fit :

Provided that where any such authority considers it necessary or expedient so to do, it may ,for reasons to be recorded in writing ,extend such period by such further period as it may think fit:

Provided further that no proceedings before any such authority shall lapse merely on the ground that any period specified in this sub- section had expired without such proceedings being completed.

The purpose of Section 33 is to maintain status quo during the pendency of certain proceedings under this Act. It ensures against victimization of work man by the employer.

Section33(1)appliesduringthependencyoffollowingproceedings,namely

—(a)conciliation proceedings before a conciliation officer or a Board;

(b) Any proceeding before an arbitrator ;and

(c) Any proceeding before a Labor Court, Tribunal or National Tribunal.

The above proceedings must be in respect of an industrial dispute. While any such proceeding is pending, the employer is prohibited to take the following actions, except with express permission in writing of the authority before which the proceeding is pending:

(a) The employer shall not in regard to any matter connected with the dispute, alter to the prejudice of the workmen concerned in such dispute, the conditions of service applicable to them immediately before the commencement of such proceeding; or

(b) The employer shall not discharge, dismiss or otherwise punish for any misconduct connected with the dispute any workmen concerned in such dispute.

It is not every alteration in the conditions of service of workmen concerned in the dispute, but an alteration in regard to any matter connected with the pending dispute, which is prohibited. For application of Section 33(1)(a) the following conditions must be fulfilled.

(i) Some proceeding under the Act must be pending before any one of the authorities mentioned therein;

(ii) There must be some alterations in the conditions of service of workmen;

(iii) The alteration must be in the conditions of service as were applicable to the workmen concerned immediately before the commencement of such proceedings;

(iv) Thealterationmustbetotheprejudiceoftheworkmenconcernedinsuchdispute (i.e., if the alteration made is in favour of the workmen, it shall be valid);

(v) The alteration should be in regard to any matter connected with the pending dispute;

(vi) The workman, who can claim protection under this section, should not only be a workman within the meaning of Section 2(s) but should also be a workman connected with the pending dispute;

(vii) The action should have been taken without the express permission in writing of the authority before which proceeding is pending;

For application under Section33(1)(b) the following conditions must be fulfilled :

(i) Some proceeding should be pending before one of the authorities under this Act,

(ii) The workman claiming protection under this section should not only be a workman within the meaning of Section 2(s), but should also be a workman within the meaning of Section 2(s), but should also be a workman connected with the pending dispute;

(iii) The action taken should be discharge or punishment by way of dismissal or otherwise;

(iv) Such discharge or punishment should be for any misconduct connected with the pending dispute;

(v) The action should have been taken without the express permission in writing of the authority before which the proceeding is pending.

Section33(2)providesthattheemployermaytakethefollowingactionsduringthe pendency of any proceeding in respect of an industrial dispute —

(a) he may alter, in regard to any matter not connected with the dispute, the conditions of service applicable to that workman immediately before the commencement of such proceeding;

(b) he may discharge or punish, whether by dismissal or otherwise,that workman for any misconduct not connected with the dispute.

The right of the employer to take action is subject to the following conditions :

(i) the action taken should be in accordance with the Standing Order applicable to workman connected in such dispute; or

(ii) where there are no standing orders, the action taken should be in accordance with the terms of the contract, whether express or implied, between the employer and the workmen;

(iii) where a workman is discharged or dismissed he shall be paid a 'wages for one month; and

(iv) in case of discharge or dismissal an application should have been made by the employer to the authority before which the proceeding is pending, for approval of the action taken by the employer.

Section 33(3) deals with the right of "protected workman". The employer shall not take the following action against a 'protected workman' in regard to any matter not connected with the pending dispute-

(i) The employer shall not altert ot he prejudice of protected workman the conditions of service applicable to him immediately before the commencement of such proceedings;

(ii) The employer shall not discharge,orpunish,whetherby dismissal or otherwise such protected workman.

It is further provided that the prohibition operates during the pendency of any proceedings in aspect of an industrial dispute. No alteration in the conditions of service, discharge or dismissal, etc.,can be made without the express permission in writing of the authority before which the proceeding is pending.

For application of Section 33(3)the following conditions must be fulfilled—

(1) Some proceeding should be pending before any one of the authorities under this Act;

(2) The workman claiming protection should not only be a workman within the meaning of Section 2(s), but should be a protected workman and a workman concerned in the pending dispute;

(3) There should be alteration in the conditions of service applicable before the commencement of the proceeding or discharge or punishment by way of dismissal or otherwise of such protected workman;

(4) Thealterationintheconditionsofserviceshouldbetotheprejudiceofprotected workman;

(5) The action taken may be evening regard to any matter not connected with the pending dispute;

(6) The action should have been taken without the express permission in writing of the authority before which the proceeding is pending.

Protected workman-Explanation to Section 33(3) defines a protected workman. The definition is for the purposes of this sub-section only. In relation to an establishment protected workman means;

(i) A workman who is a member of the executive or other office bearer of a registered trade union connected with the establishment; and

(ii) Who is so recognized as 'protected workman' under the rules applicable to other establishment.

Section 33(4) provides that in every establishment the number of recognized protected work-men shall be one per cent of the total number of workmen employed therein. But there shall be a minimum of five and a maximum of one hundred 'protected workmen'. The appropriate Government is empowered by this sub-section to make rules for choosing and recognizing the protected workman. It is also empowered to make rules for distribution of protected workmen among various trade unions connected with the establishment.

Section 33(5)deals with the disposal ofan application made by the employer for approval of the action taken by him to Conciliation Officer, Board, an arbitrator, Labour Court, Tribunal orNationalTribunal.Ithasbeenheldinthecaseof***TataIronandSteelCo.Ltd.v. S. N. Modak***, (1956) II LLJ 128 (SC), that the authority shall without delay hear the application and dispose it within a period of three months from the date of receipt of such application. It means that a proper order in respect of such application should be passed as expeditiously as possible on the application.

Provided that where any such authority considers it necessary or expedient so to do, it may, for reasons to be recorded in writing extend such further period as it may think fit.

Provided further that no proceedings before any such authority shall lapse merely on the ground that any period specified in this sub-section had expired without such proceedings being completed.

The Sec. 33A - It is a special provision for adjudication as to whether conditions of service etc., changed during the pendency proceedings. Whenever the employer contravenes the provisions of the Sec. 33 of the ID Act during the pendency of the proceedings - before any conciliation officer, board or arbitrator, labour court/tribunal-aggrieved workman can raise the dispute for contravention, in writing.

TheSec.33B- It is the power of the Govt. total transfer certain proceedings from one labour court/tribunal to another.

Sec. 33C - It is recovery of amount due to the employee from the Employer. If any court orders for payment under settlement, or an award or under the provisions of Chapter VA or VB, the workmen, or his agent, or his legal heir , make an application to the appropriate Govt. for the recovery of the money due to him/her. Such application should be made within one year from the date on which the money becomes due to the workman from the

employer.

TRADEUNIONS ACT ,1926

Definition and nature of trade union

A trade union for average man signifies an association of workers which is engaged in securing certain economic benefits for its members. A trade union may also by to advance the social, political and cultural interests of its members through collective action. A Trade Union is commonly regarded as an association to help its members in getting collectively better terms of employment, wages etc. The legal definition of a trade union, however, permits even employer's organizations to get themselves registered as trade unions.

According to Chambers "Encyclopedia" :"A trade union is an association of wage earners or salary earners, formed primarily for the purpose of collective action for the forwarding or defence of its professional interests"

In fact Trade Unions are voluntary organizations of workers formed to promote and protect their interests by collective action. A Trade Union "must possess definite aim, its members must be welded together in a united front for the good of the whole group rather than for the promotion of any selfish, individual interests and it must, to be effective, take on a definite and permanent form organization through which it strivesto accomplish its goals."

It indicates that Trade Unions are voluntary associations of workers constituted for the purpose of promoting and protecting their interests by combined efforts. The membership is voluntary, the trade union must possess definite aims and objects so that workers may join the union after full consideration of the aims and objects for which it has been formed.

Statutory definition of Trade Union : The statutory definition of the term 'trade union' in India is borrowed from the British Trade Union Acts of 1871, 1825 and 1913.

According to section2(h)oftheIndianTradeUnionAct,1926, "TradeUnion"means any combination, whether temporary or permanent, formed primarily for the purpose of regulating the relations between workmen and employers or between workmen and workmen, or between employers and employers, or for imposing restrictive conditions on the conduct of any trade or business, and includes any federation of two or more Trade Unions :

Provided that this Act shall not affect—

(i) Any agreement between partners as to the own business;

(ii) any agreement between an employer and those employed by him as to such employment; or

(iii) any agreement in consideration of the sale of the good-will of a business or of instruction in any profession, trade or handicraft.

The definition of the Trade union as contained in section 2(h) of the Trade Union Act, 1926, indicates that it is any combination or association of persons based on mutual confidence, under-standing and co-operation for safeguarding common interests. It may be any association of work-men or employers. It need not be permanent combination, it can be formed even for a shorter period the definition itself indicates statutory primary purposes of trade union. As such the Trade Union is formed primarily for the following two purposes :

Firstly,for regulating the relations between—

(a) Workmen and employers;or

(b) Workmen and workmen; or

(c) Employers and employers.

Secondly,for imposing restrictive conditions on the conduct of any trade or business and includes any federation of two or more trade unions.

The analysis of the definition of the trade union clearly shows that the purpose of trade union is to maintain balance, harmony and proper adjustments in the relations of the persons involved in industrial process and production. The purpose of the trade union is not to secure harmony between the employers and workmen only but it is intended to secure peaceful relation between workmen and workmen and between employers and employers also.

We can distinguish three classes of objectives which a trade union can have. The first may be classified as purely economic objectives, i.e. those which relate to questions concerning wages, hours of work, working and living conditions. The second one, viz. benefit purpose which includes dispensation of various benefits like sickness and un- employment. The third group consists of social and political objectives.

The model constitution and rules of trade unions cover these three classes of objectives. The Act simply emphasizes the supreme importance of the first type viz., the purely economic objectives. It does not debar trade unions from having others. The registration of any union shall be void if any of its objectives are unlawful.

Incorporation of registered Trade Unions-According to Section 13 of the Trade Unions Act, every registered Trade Union shall be a body corporate by the name under which it is registered and shall have perpetual succession and a common seal with power to acquire and hold both movable and immovable property and to contract, and shall by the said name sue and be sued.

The analysis of the aforementioned provision would make it clear that when a Trade Union is registered, it becomes a body corporate meaning there by an artificial legal person. By virtue of its legal entity certain rights are accorded. Duties are imposed and certain powers are conferred upon which may be called advantages of registration in an ordinary sense. Thus, the following are the advantages of registration of Trade Union.

(1) Every registered Trade Union becomes a body corporate by the name under which it is registered. It means that the Trade Union, after registration under this Act, becomes artificial legal person having its separate existence from its members of which it is composed.

(2) An incorporated Trade Union never dies. It becomes an entity with perpetual succession. The members of the Trade Union change but the Trade Union remains unchanged. The retirement's withdrawal or expulsion and death of individual members donot affect the corporate existence of the Trade Union.

(3) The Trade Union shall have a common seal after its registration.

(4) The Trade Union is empowered to acquire and hold both movable and immovable property in its own name.

(5) By virtue of its legal personality,theTradeUnion acquires power to contact in its own name.

(6) TheTrade Union,being a body corporate, can sue and be sued in its own name.

(7) The Registered Trade Union is granted immunity from criminal(Section-17)and civil (Sec-tion-18) liability in certain cases singled out under the provisions of the Trade Union Act, 1926.

Section-14: Certain Acts not to apply to register Trade Union-The following Acts shall not

Apply to any registered under any such Act shall be void. The Acts are as follows:-

(i) TheSocietiesRegistrationAct,1860;

(ii) TheCo-operativeSocietiesAct,1912;

(iii) TheCompaniesAct,2013.

In G.T.R.T.C.S.and***Officer'sAssociation,Bangaloreandanotherv.AssistantLabor***

Commissioner and Deputy Registrar of Trade Unions, Bangalore Division I andanother's, (2002) II LLJ 335 (Kant.), the respondent authority refused to register the petitioner as trade union on the ground that the applicants were not workmen within the meaning of Section 2(s) of the Industrial Disputes Act, 1947. The High Court observed that as per Section 2(g) of the Trade Unions Act, 1926 the word 'workman' included all persons employed in a trade or industry. It was not a restricted definition as in any other Labour Law enactment. The emphasis was on the purpose for which the union was formed and not so much on the persons who constituted it.

In ***Food Corporation of India Staff Union v. Food Corporation of India and others***, (1995) II LLJ 272 (SC), it was held that where more than one unions claim representative character, the method of secret ballot should be adopted to ascertain the correct position as regards the membership of different Trade Unions.

It was held in ***National Organisation of Bank Workers Federation of Trade Unions v. Union of India & others***, (1993) II LLJ 537 (Bombay), that where a federation of trade unions is not registered it is not a trade union under the Act. It is not a juristic person and is not competent to raise a demand on behalf of employees which can fall in the ambit of industrial dispute. It cannot file a writ petition.

Section-2 : Appropriate Government-The expression 'Appropriate Government' has been defined in relation the object of the TradeUnion. In relation to aTrade Union, whose objects are not confined to one State the 'Appropriate Government' is the Central Government. In relation to all other Trade Unions the State Government is the Appropriate Government.

Section 2(a) — (a) "Executive" means the body, by whatever name called, to which the management of the affairs of a Trade Union is entrusted;

The literal meaning of the'executive'is an individual or group constitutes the agency that controls or directs an organization. The sense with which the word 'executive' has been used in the Act is almost similar. It is defined as the body by whatever name called to which the management of the affairs of a trade union is entrusted. The executive of a trade union is an elected body when in fact formulates the policy of the trade union.

Where the executive committee of the Union constituted for 'management of the Union, and execution of its policy' resolved to espouse the cause of an individual employee it was held in the case of **M. L. Garg v. Labor Court, Meerut**, 1970 Lab, I.C. 522(All.), that the objects of the committee are wide enough to cover this resolution.

Section-(b) "Office-bearer", in the case of a Trade Union, includes any member of the executive thereof, but does not include an auditor;

In other words, an executive is composed of all the office-bearers excepting the auditor of trade union. Office-bearers are distinctly designated entitles of a trade union whereas an executive is a much of elected members of the trade union including secretary of a trade union can legally represent the interest of the workmen composing the union.

Section2(c)"Prescribed"means prescribed by regulations made under this Act;

Section 2(d) "Registered office" means that office of a Trade Union which is registered under this Act as the head office thereof;

Section2(e)“RegisteredTradeUnion”meansaTradeUnionregisteredunderthis Act;

Section 2(f) “Registrar” means —

(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 ;

Section 2(g) : Trade Dispute — "trade dispute" means any dispute between employers and workmen or between workmen and workmen, or between employers and employers which is connected with the employment or non-employment, or the terms of employment or 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.

The expression "Trade Dispute" has been defined in the first part of Section 2(g) of this Act in relation to parties and the nature of the dispute —

(1) Trade Dispute —

(a) Between employer and workmen; or

(b) Between work men and workmen; or

(c) Between employers and employers.

(2) Any such dispute must be connected with-

(i) The employment; or

(ii) non-employment;

or

(iii) the terms of employment; or

(iv) condition of labour, of any person.

The definition of 'Trade Dispute' is almost identical with the definition of "Industrial Dispute" in the I. D. Act. For a trade dispute it is necessary that there must be some difference between the parties as aforesaid that is, a demand from one party and refusal to accept those demands by the other party. There can be no dispute by the unilateral action of one party; which means the demand must be communicated to the other party.

It has been held in the case of ***C. P. Sarathy v. State of Madras***, AIR 1951 Mad. 191,that no trade dispute can be said to have arisen unless an opportunity to the other party is given to express any view or indicate any positive or negative relation thereto.

Further it has been held in the case of ***Workmen of D.T.E. v. Management of D.T.E.***,AIR 1958 S.C. 353 that the dispute must be real and substantial between the parties to such dispute. Unless parties to the dispute have a direct or substantial interest in the employment, non-employment, or conditions of labour of the person regarding whom the dispute is raised, it cannot be said to be a real and substantial dispute between them.

Workman : The later part of section 2(g) of this Act defines "workmen" as follows —

"Workman"means all persons employed in trade or industry whether or not in the Employment of the employer with whom the Trade Dispute arises. This definition has two ingredients:

(1) "Workman"means all persons employed in trade or industry.

(2) Itisimmaterialthatthepersonsemployedinatradeorindustryisnotinthe employment of the employer with whom the Trade Dispute arises.

The word “trade” has not been defined in the Act. So also the word “industry” although not defined in this Act, is defined in section 2(j) of the Industrial Disputes Act. Industry may be said to be an activity systematically or habitually undertaken for the production or distribution of goods or for rendering of material services to the community at large or part of such community with the help of the employees. In ***StateofBombayv.Hospital Mazdoor Sabha***, AIR 1960 SC 610,

It has been observed that industrial activity involves the cooperation of the employer and the employees and its object is the satisfaction of material human needs. The definition of "workmen" embraces in it a dismissed, discharged, removed or retrenched employee also. Further,the employerwithwhomthedisputearisesorunderadifferentemployerconnected with whom the dispute arises or under a different employer connected with the same or similar industry.

Registration of trade unions

The Trade Union are mass organizations of workers or employers formed voluntarily for collective bargaining of better terms and conditions of service or employment or for imposing restrictive conditions on the conduct of any trade, business or industry through concerted action and for peaceful and harmonious industrial relations.The Trade Unions Act introduces a voluntary system of registration of Unions.

Section 3. **Appointment of Registrars —** The whole process of registration is finalised by the Registrar of the Trade Unions. Section 3(1) of the Act not only authorizes the appropriate Government to appoint the Registrar but it places the appropriate Government under a statutory duty to appoint a person to be the Registrar of Trade Unions for Additional and Deputy Registrars as the appropriate Government thinks fit. They shall work under the superintendence and specify and define the local limits within which any Additional or Deputy Registrar shall exercise and discharge his powers and functions. It has been further providedundersub-section(3)ofSection3thatsubjecttotheprovisionsofthesub-section
(2) where an Additional or Deputy Registrar exercises and discharges the powers and functions of a Registrar in an area within which the registered office of a Trade Union is situated, the Additional or Deputy Registrar shall be deemed to be Registrar in relation to the Trade Union for the purposes of this Act.

The Additional and Deputy Registrar are appointed where the Registrar is unable to exercise and discharge the powers and functions due to excessive work load. In such situation the appropriate Government appoints these officers to function under the superintendence and direction of the Registrar and demarcate local limits and also specify powers and functions assigned to them. It has been further provided under sub-section (3) of Section 3 that subject to the provisions of the sub-section (2) where an Additional or Deputy Registrar exercise and discharge the power and functions of a Registrar in an area within the registered office of a Trade Union is situated, the Additional or Deputy Registrar shall be deemed to be Registrar in relation to the Trade union for the purpose of this Act.

Section4.**ModeofRegistration —**A Trade Union may be a registered, unregistered or a rercognised Trade Union. There is basic distinction between these different Trade Unions. The members of a recognized and registered Trade Union enjoy such benefits as the members of an unregistered Trade Union do not.

Section 4 of the Trade Unions Act provides for the mode or procedure of registration of a Trade Union. It says, "any seven or more members of a Trade Union may, by subscribing their names to the rules of the Trade Union and by otherwise complying with the provisions of this Act with respect to registration, apply for registration of the Trade Union under this Act."

By Act 31 0f 2001 w.e.f. 9-1-2002, provided that no Trade Union of workmen shall be regis-tered unless at least ten percent or one hundred of the workmen, whichever is less, engaged or employed in the establishment or industry with which it is connected are the members of such Trade Union on the date of making of application for registration:

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

This provision makes it clear that an application for registration of a Trade union must be moved at least by seven members. But it is not necessary that this minimum number of members must remain in fact until the Trade Union is finally registered. The provision is expressly made to cover such contingency under the provisions of Section 4(2) of the Trade Unions Act which provides that where an application has been made 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 persons who made the application, have ceased to be the members of the Trade Union or have given notice in writing to the Registrar disassociating themselves from the application
. The word 'members' used in Section 4 of the Trade Unions Act, means that before an application for registration is signed by a particular person he must have been admitted to the trade union in accordance with the rules for admission. A person becomes a member as soon as his application is accepted and he complies with the rules as to admission. Normally, these rules include the payment of an entrance fee and contributions.

It may be pointed out that persons under the age of fifteen years cannot members of a trade union. It has been expressly provided that any person who has attained the age of fifteen years may be a member of a registered trade union subject to any rules of the Trade Union to contrary, and may, subject as aforesaid enjoy all the rights of a member and execute all instruments and give all acquaintances necessary to be executed or given under the rules.

So far as membership is concerned any person who has attained the age of fifteen years may become member in the trade union. However, he will be disqualified for being chosen as, and for being, a member of the executive or any other office bearer of a registered trade union, if he has not attained the age of eighteen years. Thus, an application for registration can be made by any seven or more members of a trade union subscribing their names to the rules of the trade union and by otherwise complying with the provisions of this Act with respect to registration.

But the proposed amendment in the existing provisions of Section 4 provides 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 with which the Trade Union is connected, the number of workmen engaged or employed in such establishment or such class of industry is more than one hundred, any such application shall be made by at least ten percent of the workmen so engaged or employed. Provided further 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, the number of workmen so engaged or employed immediately before the commencement of Part B of the Trade Unions and the Industrial Disputes (Amendment) Bill 1988 is more than one hundred, the certificate of registration in relation to such Trade Union shall be deemed to have been cancelled after six months from such commencement unless an application for the continuance of its registration is made by at least ten percent of such work-men before the said period of six months.

Section 5. **Application of Registration :**According to the provisions of the Act a Trade Union may become a registered Trade Union in the following manner :

(1) AnapplicationshouldbesenttotheRegistrarinwhichsevenormoremembersof such Union must subscribe names to the rules of the Trade Union.

(2) Theapplicationinform"A"shouldbeaccompaniedwithacopyofrulesoftheTrade Union and a statement of the following particulars, namely-

(a) The names, occupations and addresses of members making the application;

(aa) In the case of aTrade Union of workmen,the names,occupations and address of the place of work of the members of the Trade Union making the application;

(b) The name of the Trade Union and the address of its Head Office; and

(c) Thetitles,names,ages,addresses and occupations of officers of the Trade Union.

(3) A general statement of the assets and liabilities of the Trade Union prepared in the prescribed form and containing such particulars as may be required should be sent with the application to the Registrar where a Trade Union has been in existence for more than one year before the making of an application for its registration.

Thus according to Section 5(1) of the Trade Union Act, the above particulars are necessary to be furnished to the Registrar by the newly established Trade Union but where a Trade Union has been in existence for more than one year before the making of an application for its registration, Section 5(2) of the Trade Unions Act makes it imperative to submit a general statement of the assets and liabilities of the Trade Union prepared in such form and containing such particulars as may be prescribed, together with the application.The object of this provision is to make it known to the public and its members, the financial condition and stability of the Trade Union.

Section 6. **Contents of the copy of rules :**As mentioned above, every application for registration of Trade Union shall be accompanied by a copy of the rules of the Trade Union relating to objects, payment of subscription, procedure to amend the rules and manner of dissolution of the Trade Unions. In the absence of such rules, no Trade Union shall be entitled to registration under this Act, unless the Executive thereof, is constituted in accordance with the provisions of this Act, and the rules thereof provide for the following matters, namely-

(a) The name of the Trade Union;

(b) The whole of the objects for which the general funds of the Trade Union shall be applicable which must be permissible under this Act;

(c) The whole of the purposes for which the general funds of the Trade Union shall applicable which must be permissible under this Act;

(d) The maintenance of a list of the Trade Union and adequate facilities for the inspection of such list 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 any 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 Section22 to form the executive of the Trade Union;

(ee)The payment of a subscription by members of Trade Union which shall be not 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 State Government, and annual audit, in such manner

as may be prescribed, of the accounts thereof and adequate facilities for the inspection of the accounts-book by the office hearers and members of the Trade Union; and

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

It may be indicated that Section 21-A expressly provides that a person shall be disqualified for being chosen as, and for being a member of the executive or any other office bearer of a registered union, if

(i) He has not attained the age of eighteen 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.

It is required that not less than one-half of the total number of the office bearers of every registered trade union must be persons actually engaged or employed in an industry with which the trade union is connected. However, the appropriate Government may, by special or general order, declare that this provision shall not apply to any trade union or class of trade unions specified in the order.

In ***M. T. Chandersenan v. Sukumaran***, AIR 1974 SC 1759, it was held that if subscriptions are not paid in accordance with the bye-law of the Trade union, persons who have failed to pay cannot be considered as members of the Union. But subscriptions should not be refused under some pretext which results in denial of membership.

It was held by the Supreme Court in ***Bokajan Cement Corporation Employees Union v. Cement Corporation of India Ltd.***, (2004) I LLJ 197 (SC), that an employee would not automatically ceased to be a member of the Trade Union on termination of his employment be-cause there was no such provision either in Trade union Act or in the constitution of the union.

In ***Indian Oxygen Ltd. v. Their Workmen***, AIR 1969 SC 306, the dispute regarding workmen of one factory represented by their Union and company was referred to the Tribunal. The membership of the Union was limited to workmen of that factory. It was alleged the Constitution of the Union was amended so as to embrace workmen of other factories of the company and the name of the Union was changed before reference. But the amendment was not effected according to the provisions of the Act.It was held that award of the Tribunal could not extend to workmen of other factories.

Section 7. **Power to call for further particulars and to require alteration of name :**After an application for registration is made and a copy of rules is submitted with the application, it is not obligatory on the part of Registrar to register the Trade Union, if in his opinion, there is noncompliance of rules contained in this Act. In such cases the Registrar is empowered to call for further information under section 7(1) of the Trade Unions Act, for the purpose of satisfying himself that any application complies with provisions of Section 5, or that the Trade Union is entitled to registration under Section 6, and may refuse to register the Trade union until such information is supplied. Furthermore, if the name under which a Trade Union is proposed to be registered is identical with that by which any other existing Trade Union has been registered or, in the opinion of the Registrar, so nearly resembles such name as to be likely to deceive the public or the members of either Trade Union, the Registrar shall require the persons applying for registration to alter the name of theTrade

Union stated in the application, and shall refuse to register the union until such alteration has been made.

In other words, it is the duty of the Registrar to ensure that the provisions of this Act pertaining to registration have been duly complied with. If in his opinion there is any lacuna, the Registrar may take all proper steps to remove it before registration is affected. The Registrar is entitled to call

for evidence that the application for registration has been duly authorized by the members of the Union, if he has reason to believe that the applicants have not been duly authorized to make the application. Unless and until there is full compliance of the pertinent provisions of the Trade Unions Act, the Registrar is under statutory duty to refuse to register the Union. Only an existing Trade Union can be registered, not a prospective one.

In ***Tata Workers Union v. State of Jharkhand and another***, (2002) III LLJ 474 (Jharkhand),there were two rival groups of Union.The Registrar of Trade Union by an order took a decision to supervise the election of officer bearers to the petitioner Union. This order was challenged and the High Court held that the Registrar could not intervene in the matter of holding election of office bearers of a registered Trade Union.

Section 8. **Registration :**Section 8 of the Trade Union Act, 1926, provides that the Registrar on being satisfied that the Trade Union has complied with all the requirements of this Act, in regard to registration, shall register the Trade Union by entering in a register to be maintained in such form as may be prescribed, the particulars relating to the Trade Union contained in the statement accompanying the application for registration.

The workmen of an industrial establishment can form as many Unions as they like. There is nothing in the Act that bars the formation of rival Unions or requires a Union applying for registration to give notice to all existing Unions. When a Union seeks registration, all that it has to do is to ensure that the provisions of the Act, Rules and Regulations made there under relating to registration of Trade Union have been complied with.

It was held in ***A.C.C. Rajanka Lime Stone Quarried Mozdoor Union v. The Registrar of Trade Unions, Government of Bihar***, AIR 1958 Pat. 470, that Section 8 imposes the statutory duty upon the Registrar to register the Trade Union on being satisfied that it has com-plied with all the requirements of this Act. Where therefore no action is taken under Section 7 or Section 8 on an application for registration of the Trade Union for more than 3 months and it is merely kept pending, there is cause for issue of writ under Article 226 of the Constitution of India commanding the Registrar of Trade Unions to perform statutory duty imposed upon him under Section 7 and 8 and to deal with law the application in accordance with law and as promptly as possible.

The amendment Bill, 1988 under its clause 6 seeks to insert the expression "register the trade union within sixty days after the receipt of the application thereof". Therefore after the operation of the amendment the Registrar would be under statutory duty to register the trade union within sixty days from the date of its receipt. It would fasten the process of registration and unnecessary delay would be avoided.

In ***Chemosyn (P) Ltd. & others v. Kerala Medical and Sales Representatives Association***, (1988) II LLJ 43 (Kerala), it was held that the Registrar of Trade Union registered under the Act is not a statutory body. It is not created by statute or incorporated in accordance with the provisions of a statute. The activities of the Trade Union are not closely related to Governmental functions and are not of public importance. Therefore a Trade Union is not amenable to writ jurisdiction as it is not covered by “other authorities” in Article 12 of the Constitution.

The scope of the powers of the Registrar of the Trade Unions under Section 8 and 28 of the Act was discussed in ***ONGC Workmen’s Association v. State of West Bengal***, (1988) II LLJ(Cal.), it has been held that it is beyond any doubt that the Registrar of the Trade Unions

has no quasi judicial authority to hold any enquiry by allowing parties to examine witnesses and to decide the dispute as to who are the real office-bearers. In the instant case, in the conduct of an administrative enquiry there are certain obvious irregularities. Areal enquiry is needed and a

show enquiry does not serve any purpose. Under any jurisprudence an enquiry must be held in the presence of both the parties. Anything done behind one's is likely to raise suspicions and doubts. The impugned order appears to be inherently defective in form and on merit. Accordingly impugned order was quashed. To avoid the chaos in running the union work and in the interest of everybody, the court appointed Registrar of the trade unions as a special officer to conduct the election afresh of the office-bearers of ONGC Workmen's Association within two months complying all formalities of the election.

In ***North Eastern Railway Employees Union v. Third Additional District Judge***, (1988) II LLJ 332 (SC), the Supreme Court has held that the Registrar of Trade Unions is the authority charged with the duty of administering the provisions of the Trade Unions Act. High Court cannot designate the General Manager, North Eastern Railway as an authority to hold the elections. Directions of the High Court modified and the election will be held under the supervision of the Registrar of Trade Unions or by an officer designated by him for this purpose.

Section 9. **Certificate of Registration :**This certificate is an end to the process of registration. When the Trade Union is registered in accordance with law by the Registrar, a certificate is issued in the prescribed form the applicant concerned as a proof that a particular union has been registered after due compliance of the provision of this Act in regard to registration.

Certificate is issued in the following prescribed form to the applicant concerned as a proof that a particular Union has been registered.

No……..

It is hereby certified that the(Name of theTrade Union)has been registered under the Trade union Act, 1926, this day of ……20……

(Seal)
Signature

Registrar of Trade Unions.

Section 9 also imposes statutory duty upon the Registrar to issue the certificate of registration which shall be conclusive evidence that the Trade Union has been duly registered under this Act. He cannot refuse to sue such certificate.

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

Section 10. **Cancellation of Registration :**As a registration certificate is issued by the Registrar of Trade Unions, it may also be withdrawn or cancelled by the Registrar, under the provisions of the Trade Unions Act. According Section 10 of the Trade Unions Act, a certificate of registration of a Trade Union may be withdrawn or cancelled by the Registrar in one of the following two ways;

1) **On the application of Trade Union :**When the members of a Trade Union themselves do not want their Trade Union to remain registered Trade Union any longer, for any reasons better known to them,they may file an application to be verified in such manner

as may be prescribed showing their intention that its registration be cancelled and in such an event the Registrar is empowered to cancel the registration.

2) **At the will of the Registration :**It is the Registrar of Trade Unions on whose satisfaction the certificate of registration is issued to the Trade Union. If the Registrar does not remain satisfied in positive direction but he is satisfied in the negative direction, he may withdraw or

Cancel the certificate of registration on any one of the following grounds :

a) That the certificate has been obtained by fraud or mistake;or

b) That the Trade Union has ceased to exist;or

c) ThattheTradeUnionhaswillfullyandafternoticefromtheregistrarcontravenedany provision of the Trade Unions Act; or

d) That the Trade Union has allowed any rule to continue in force which is in consistent with any such provision contained in the Trade unions Act; or

e) That the Trade Union concerned has rescinded any rule providing for any matter, provision for which is required by Section 6 of the Trade Unions Act, such as manner of appointment and removal of the executive and other office-bearers of the Trade Union, the manner of dissolution of the Trade Union etc.

The Amendment Bill, 1988 seeks to add one more ground in Section 10(b). It provides that if a trade union of workmen indulges in a strike which is illegal under section 24 of the industrial Relations Act, 1947 the registration certificate may be cancelled or withdrawn. It has been further provided that no certificate of registration of a trade union shall be withdrawn or cancelled on the above ground if an appeal against an order declaring a strike as illegal is pending. However Bill could not become Act.

When a certificate of registration of a Trade Union is cancelled or withdrawn by the Registrar on any one of the aforementioned grounds not less than two months previous notice in writing specifying the ground on which it is proposed to withdraw or cancel the certificate shall be given by the Registrar to the Trade Union before the certificate is withdrawn or cancelled otherwise than on the application of the Trade Union.

It was held in ***Tata Electric Companies Officer Guild v. Registrar of Trade Unions, Bombay***, (1994) I LLJ 125 (Bom), that for cancellation of registration of a Trade union willful contravention of provision of the Act is necessary. Therefore where a Trade Union did not file return due to misunderstanding of accounting year and the return was filed soon after receipt of show cause notice from the Registrar, the cancellation of registration on the ground of non-filing of return was held improper.

In ***Tirumala Tirupati Devasthanam v. Commissioner of Labor and others***, 1996 S.C.C. (L&S) 97-98, wherein Tirumala Tirupati Devasthanam employees working in Power & Water Works Wings of the appellant -Devasthanam applied for registration of their association under the Trade Unions Act, 1926, the application was allowed. However, thereafter the Devasthanam made an application under section 10 of the Act for cancellation of the registration of the Trade Union. The Registrar rejected the application. In appeal, the High Court went into the question as to whether two said wings were industry and came to the conclusion that they were industry and therefore, held that certificate granted was not liable to be cancelled.

Before the Supreme Court, appellants contended that since the said wings of the appellant were not an industry, no union of the employees working in them could have been registered as a trade union under the Act. Supreme Court held that “it would be apparent form the definition of the trade union under the Act that any group of employees which comes together primarily for the purpose of regulating the relations between them and the employer orbetweenthemandtheotherworkmenmayberegisteredasatradeunionundertheAct.It

cannot be disputed that the relation-ship 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."

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Section 11. **Provisions pertaining in appeal :**It is the practice of every legislation to provide for judicial control over the exercise of powers and functions by the executive authority. The Trade Unions Act also contains for judicial review of the functions performed by the Registrar of Trade Unions. The Trade Unions Act, makes provision that any such person aggrieved by order of the Registrar has right to appeal within such period as may be prescribed, in the Court of competent jurisdiction against the order of the Registrar. The following orders are appealable :

a) Any refusal of the Registrar to register a Trade Union; or

b) Withdrawal of the registration certificate;or

c) Cancellation of the registration certificate.

Under the above-mentioned provision there is only one restriction on the exercise of the right to appeal. The restriction is that only such person is entitled to appeal whose rights and interests are affected by the order of the Registrar. The word 'person' under this section includes natural as well as artificial person for the purposes of filing a suit against the order of the Registrar. Therefore, any Trade Union can also exercise this right in the event of withdrawal or cancellation of the registration certificate by the Registrar of Trade union and before the registration of Trade Union, any member thereof can exercise this right.

Jurisdiction of the Court, Section 11 : The expression "High Court" used in section 11, of the Trade Unions Act, means and includes the High Court in its original as well as appellate jurisdiction. The appeal shall be made :—

(a) Where the head office of the Trade Union is situated within the limits of a Presidency town to the High Court; or

(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.

(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 that area.

The appellate Court may dismiss the appeal or pass an order directing the Registrar to register the Union and to issue a certificate of registration. It may also set aside the order for withdrawal of cancelled of certificate. The Registrar shall comply with any such order passed by the appellate Court.

Section-12. **Registered Office :**All communication and notices to a registered Trade Union may be addressed to its registered office. Notice of any change in the address of the head office shall be given within fourteen days of such change to the Registrar in writing. The change in address shall be recorded in the register referred to in Section 8 of the Act.

Section 13. **Incorporation of registered Trade Union :**A Trade Union after registration becomes entitled to the following advantages:

(a) It becomes a body corporate by the name under which it is registered.

(b) It goes perpetual succession and common seal,

(c) It can acquire and hold both movable and immovable property,

(d) It can contract through agent,

(e) It can sue and be sued in it registered name.

A non registered Trade Union could not be sued inTort by suing a member thereof in a repre-

sentative capacity. The proper course in such a case was to sue a member for any cause of action that lay against that member and it was not intended anywhere that such a suit, would in any way be improper. Therefore an unregistered Trade union is only a voluntary association of individuals having no corporate existence. It is not a legal entity. An unregistered Trade Union cannot be sued and any appearance of officials on its behalf before the Court is not right. Therefore any person aggrieved by a wrong committed by the members of such a Union should bring an action against all persons personally who were members of the Union at the time of the commission of alleged wrong; or in case the members are in a large number, leave to sue them through a few to represent them may be obtained under the Civil Procedure Code provided they have common interest in resisting the claim.

Right and Liabilities of Registered Trade Unions

In order to encourage registration a legal status was given to registered unions, conferring certain powers and advantages. The Trade Unions Act, 1926, grants legal personality, authority to spend funds on trade disputes for accomplishing its objectives, protections from criminal prosecutions, immunity from civil actions and validity to the agreements between its members from the challenge that its objects are in restraint of trade. Thus the Trade Unions after registration under the provisions of this Act are granted various rights so that they may be able to take appropriate actions for the attainment of objectives for which they have been formed.

Rights of registered Trade Unions under the Trade Unions Act, 1926 : The registered Trade Unions have been granted following rights under the different provisions of the Trade Unions Act, 1926 —

(1) Rightsgrantedtoitasalegalperson-AregisteredTradeUnionbecomesalegalperson by the name under which it is registered and as such it has;

(i) Right to have a common seal in its own name;

(ii) Right to acquire, bold and dispose of both movable and immovable property in its own name; In ***State Bank of India Officers' Association v. Commissioner of Wealth Tax*** (1986) II LLJ 267 the High Court of Madras held that a registered Trade Union is an "Individual" as envisage by Wealth Tax, and liable to pay wealth tax.

(iii) Right to contract in its own name;

(iv) Right to sue for any infringement of its rights whatsoever. Any aggrieved party may also sue if in its name.

It may be pointed out that these rights are very significant.Unless theTrade Union has power or competence to enforce its rights by its own name, rights become meaningless.

In ***Chemosyn Pvt. Ltd. and others v. Kerala Medical and Sales Representative Association***(1988) II LLJ43(Kerala), the question for consideration was whether a trade union, registered under Trade Union Act, is amenable to Writ Jurisdiction under Article 226 oftheCon-stitutionofIndia.Itwasheldthatapplyingthetestsathatarewellestablishedit canbeseenthatatradeunionregisteredundertheTradeUnionActisneitheran instrumentalitynoranagencyoftheStatedischargingpublicfunctionsorpublicduties. Therefore,theTrade Union is not amenable to writ jurisdiction under Article226 of the Constitution.

(2) **Right of spend General Funds :**No organization can function efficiently without funds. The Trade Unions Act makes provisions for the Constitution of general as well as political funds. However, the Act puts certain restrictions on the Trade Union in regard to utilisation of these funds. Section 15 of the Act is in the form of general restraint against expenditure of the general funds of a Trade Union. The Trade Unions have authority to spend general funds only for the

Following objects, namely—

(a) The payments of salaries,allowances and expenses to office-bearers of theTrade Union;

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

(c) the prosecution or defence of any legal proceeding to which the Trade Union or nay member of the Trade Union 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. Thus the general funds may be spent for the prosecution or defence of any legal proceeding only when the Trade Union as such or any member of the Trade Union is a party and such prosecution or defence is undertaken for the purpose of securing or protecting anyrightsoftheTradeUnionassuchoranyrightsarisingoutoftherelationsofanymember with his employer.

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

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

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

(g) theissueof,orunderpoliciesinsuringmembersagainstsickness,accidentor unemployment;

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

(i) theupkeepofaperiodicalpublishedmainlyforthepurposeofdiscussingquestions affecting employers or workmen as such;

(j) the payment, in furtherance of any of the objects on which general funds of the Trade Union may be spent, of 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 up to that time accrued to the general funds of theTrade Union during that year and of the balance at the credit of those funds at e commencement of that year;

(k) the general funds of the Trade Union may be spent on any other object notified by the appropriate Government in the Official Gazette subject to any condition laid down in such notification.

Thus it will be illegal to spend the Union funds for any purpose other than those stated above. It is illegal to devote Union funds in support of an illegal strike or lockout and a Union can be restrained by injunction from applying its funds for any unlawful purpose, because such expenditure shall be ultra vires of the Act.

In ***Gross v. British Iron Steel and Kindered Trade Association***, (1968) Lab. I.C. 1626 (C.A.), a member of aTrade Union was injured by an accident, the particulars of which were supplied to the Secretary of the Union. Papers were forwarded by the Secretary to the legal adviser of the Union. The solicitor was of the opinion that there was no legal cause of action against employer.The legal advice was communicated to the injured workman and was also

accepted by him. But when the period of limitation for claiming damages expired the member brought an action against the Union for failure to exercise proper care and diligence in pursuing his claim. It was held that the Union was not liable. The court pointing out the duties of the Trade Union towards its members observed that, “if the solicitor of the Union had advised that further inquiries should be made or that an action should be brought, the Union would have been under a duty to

act accordingly. But in absence of any such direction from the Solicitor, the Union had fulfilled its duty by providing legal assistance which was adverse to claim.

In ***Mario Raposo v. H.M. Bhandarkar and others*** (1994) 2 Lab. L.J. 680 (Bom), the petitioner as well as the respondents were members of a Union Called V.C.O. Bank Employees' Association Nagpur. The office bearers of the union purchased shares of U.T.I. in their individual names out of the Union General Fund. It was held that purchase of shares cannot be termed as investment under section 15 of the Act but is a speculative activity. Section 15 of the Act does not allow to spend the fund of the union on speculative activity.

(3) **Right to constitute a separate Political Fund :**As indicated above, the general funds of the Trade Union cannot be spent for any objects other than expressly mentioned in Section 15 of the Act and the political objects are not mentioned therein. Section 16 provides that a registered Trade Union may constitute a separate fund from contributions separately levied for or made to that fund. All expenditure of the funds in furtherance of political objects is prohibited, whether direct or indirect. If the registered Trade Union decides to carry out political objects it has authority to constitute a separate political fund for such activities from contribution separately levied for or made to that fund. From this fund payment may be made for the promotion of the civil and political interest of its members. Thus the political fund is a fund constituted separately by the Trade Union by way of separate levy on members of the Trade Union for the promotion of civil and political interests of the members of the Trade Union.

This political fund may be applied in furtherance of the following objects :

(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 such as Lok Sabha, Vichan Sabha, etc. 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 support of any such candidate; or

(c) the maintenance of any person who is member of any legislative body constituted under the Constitution or of any local authority; or

(d) theregistrationofelectorsoftheselectionofacandidateforanylegislativebody constituted under the Constitution or for any local authority; or

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

It has to be borne in mind that no member shall be compelled to contribute to the political fund. Any member who does not contribute to the political fund of the Union shall not be excluded from any benefits of the Trade Union, who have contributed to political fund. In other words no discrimination on the ground of a member having contributed or not to the political funds of the Trade union shall be made. Further, contribution to the political funds of the Trade Union shall be made. Further, contribution to the political fund cannot be madea condition for admission of a person to the Trade Union. However, the control of management of the political funds can exclusively be vested in the hands of only those memberswhohavecontributedtopoliticalfunds.Non-contributiondiesnotrenderaq

Member ineligible for any office involving control or management but such aright cannot be pressed.

(4) Section 23. **Right to change its name :**Any registered trade Union may, with the consent of not less than two-third of the total number of its members and subject to the provisions of Section 25 change its name. Section 25(1) of the Act requires that notice in writing of every

change of name signed by secretary and seven members of the Trade Union changing its name shall be sent to Registrar. The registrar shall, if he satisfied that the provisions of this Act in respect of change of name have been complied with, register the change of name inthe register referred to in Section-8. The change of name shall have effect from the date of such registration. Section 7(2) of the Act provides that no Trade Union shall be registered under the name identical with the name of any other existing Trade Union.

(5) Section 24. **Right to amalgamate :**The method for amalgamation of two or more Unions is provided for in section 24 of the Act. Any two or more registered Trade unions may become amalgamated together as one Trade Union with or without dissolution or division of the funds of such Trade Unions or either or any of them, provided that the votes of at least one half of the members of each or every such Trade Union entitled to vote are recorded, and that at least sixty percent of the votes recorded are in favour of the proposal of the amalgamation.

Thus the registered Trade Unions have rights to amalgamate. If the Trade Unions amalgamate, it is not necessary that there must be dissolution or division of funds of such Trade unions. They may amalgamate without dissolution or division of funds of such Trade Unions. But it is necessary that the votes of at least one-half of the members of each orevery such Trade Union entitled to vote are recorded and at least 60 per cent of votes so recorded are in favour of the proposed amalgamation.

Section 25, of the Act required that notice in writing of every amalgamation signed by the secretary and by seven members of each and every Trade Union which is a party thereto shall be sent to Registrar. An amalgamation shall have effect only after it has been registered. The amalgamation may be declared invalid on the ground that the votes of fifty per cent of the members had not been recorded.

(6) Section 26(1). **Effect of change of name :**Section 26 of the Act provides that the change in the name of a registered Trade Union shall not affect any rights or obligations of the Trade Union. It shall also not render ineffective any legal proceeding by or against the Trade Union. Any legal proceeding which might have been continued or commenced by or against a Trade Union by its former name may be continued or commenced by or against its new name.

(7) **Dissolution :**Section 27 of the Act provides that when a registered Trade Union isdis-solved, notice of the dissolution signed by seven members and by the Secretary of the Trade Union shall, within fourteen days of the dissolution, be sent to the Registrar. If the Registrar is satisfied that the dissolution, has been effected in accordance with rules of the Trade Union, the notice shall then be registered. The dissolution of a registered Trade Union shall have effect after registration of the notice.

Where the dissolution of a registered and the rules of a Trade Union do not provide forthe distribution of funds of the Trade Union on dissolution, the Registrar shall divide the funds amongst the members in such manner as may prescribed.

Rights of Trade Unions in respect of Industrial matter : In addition to rights of a registered Trade Union as granted under the different provisions of the Trade Unions Act, 1926, the Trade Unions have certain general rights in respect of industrial matters which are exercised with a view to provide safety,protection and safeguards to its members and for the

well-being of the working class. Labour Unions have got the following important rights of representation and taking action on behalf of the workmen :

(a) Rightofrepresentationoflabourbeforeemployer,inworkscommittees,before conciliation, mediation and in arbitrations, before courts and tribunals or labour departments;

(b) Right to negotiate and settle the disputes with the employers and sign the settlement and execute them;

(c) Right to hold meetings,conference,post their notices or inspect the places where the members are employed for work;

(d) Right to accept services ,summons,etc.;

(e) Right to perform other formalities,e.g.attestation of agreements;

(f) Right to obtain legal aid;

(g) Right to collect fees on employer's premises;

(h) Right to stage demonstrations and strikes.This is not an absolute or fundamental right, but a common law rigid, hence it is subject to laws regulating the strikes. However, this is most important right in the armoury of labour.

Liabilities and Duties of a registered Trade Union: The Trade Union Act imposes following liabilities and duties on the unions registered under this Act —

(1) Duty to make provisions in the rules of certain matters enumerated in Section 6 of the Act —The Constitution of the Trade Union must provide for the matters enumerated in Section 6 of the Trade Unions Act, 1926. Section 6 contains matters in respect of which the Trade Union must provide within its rules. Some of which are rules declaring the objects for which the Trade Union has been established, the purposes on which general funds of the Trade Union may be spent, admission of members to the Trade Union, the manner in which the Trade Union may be dissolved, etc.

(2) Duty to constitute executive as contained in Section 21-A of the Act — It is under duty to constitute the executive of the Trade union in accordance with the provisions of this Act. The provisions relating to the constitution of executive of the Trade Union are contained in Section 21-A and 22 of the Act. There are two duties imposed by the provisions of the Act as conditions precedent to the process of registration. Unless these duties are complied with, the Registrar is empowered to refuse to register the proposed Trade Union.

(3) Duty to spend general funds in accordance with Section 15 of the Act — The Trade Union is under statutory duty to spend general funds of the Trade Union in accordance with Section 15 of the Act which enumerates certain specified objects on which only the general funds can be spent and not otherwise.

(4) DutytoconstituteaseparatepoliticalfundinaccordancewithSection16oftheAct — The Trade Union, if decides to promote civil and political interests of its members, has to constitute a separate fund commonly known as political fund in accordance with Section 16 of the Act and it may be spent on the objects specified therein.

(5) Duty to provide access to books of Trade Union for inspection by an office-bearer or member of the Trade Union — According to Section 20 the account books and list of members shall be kept open by a registered Trade Union for inspection by an office-bearer or member of the Trade Union at such times as may be provided for in the rules of the Trade Union.

(6) Duty to send notice to the Registrar in cases of every change of its name, every amalgamation, any change in the address of the head office and dissolution thereof.

The Trade Union is under duty to send notice to Registrar in cases of every change of its name Section 23, every amalgamation Section 24, any change in the address of the head office of Trade Union Section 12, and dissolution Section 146 thereof.

(7) Dutytofilereturns.Thestatementshallbepreparedinsuchformandshallcomprise such particulars as may be prescribed.

There shall be sent annually to the Registrar, on or before such date as may be prescribed, a general statement audited in the prescribed manner, of all receipt and expenditure of every regis-tered Trade union during the year ending on the 31st day of December, next preceding such prescribed date, and of the assets and liabilities of the Trade Union existing on the 31st day of December. The statement shall be prepared in such form and shall comprise such particulars as may be prescribed.

Together with the general statement there shall be send to the Registrar a statement showing all changes of office-bearers made by the Trade Union during the year to which the general statement refers, together also with a copy of the rules of the Trade union corrected up to the date of the despatch thereof to the Registrar.

The Trade Union is under duty to send a copy of every alteration made in the rules of a regis-tered Trade Union to the Registrar within 15 days of the making of the alteration Section 28.

Liabilities and immunities of registered Trade Union — The office-bearers of Trade Unions cannot perform their duties successfully,properly and efficiently in order tocarry out the mission of the Trade Union unless certain immunities are granted to the Trade Unions as such and to their officetts and members. The Act intended to legalise the Trade Unions andto provide immunities to them for the purpose to accomplish their lawful objectives. The Trade Unions Act contains following provisions in this regard.

(1) **Immunities form criminal liability —** Section 17 of the Act grants immunity from criminal liability to registered Trade Unions. It provides that "no office-bearer or member of a registered Trade Union shall be liable to punishment under sub-section (2) of Section 120-B of the Indian Penal Code, 1860, in respect of any agreement made between the members for the purpose of furthering any such object of the Trade Union as is specified in Section15, unless the agreement is an agreement to commit an offence."

The legal principles to be derived from the'Famous Triology' were formulated by ***Lord Cove in Sorrell v. Smith*** as follows —

i) A combination of two or more persons willfully to injure a man in his trade is unlawful, and if it results in damage to him, is actionable;

ii) If the real purpose of the combination is not to injure another, but to forward or defend the trade of those who enter into it, then no wrong is committed and no action will lie, although damage to another causes.

Section 120-A of the Indian Penal Code provides that two or more persons agree to do, or cause to be done, an illegal act or an act which is hot illegal by illegal by illegal means, such an agreement is designed a criminal conspiracy. Section 120-B(1) of the Indian Penal Code provide that whoever is a party to a criminal conspiracy to commit an offence punishable with death, imprisonment for life or rigorous imprisonment for a term of two years or upwards, shall where no excess provision is made in this code for the punishment of such a conspiracy, be punished in the same manner as if he had abetted such offence and Section 120-B(2) provides that whoever is party to a criminal conspiracy other than a criminal conspiracy to commit an offence punishable as aforesaid shall be punished with

imprisonment of either description for a term not exceeding 6 months, on with fine, or with both.

Thus Section 120-A of the Indian Penal Code defines the offence of Criminal conspiracy while Section 120-B provides punishment for such an offence. The Trade unions Act, 1926, in its Sec-

tion 17, exempts office-bearers or members of the registered Trade Union from liability for crimi-nal conspiracy as contemplated under section 120-B(2) of the India Penal Code. An agreement to commit an offence has been expressly excluded from the purview of Section17.

Jaya Engineering Works v. State of West Bengal, AIR Cal 407, is an interesting case a the point where in the Special Bench has held that the word'gherao'is a physical blockade of a target either by encirclement intended to blockage the egress and ingress from and to a particular office, workshop, factory or even residence or for civil occupation and that the blockade may be complete or partial and is invariably accompanied by wrongful restraint and/or wrongful confine-ment and occasionally accompanied by assault, criminal trespass, mischief to person and property, unlawful assembly and various other criminal offences. Some of the offences are cruel and inhuman, like confinement

in a small space without lights or fans and for long periods without food or communication with outside world. Such a 'gherao' to achieve their object invariably involves the commission of offences.

In ***IndianBankv.FederationofIndiaBankEmployeesUnion*** (1982) IILLJ123(Mad), it was held that some limited forms of peaceful demonstration even inside the premises of the factory or institution are permissible.

In ***West India Steel Company Ltd. v. Azeez*** (1990) 2 LLJ 133 (Kerala), it was held that a worker inside the factory is bound to the duties assigned to him. The mere fact that such worker is a Trade Union leader does not conferm on him only immunity in that regard.

(2) **Immunities from civil suits in certain cases —** Section 18 of the Trade Union Act deals with the immunity from civil proceedings afforded to a registered Trade Union, and to its members or office bearers. A person is liable in Torts for deliberately bringing about a breach of contract of employment between the employer and the employee. But a registered Trade Union, its members or office bearers are protected from being sued for inducing a person to break his contract of employment or for interfering with the trade, business or employment of some other person, provided such inducement is in contemplation or furtherance of a trade dispute.

The analysis of this provision would show that no suit or other legal proceeding is maintainable in any Civil Court for any act against (1) any registered Trade Union or (2) any office-bearer or (3) a member of the Trade Union provided such act has been done in contemplation or furtherance of a trade dispute and a member of the trade union is a party to that trade dispute if the ground is only that (a) such act induces some other person to break a contract of employment, or (b) that it is interference with the right of some other person to dispose of his capital or his labor as he desires.

Rohtas Industries Staff Union v. State of Bihar, AIR 1963 Pat. 170, is the leading case on this section. In this case the question for determination was, whether the employers have any right to claim damages against the employee participating in an illegal strike and there by causing loss of production and business. Held that employers have no right of civil action,for damages against the employees participating in an illegal strike within the meaning o section 24(1) of the Industrial Disputes Act.

In ***Ram Chandra Tripathi v. U.P. Public Service Tribunal IV and others***, 1994 SCC (L&S)1044,wherenon-stigmaticorderofterminationwaspassedagainstanemployeewho

was an office-bearer of a union and had allegedly raised demands on behalf of the employees. It was held that the order of terminated cannot ipso facto be treated as punitive. The appellant had poor service record and had suffered adverse entries.The order was passed without any stigma and in accordance with the service rules, therefore, it cannot be held to be illegal or invalid. However, keeping in view his advanced age and difficulty in getting suitable employment opportunity, while the impugned termination order is upheld the U.P. Jal Nigam is directed to pay an ex gratia sum of Rs. 75,000/- to the appellant, within a period of three months.

Section21A.Disqualificationsofoffice-bearersofTrade Unions.

Section 21A. **Disqualifications of office-bearers of Trade Unions—** (1) A person shall be disqualified for being chosen as, and for being, a member of the executive or any other office-bearer of a registered Trade Union if —

(i) He has not attained the age of eighteen years,

(ii) he has been convicted by a Court in India of any offence involving moral turpitude and sentenced,unless a period of five years has elapsed since his release.

(2) 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 (38of1964), has been convicted of any offence involving moral turpitude and sentenced to imprisonment, shall on the date of such commencement cease to be such member or office-bearer unless a period of five years has elapsed since his release before that date.

(3) In its application to the State of Jammu and Kashmir, reference in sub-section (2) to the commencement of the Indian Trade Unions (Amendment) Act, 1964 (38 of 1964), shall be construed as reference to the commencement of this Act in the said State.]

Section22.Proportionofoffice-bearerstobe 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 unrecognised sector shall be persons actually engaged or employed in an industry with which the Trade Union is connected : Provided that the appropriate Government may, by special or general order, declare that the provisions 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, "unorganised sector" means any sector which the appropriate Government may, by notification in the Official Gazette, specify.

(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 acutally engaged or employed in the establishment or industry with which the Trade Union is connected. Explanation.-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.

(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.)

Appeal

Section. 11. **Appeal :**(1) Any person aggrieved by any refusal of the Registrar to register a Trade Union or by the withdrawal or cancellation of a certificate of registration may,within such period as may be prescribed, appeal, —

(a) Where the head office of the Trade Union is situated within the limits of a Presidency- town, to the High Court, 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 that area.

(2) The appellate Court may dismiss the appeal, or pass an order directing the Registrar to register the Union and to issue a certificate of registration under the provisions of section9 or

Setting aside the order for withdrawal or cancellation of the certificate,as the case may be, and the Registrar shall comply with such order.

(3) For the purpose of an appeal under sub-section (1) an appellate Court shall, so far as may be, follow the same procedure and have the same powers as it follows and has when trying a suit under the Code of Civil Procedure, 1908 (5 of 1908), and may direct by whom the whole or any part of the costs of the appeal shall be paid, and such costs shall be recovered as if they had been awarded in a suit under the said Code.

(4) In the event of the dismissal of an appeal by any Court appointed under clause (b) of sub-section (1), the person aggrieved shall have a right of appeal to the High Court, and the High Court shall, for the purpose of such appeal, have all the powers of an appellate Court under sub-sections (2) and (3), and the provisions of those sub-sections shall apply accordingly.

Provision pertaining to appeal : It is practice of every legislation to provide for judicial control over the exercise of powers and functions by the executive authority. The Trade Unions Act also contains for judicial review of the functions performed by the Registrar of Trade unions. The Trade Unions Act under its Section 11 makes provision that any such person aggrieved by order of the Registrar has right to appeal within such period as may be prescribed in the Court of competent jurisdiction against the order of the Registrar. The following orders are appealable.

(a) Any refusal of the Registrar to register aTradeUnion; or

(b) Withdrawal of the registration certificate;or

(c) Cancellation of the registration certificate.

Under the above mentioned provision there is only one restriction on the exercise of the right to appeal. The restriction is that only such person is entitled to appeal whose rights and interests are affected by the order of the Registrar. The word ‘person’ under this section includes natural as well as artificial person for the purposes of filing a suit against the order of the Registrar. Therefore, any Trade Union can also exercise this right in the event of withdrawal or cancellation of the registration certificate by the Registrar of Trade Unions and before the registration of Trade Union, any member thereof can exercise this right.

Penalties and procedure

Like other labour legislations this Act also makes provisions for penalties in cases of failure to follow provisions of this Act, as it is necessary for the enforcement of the provisions of the Act. Chapter V of this Act deals with penalties imposes for default on the part of any registered Trade union in giving any notice as required under the provisions of this Act as discussed earlier or sending of any statement or other document required by or under any provision of this Act. The provisions in this regard may be discussed as under:

Section.31. **Failure to submit returns.**

1)If default is made on the part of any registered Trade Union in giving any notice or sending any statement or other document as required by or under any provision of this Act, every office-bearer or other person bound by the rules of the Trade Union to give or send the same, or, if there is no such office-bearer or person every member of the executive of the TradeUnion,shallbepunishable,withfinewhichmayextendtofiverupeesand,inthecase

Of a continuing default, with an additional fine which may extend to five rupees for each week after the first during which the default continues:

Provided that the aggregate fine shall not exceed fifty rupees.

The amendmend seek to enhance penalty from rupees five to rupees twenty-five.In proviso the

words“fivehundred”arebeingsubstituted.Thusthetotalfinemaybenowuptorupeesfive hundred instead of rupees fifty if the amendment is passed.

(2)Any person who wilfully makes, or causes 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 sent to the Registrar under that section,shall be punishable with fine which may extend to five hundred rupees.

Section.32.**SupplyingfalseinformationregardingTrade Unions**.

Any person who, with intent to deceive, gives to any member of a registered Trade Union or to any person intending or applying to become a member of such Trade Union any document purporting to be a copy of the rules of the Trade Union or of any alterations to the same which he knows, or has reason to believe, is not a correct copy of such rules or alterations as are for the time being in force, or any person who, with the like intent, gives a copy of any rules of an unregistered Trade Union to any person on the pretense that such rules are the rules of a registered Trade Union, shall be punishable with fine which may extend to two hundred rupees.

It would be appropriate to enhance penalty from rupees two hundred to rupees five hundred for supplying false information regarding trade union.

Section.33.Congnizance of offences.

(1)No Court inferior to that of a Presidency Magistrate or a Magistrate of the first class shall try any offence under this Act.

(2)No Court shall take cognizance of any offence under this Act, unless complaint there of has been made by, or with the previous sanction of, the Registrar or, in the case of an offence under section 32, by the person to whom the copy was given, within six months of the date on which the offence is alleged to have been committed.

THEEQUALREMUNERATIONACT, 1976

Introduction: Though Labour welfare enactment's have provided protections,safeguards and benefits to working women in our country, there was an emergent need to give more protection to female workers who are discriminated as regards employment and wages. In today's globalized era, women form an integral part of the Indian workforce. In such an environment, the quality of women's employment is very important and depends upon several factors. The foremost being equals access to education and other opportunities for skill development. This requires empowerment of women as well as creation of awareness among them about their legal rights and duties.

There are various reasons, why the employment of women has not been up to mark. In a developing country like India the income, by and large, is low but social conventions weigh against employment of women. Due to labour surplus the unemployment and under-employment problems, many men are available, hence, the problem of participation of women, economic activity becomes serious. Secondly, technological changes, fixation of minimum work load and standardization of wages, rationalization and mechanisation schemes and certain occupations being found hazardous, they have necessitated retrenchment of women workers. The economic reasons involving additional cost is an impediment to women employment. Some employers recruit unmarried women only on condition to resign their post on getting married. This has been discriminatory, unfair and unjust.

The entire world over the demand for equal remuneration against all types of discrimination is voiced by various organizations of women and by the I.L.O., I.C.T.U. It is appreciable that in England in 1970 the Equal pay Act was passed giving right to individual women to claim equal pay for similar work. In United States of America, the Equal Pay Act has been passed which came in to force in June 1963 which has helped in erasing wage discrepancies based on sex.

U.S.A. : Equal Pay Act of 1963 — The first attempt at equal pay legislation in the United States, “Prohibiting Discrimination in Pay on Account of Sex,” was introduced by Congress-woman Winifred C. Stanley of Buffalo, N.Y. on June 19, 1944. Twenty years later, Legislation passed by the Federal Government of the United States in 1963 made it illegal to pay men and women different wage rates for equal work on jobs that require equal skill, effort, and responsibility and are performed under similar working conditions. One year after passing the Equal Pay Act,Congress passed the1964CivilRightsAct.TitleVIIof this act makes it unlawful to discriminate based on a person's race, religion, color, or sex. Title VII attacks sex discrimination more broadly than the Equal Pay Act extending not only to wages but to compensation, terms, conditions or privileges of employment. Thus with the Equal Pay Act and Title VII, an employer cannot deny women equal pay for equal work; deny women transfers, promotions, or wage increases; manipulate job evaluations to relegate women's pay; or intentionally segregate men and women into jobs according to their gender.

U.K. : Equal Pay Act 1970 is an Act of the United Kingdom Parliament which prohibits any less favourable treatment between men and women in term of pay and conditions of

employment. The Equal Pay Act was repealed but its substantive provisions were replicated in the Equality Act 2010.

The Equality Act 2010 is an Act of Parliament of the United Kingdom, and has the same goals as the four major EU Equal Treatment Directives, whose provisions it mirrors and implements.

The primary purpose of the Act is to codify the complicated and numerous arrays of Acts and Regulations, which formed the basis of anti-discrimination law in Great Britain. This was, primarily, the Equal Pay Act 1970, the Sex Discrimination Act 1975, the Race Relations Act 1976, the

Disability Discrimination Act 1995 and three major statutory instruments protecting discrimination in employment on grounds of religion or belief,sexual orientation and age. It requires equal treatment in access to employment as well as private and public services, regardless of the protected characteristics of age, disability, gender reassignment, marriage and civil partnership, race, religion or belief, sex, and sexual orientation. In the case of gender, there are special protections for pregnant women. The Act does not guarantee transsexuals 'access to gender-specific services where restrictions are"a proportionate means of achieving a legitimate aim". In the case of disability, employers and service providers are under a duty to make reasonable adjustments to their workplaces to overcome barriers experienced by disabled people.In this regard,theEqualityAct2010did not change the law. Under section 217, with limited exceptions the Act does not apply to Northern Ireland.

INDIA : In order to ensure this, the Government of India has taken several steps for creating a congenial work environment for women workers. A number of protective provisions have been incorporated in the various Labour Laws. Article 39 of Constitution of India envisages that the State shall direct its policy, among other things, towards securing that there is equal pay of equal work for both men and women. To give effect to this Constitutional provision and also to ensure the enforcement of ILO Convention the Equal Remuneration Act, 1976 was enacted by the Parliament.

Equal pay for equal work finds its place in the Directive Principles of State Policy and itis an accompaniment of equality clause enshrined in Article 14 and 16 of the Constitution of India. Nevertheless the abstract doctrine of equal pay for equal work cannot be read in Article 14. Reasonable classification based on intelligible criteria, having nexus to the object sought to be achieved, is permissible. Accordingly it has been held in ***State of A.P. and others v. G. Sreenivas Rao &others***, (1989) II L.L.J. 149 (SC), that "equal pay for equal work" does not mean that all the members of a cadre must receive the same pay packet, irrespective of their seniority, source of recruitment, educational qualifications and various other incidents of service. It was further held that ordinarily grant of higher pay to a junior would ex-facie be arbitrary, but the equality doctrine cannot be invoked where there are justifiable grounds in doing so. For example when persons recruited from different sources are given pay protection, when a promotee from a lower cadre or a transferee from another cadre is given pay protection,when a senior is stopped at efficiency bar, when advance increments are given for experience, passing a test, acquiring higher qualification or as incentive for efficiency are some of the eventualities when a junior may be drawing higher pay than his senior without violating the mandate of equal pay for equal work.

In ***StateofWest Bengal and others v. Hari Narayan Bhowal and others***,(1995) IIL.L.J. 318 (S), the Supreme Court has held that unless a very clear case is made out and court is satisfied that the scale provided to a group of persons on the basis of the material produced before it amounts to discrimination without there being any justification,the court should not take upon itself the responsibility of fixation of scales of pay, especially when the different scale of pay have been fixed by Pay Commission or Pay Revision Committees, having persons as members who can be held to be experts in the field and after examining all the relevant material. Till the claimants satisfy on material produced, that they have not been treated as equals within the parameters of Article14,courts should be reluctant to issue any

writ or direction to treat them equal, particularly, where a body of experts has found them not to be equal.

In ***Associate Banks Officers' Association v. State of Bank and others***, 1998 SCC (L&S) 294, the Supreme Court observed that "Equal pay for equal work for both men and women" is one of the Directive Principles of State Policy laid down in Article 39(d) of the Constitution.

Section2(a)“appropriate Government”means—

(i) in relation to any employment carried on by or under the authority of the Central Government or a railway administration, or in relation to a banking company, a mine, oilfield or major port or any corporation established by or under a Central Act, the Central Government, and

(ii) in relation to any other employment,the State Government;

The decision in ***K. E. Koshy v. State of Karnataka*** (1987) 71 FJR 548 (Kant), is rendered by a learned single Judge of this Court.In that case the expression ‘appropriate Government’ as defined under Section 2(a) of the Equal Remuneration Act, 1976, is considered. The definition of the expression ‘appropriate Government’ is no doubt in pari materia with the definition of the similar expression contained in Section 2(b) of the Minimum Wages Act, 1948. The words “under the authority of” in the definition of “appropriate Government” in section 2(a) means pursuant to the authority. If the firm and its partners were independent contractors, their employment cannot be said to be carried on by or under the authority of Central Government and sanction of Central Government would be invalid and incompetent.

Section 2 (g) “remuneration” means the basic wage or salary, and any additional emolumentswhatsoeverpayable,eitherincashorinkind,toapersonemployedinrespectof employment or work done in such employment, if the terms of the contract of employment, express or implied, were fulfilled;

Section2(h)“same work or work of a similar nature”means work inrespect of which the skill, effort and responsibility required are the same, when performed under similar working conditions, by a man or a woman and the differences, if any, between the skill, effort and responsibility required of a man and those required of a woman are not of practical importance in relation to the terms and conditions of employment;

Equal Remuneration Act, 1976 provides for the payment of equal remuneration to men and women workers and for the prevention of discrimination, on the ground of sex, against women in the matter of employment and for matters connected therewith or incidental thereto.

In the case of ***State of Madhya Pradesh v. Pramod Bhartiya***, 1992 (65) FLR 1991 (SC), It was held that in section 2(h) the expression "same work or work of similar nature" lays stress upon the similarity of skill, effort and responsibility when performed under similar working conditions. The equality of work may vary from institution to institution. It is a matter of proof and not of assumption.

It has been held in the case of ***Ashok Kumar Garg v. State of Rajasthan***, (1994) 3 SCC 357 : 1994 SC (L & S) 768: (1994) 27 ATC 200, that the question of equal work depends on various factors like responsibility, skill, effort and condition of work; and in the case of ***Mackinnon Mackenzie and Co. v. Audrey D’ Costa***, (1987) 2 SCC 469, it has been observed, a broad approach should be taken in deciding whether the work is the same or of a similar nature. In doing so the duties actually and generally performed by men and women and not those theoretically possible, should be looked at.

Section 3. **Validity over other laws or rules or regulations :**Section 3 of the Act provides that the provisions of the Act shall have effect notwithstanding anything inconsistent contained in any other law or in the terms of any award,

Of services,whether made before or after the commencement of the Act,or in any instrument having effect under any law for the time being in force.

In***M/s.MackinonMackenzie&Co.Ltd.v.AndreyD'Costa&another***,(1987)IL.L.J. 536(SC),it was urged on behalf of the management that the difference between the remu-

neration of male stenographers and confidential lady stenographers was on account of a settlement arrived at after proper negotiation. It was held that in view of Section 3 of the Act the provisions of the Act shall have effect notwithstanding anything inconsistent therewith contained in any other law or in the terms of any award, agreement or contract of service whether made before or after the commencement of the Act, or in any instrument having effect under any law for the time being in force. Therefore the settlement must yield to the provisions of the Act.

In ***State Bank of India v. M.R. Ganesh Babu and others***, 2002 SCC (L &S) 568, where the question for decision in appeals before the Supreme Court was whether the respondents could claim to fall in the same category as generalist officers, namely the Probationary Officers and Trainee Officers. The Supreme Court observed that the principle of equal pay for equal work has been considered in many reported decisions of this Court. The principle has been adequately explained and crystallized and sufficiently reiterated in a catena of decisions of this Court. It is well settled that equal pay must depend upon the nature or work done. It cannot be judged by them are volume of work; there may be qualitative difference as regards reliability and responsibility. Functions may be same but the responsibilities make a difference. One cannot deny that often the difference is a matter of degree and there is an element of value of judgment by those who are charged with the administration in fixing the scales of pay and other conditions of service. So such value judgment is made bona fide, reasonably on an intelligible criterion which has a rational nexus with the object of differentiation, such differentiation will not amount to discrimination. The principle is not always easy to apply as there are inherent difficulties in comparing and evaluating the work done by different organizations, or even in the same organization. Differentiation in pay scales of persons holding same post and performing similar work on the basis of difference in the degree of responsibility, reliability and confidentiality would be a valid differentiation. The judgment of administrative authorities concerning the responsibilities which attach to the post, and the degree of reliability expected of an incumbent, would be a valid judgment of the authorities concerned which, if arrived at bona fide, reasonably and rationally, was not open to interference by the Court.

Since the plea of equal pay for equal work has to be examined with reference to Article 14, the burden is upon the petitioners to establish their right to equal pay or the plea of discrimination, as the case may be. The Court held that the decision taken by the Bankcannot be faulted on the ground of its being either unreasonable, arbitrary or discriminatory and, therefore, judicial interference was inappropriate and thus, the appeals were allowed accordingly.

Section 4. **Duty of employer to pay equal remuneration to men and women work-ers for same work or work of a similar nature —** (1) No employer shall pay to any worker, employed by him in an establishment or employment,remuneration, whether payable in cash or in kind, at rates less favourable than those at which remuneration is paid by him to the workers of the opposite sex in such establishment or employment for performing the same work or work of a similar nature.

(2) No employer shall,for the purpose of complying with the provisions of sub-section (1), reduce the rate of remuneration of any worker.

(3) Where, in an establishment or employment, the rates of remuneration payable before the commencement of this Act for men and women workers for the same work or work of a similar nature are different only on the ground of sex, then the higher (in cases where there are only two rates), or, as the case may be, the highest (in cases where there are only two rates), of such rates shall be the rate at which remuneration shall be payable, on and from such commencement, to such men and women workers:

Provided that nothing in this sub-section shall be deemed to entitle a worker to the revision of the rate of remuneration payable to him or her with reference to the service rendered by him or her before the commencement of this Act.

In ***M/s. Mackinon Mackenzie & Co. Ltd. v. Andrey D'Costa & another***, (1987) I L.L.J. 536 (SC), it was held that the Act does not permit the Management to pay to a section of its employees doing the same work or work of a similar nature lesser pay contrary to Section 4(1) of the Act because of its financial position which does not permit payment of equal remuneration to all.The applicability of the Act does not depend upon the financial ability of Management to pay equal remuneration as provided by the Act.

In ***Federation of All India Customs and Central Excise Stenographers (Recognised) v. Union of India***, 1988 SCC (L&S) 673, the Court observed that 'Equal pay for equal work is a Fundamental Right. But equal pay depends upon the nature of the work done. It cannot be judged by the mere volume of work, there may be qualitative difference as regards reliability and responsibility. Functions may be the same but the responsibilities make a difference.Onecannotdenythatoftenthedifferenceisamatterofdegreeandthatthereisanelementof value judgment but those who are charged with the administration in fixing the scales of pay and other conditions of service. So long as such value judgment is made bona fide, reasonably on an intelligible criterion which has a rational nexus with the object of differentiation, such differentiation will not amount to discrimination. It is important to emphasize that equal pay for equal work is a concomitant of Article 14 of the Constitution. But it follows naturally that equal pay for unequal work will be a negation of that right.'

The same view was reiterated in ***State of Haryana v. Jasmer Singh***, 1997 SCC (L&S) 210, the Court held that the principle of 'equal pay for equal work' is not always easy to apply. There are inherent difficulties in comparing and evaluating work done by different persons in different organizations, or even in the same organization. The principle was originally enunciated as a part of the Directive Principles of State Policy in Article 39(d) of the Constitution.

In ***State Bank of India v. M. R. Ganesh Babu and others***, 2002 SCC (L&S) 568, where the question for decision in appeals before the Supreme Court was whether the respondents could claim to fall in the same category as generalist officers, namely the probationary Officers and Trainee Officers. The Supreme Court observed that the principle of equal pay for equal work has been considered in many reported decisions of this Court. The principle has been adequately explained and crystallized and sufficiently reiterated in a catena of decisions of this Court. It is well settled that equal pay must depend upon the nature or work done. It cannot be judged by the mere volume of work,there may be qualitative difference as regards reliability and responsibility. Functions may be same but the responsibilities make a difference. One cannot deny that often the difference is a matter of degree and there is an element of value of judgment by those who are charged with the administration is fixing the scales of pay other conditions of service. So long as such value judgment is made bona fide, reasonably on an intelligible criterion which has a rational nexus with the object of differentiation, such differentiation will not amount to discrimination. The principle is not always easy to apply as there are inherent difficulties in comparing and evaluating the work on the basis of difference in the degree of responsibility, reliability and confident iality would be a valid differentiation.

Section5.**Nodiscriminationtobemadewhilerecruitingmenandwomen workers**
—On and from the commencement of this Act,no employer shall,while making recruitment for the same work or work of a similar nature, or in any condition of service subsequent to recruitment such as promotions, training or transfer, make any discrimination against women except where the employment of women in such work is prohibited or restricted by or under any law for the time being in
force

Provided that the provisions of this section shall not affect any priority or reservation for sched-uled castes or scheduled tribes, ex-servicemen, retrenched employees of any other class or cat-egory of persons in the matter of recruitment to the posts in an establishment or employment.

In ***Air India Cabin Crew Assn. v. Yeshaswinee Merchant and others*** with ***Air India Officers Assn. and another v. Air India Ltd. and tagged cases***, 2003 SCC (L & S) 840, where appeals were filed against the Division Bench judgment of the Bombay High Court.In a batch of petitions filed by the respondents Air India Air Hostesses Association and its members, the High Court held that the age of retirement from flying duties of air hostess esat the age of 50years with option to them to accept post for ground duties after 50 and up to the age 58 years is discrimination against them based on sex which is violative of Article 14, 15 and 16 of the Constitution of India as also Section 5 of the Equal Remuneration Act, 1976 andcontrarytothemanda-torydirectionsissuedbytheCentralGovt.underSection34ofthe Air India Corp and oration Act, 1953.

Section 4 of the Equal Remuneration Act prohibits the employer from paying unequal remuneration to male and female workers for same work or work of similar nature. Section 5 of the Act prohibits discrimination by the employer while recruiting men and women workers for same work or work of similar nature. By amendment introduced to Section 5 by Amendment Act 49 of 1987, the employer has been prohibited from discriminating men and women after their recruitment in the matter of their conditions of service for the same work or work of similar nature.

The Supreme Court keeping in view the aforementioned legal and factual background considered the matter at length with reference to the provisions of the Constitution of India Equal Remuneration Act, 1976.

The Supreme Court further observed that in the impugned, the High Court has also held that the term of service fixed by Air India to retire air hostesses at the age of 50 years or grounding them on alternative jobs is also discriminatory treatment to them on the basis of sex which violates Section 5 of the Equal Remuneration Act, 1976. In this connection the Supreme Court observed that Section 5 as amended not only prohibits the employer from making discrimination based on sex in the matter of recruitment for same work or work of similar nature but even discrimination on that basis in conditions of service subsequent to recruitment.

Section 6. **Advisory Committee —** (1) For the purpose of providing increasing employment opportunities for women, the appropriate Government shall constitute one or more Advisory Committees to advise it with regard to the extend to which women may be employed in such establishments or employments as the Central Government may, by notification, specify in this behalf.

(2) Every Advisory Committee shall consist of not less than ten persons ,to be nominated by the appropriate Government, of which one-half shall be women.

(3) In tendering its advice, the Advisory Committee shall have regard to the number of women employed in the concerned establishment or employment, the nature of work, hours of work, suitability of women for employment, as the case may be ,the need for providing

Increasing employment opportunities for women,including part-time employment,and such other relevant factors as the Committee may think fit.

(4) The Advisory Committee shall regulate its procedure.

(5) The appropriate Government may, after considering the advice tendered to it by the Advisory Committee and after giving to the persons concerned in the establishment or employment an opportunity to make representations, issue such directions in respect of employment of women workers, as the appropriate Government may think fit.

7. **Power of appropriate Government to appoint authorities for hearing and deciding claims and complaints —** (1) The appropriate Government may, by notification, appoint such officers, not below the rank of a Labour Officer, as it thinks fit to be the authorities for the purpose of hearing and deciding —

(a) Complaints with regard to the contravention of any provision of this Act;

(b) claims arising out of non-payment of wages at equal rates to men and women workers for the same work or work of a similar nature, and may, by the same or subsequent notification, define the local limits within which each, such authority shall exercise its jurisdiction.

(2) Every complaint or claim referred to in sub-section(1)shall be made in such manner as may be prescribed.

(3) If anyquestion arises as to whether two or more works are of the same nature or of a similar nature, it shall be decided by the authority appointed under sub-section (1).

(4) Where a complaint or claim is made to the authority appointed under sub-section (1)it may, after giving the applicant and the employer an opportunity of being heard, and after such inquiry as it may consider necessary, direct, -

(i) in the case of a claim arising out of a non-payment of wages at equal rates to men and women workers for the same work or work of a similar nature, that payment be made to the worker of the amount by which the wages payable to him exceed the amount actually paid;

(ii) in the case of complaint,that adequate steps be taken by the employer so as to ensure that there is no contravention of any provision of this Act.

(5) Every authority appointed under sub-section (1) shall have all the powers of a Civil Court under the Code of Civil Procedure, 1908 (5 of 1908), for the purpose of taking evidence and of enforcing the attendance of witnesses and compelling the production of documents, and every such authority shall be deemed to be a Civil Court for all the purposes of Section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973 (2 of 1974).

(6) Any employer or worker aggrieved by any order made by an authority appointed under sub-section (1), on a complaint or claim may, within thirty days from the date of the order, prefer an appeal to such authority as the appropriate Government may,by notification, specify in this behalf, and that authority may, after hearing the appeal, confirm, modify or reverse the order appealed against and no further appeal shall lie against the order made by such authority.

(7) The authority referred to in sub-section (6) may, if it is satisfied that the appellant was prevented by sufficient cause from preferring the appeal within the period specified in 6 sub-section (6), allow the appeal to be preferred within a further period of thirty days but not thereafter.

(8) The provisions of sub-section(1)ofSection33-C oftheIndustrialDisputesAct,1947 (14 of
1947),shall apply for the recovery of monies due from an employer arising out of decision of an authority appointed under this section.

Section7relates to the officer manning the adjudicatory body.It is the first pint of contact for the aggrieved party. The Act provides for a Labour Officer to hear the complaint relating to contravention of any provisions of the Act of non-payment of equal wages. Since the complaints primarily emanates from Women section of the employees it is of utmost important that the adjudicatory authority should provide assurance and should inspire confidence of aggrieved party. For this reason, the Labour Officer who has been empowered under this Section should be a woman with background of Labour practices.

The power of filing complaint should not be confined only to the aggrieved party. It has to be broad based on any information relating to contravention of the Act must be entertained. For this reason, two changes are necessary under Section 7. Firstly, if any personincludingvoluntaryorganisationreportsofanycontraventionofprovisionsofthe Act, the same should be treated as a complain and the adjudicatory authority should dispose of the same as per law. Secondly, if the Labour Officer or whosoever, is the adjudicatory authority get some information or knowledge about any practice by the employer which is in contravention of the Act, then it should have power of registration of complaint upon its own knowledge and information. These amendments are also necessary as the employees are likely to be reluctant to lodge any complain against their present employer, least they face the wrath of employer.

Section 8. **Duty of employers to maintain registers —** On and from the commencement of this Act, every employer shall maintain such registers and other documents in relation to the workers employed by him as may be prescribed.

Section 9. **Inspectors —** (1) The appropriate Government may, by notification, appoint such persons as it think fit to be Inspectors for the purpose of making an investigation as to whether the provisions of this Act, or the rules made there under, are being complied with by employers, and may define the local limits within which an Inspector may make such investigation.

(2) EveryInspectorshallbedeemedtobeapublicservantwithinthemeaningof Section 21 of the Indian Penal Code (45 of 1860).

(3) An Inspector may,at any place within the local limits of his jurisdiction,--

(a) enter,atanyreasonabletimewithsuchassistanceashethinksfit,anybuilding, factory, premises or vessel:

(b) require any employer to produce any register,mister-roll or other documents relating to the employment of workers, and examine such documents;

(c) take on the spot or otherwise, the evidence of any person for the purpose of ascertainingwhethertheprovisionsofthisActarebeing,orhavebeen,compliedwith:

(d) examine the employer, his agent or servant or any other person found in charge of the establishment or any premises connected therewith or any person whom the Inspector has reasonable cause to believe to be, or to have been a worker in the establishment;

(e) make copies,ortakeextractsfrom,anyregisterorotherdocumentmaintainedin relation to the establishment under this Act.

(4) Any person required by an Inspector to produce any register or other document or to give any information shall comply with such requisition.

Section10.**Penalties—**(1)If after the commencement of this Act, any employer,being required by or under this act, so to do —

(a) Omits or fails to maintain any register or other document in relation to workers employed by him, or

(b) Omits or fails to produce any register,muster-roll or other document relating to the employment of workers, or

(c) omitsorrefusestogivesanyevidenceorpreventshisagent,servant,oranyother person in charge of the establishment, or any worker, from giving evidence, or

(d) omits or refuses to give any information, he shall be punishable 3 [with simple imprisonment for a term which may extend to one month or with fine which may extend to ten thousand rupees or with both].

Punishment

Section10 (2) :**If any employer:—**

1. Makes any recruitment in contravention of the provisions of this Act;

2. Makes any payment of recruitment for equal rates to women workers for the same work or work of a similar nature;

3. Makes any discrimination between men or women workers in contravention of the provisions of this Act;

4. Omits or fails to carry out any directions made by the appropriate Government shall be punishable with fine which shall not be less than ten thousand rupees but which may extend to twenty thousand rupees or with imprisonment for a term which shall be not less than three months but which may extend to one year of with bothe for the first offence, and with imprisonment with may extend to two yeas for the second and subsequent offences.

Section 11 : **Offences by companies —** (1) Where an offence under this Act has been committed by a company, every person who, at the time the offence was committed, was in charge of, and was responsible to, the company, for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly :

Provided that nothing contained in this sub-section shall render any such person liable to any punishment, if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence.

(2)Notwithstanding anything contained in sub-section (1), where any offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to, any neglect on the part of any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation: For the purposes of this section,—

(a) “Company”means any body corporate and includes a firm or other association of individuals; and

(b) “Director”,in relation to a firm,means a partnering the firm.

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THE MINIMUM WAGES ACT,1948

OBJECTIVES:

The Minimum Wages Act was passed for the welfare of labourers.This Act has been enacted to secure the welfare of the workers in a competitive market by providing for a minimum limit of wages in certain employments. The Act provides for fixation by the Central Government of minimum wages for employments detailed in the Schedule of the Act and carried on by or under the aurhority of the Central Government,by a railway administrative or in relation to a mine ,oilfield or major port,or any corporation entablished by central Act, and by the State Government for other Employments covered by the Schedule of the Act. The Object of the Act is directed against exploitation of the ignorant,less organised and less privileged members of the society by the Capitalist. The anxiety of the state for improving the general economic condition of some of its less favoured members appeared to be in suppression of the old principal of absolute freedom of contract And the doctrine of laissez faire and in recognition of the new principles of social welfare and common good. The legislature undoubtedly intended to apply the Act to those industries or localities in which, by reason of causes such as unorganized labour or absence of machinery for regulation of wages, the wages paid to workers were in the light of general level of wages and subsistence level inadequate. In a developing country like ours which faces the problem of unemployment on a very large scaleit is not unlikely that labour may offer to work even on starvation wages. The policy of the Act, therefore is to prevent exploitation of sewated labour in the general interest

Basic Principles and procedure to be observed in fixing the minimum rate of wages in an industry:
Sec.3 of the Act provides that the appropriate Government shall fix the minimum rate of wages payable to employees employed in an employment specified in Part I and Part II of the schedule Provided that appropriate Government may, in respect of employees employed in an employment Specified in part II of the schedule, instead of minimum rate of wages under this clause for the whole state ,fix such rates for a part of the state or for any specified class or classes of such employment in the whole state or part thereof: review at such intervals as it may think fit,such interval not exceeding five years, the minimum rate of wages so fixed, and revise the minimum rate if necessary:

Provided that where for any reason the appropriate Government has not reviewed the minimum rates of wages fixed by it for any schedule employment within any interval of five years nothing contained in this clause shall be deemed to prevent it from reviewing the minimum rates after the expiry of the said period of five years and revising them , if necessary, and until they are so revised The minimum rates in force immediate before the expiry of the said period of 5 years shall continue in force.

It may be noted that prevailing circumstances such as cost of living index going up demand by the employees, inflation compels the government to review and revise it.

In Sangam Press Ltd v. The Workmen, AIR 1975 SC 2035, it has been held that where the rates fixed in certain employments were not unreasonably high and were not higher than those found in similar employments, in cannot be said that the rates are invalid. It is not necessary that employment should have been divide into different categories.

According to the sub-section 1-A of section 3, the appropriate Government may refrain from fixing minimum rate of wages in respect of any scheduled employment in which there are less than, 1000 employees. But at any time the Appropriate Government may after making such inquiry and finding that the number of employees in such employment has risen to 1000 or more it shall fix the minimum rate of wages payable to the employees employed in such employment.

PRICIPLES TO BE KEPT IN MIND WHILE FIXING THE MINIMUM WAGES:

Article 43 of the Indian Constitution provides a very important provision a man should be given such wages which is according to the work and helpful to him in maintaining his efficiency

In JYOTHI HOME INDUSTRIES V. STATE OF KARNATAKA, is a leading case on this point, it

has been held that the provision of section 3(2) of the Minimum wages Act, if scrutinized closely, bring out the powers of the government to fix a minimum rate of wages for time work and for piece work.

MINIMUM RATE INAPPLICABLE:

According to the subsection 2-A of section 3, the fixed minimum rate of wages shall not apply to any of the following cases when either the dispute is pending or an award by the tribunal is in operation. Where the dispute in respect of rates of wages are pending before a Tribunal or National Tribunal under the Industrial Disputes Act or before any like authority under any other law.

Or where the tribunal has made an award which is in operation.

The minimum wages can provide not only for the bare subsistence of life but also for the preservation of efficiency of the worker. The Capacity of the industry to pay is not relevant.

FACTS TO BE KEPT IN MIND WHILE FIXING OR REVISING MINIMUM RATE OF WAGES:

Different scheduled employments,different classes of work in same scheduled employments,adult,apprentices,children and adolescents,different localities or regions.

Different rates of wages for different duration of work-

By the hours, by the day, may be weekly or fortnightly ,by the month or even such other larger wage period as may be prescribed.

ESSENTIALS TO BE CONTAINED BY THE MINIMUM RATE OF WAGES:

Minimum rate of wages may consist of a basic rate of wages and special allowance to be called cost of living allowance. A basic rate of wages with or without the cost of living allowance and the cash value of concessions in respect of supplies of essential commodities at concessional rate, an inclusive rate allowance for the basic rate,rates shall be computed by the competent authority at such intervals and in accordance with such direction as may be specified or given by appropriate Government.

PROCEDURE FOE FIXING AND REVISING MINIMUM RATES OF WAGES-

Section 5 of the Act lays down the procedure for fixing and revising minimum rates of wages . According to it, the Appropriate Government shall adopt any of the following procedures in fixing and revising minimum rate of wages in respect of, scheduled employments for the first time or for revising it. Appoint as many committees and sub-committees, as it considers necessary, to hold inquiries and advise it in respect of such fixation or revision, as the case may be, or by notification in the official Gazette publish its proposals for the information of persons likely to be affected thereby and specify a date not less than two months from the date of notification , on which the proposal will be taken into consideration.

The appropriate Government shall fix or receive the minimum rates of wages in following manner:

I. It shall consider the advice of the committee.

II. It shall also consider all representations received by it before the specified date.

III. Such fixation of wages or revision of wages is to be notified in official Gazette.

IV. Such fixation or revision of wages shall come into force ordinarily after the expiry of 3 months from the date of notification in Official Gazette unless otherwise provided in the notification.

The appropriate Government has to consult the Advisory board if it proposes to revise the minimum rate of wages by the mode provide under clause (b) of subsection(1) of section 5.

OFFENCES BY COMPANIES UNDER THE MINIMUM WAGES ACT:

Sec 22-c contains the provisions in respect of the liability of an offence committed by a company. According to this section if any offence under this Act has been committed by a company the result would be that all persons who at the time of offence were in charge of and were responsible to the company for the conduct of the business of the company as well as the company became prima facie guilty of the offence unless such persons prove to the satisfaction of the court that-

a. The offence was committed without their knowledge

b. They use due diligence to prevent the offence

c. There was no connivance

if offence against the Company is proved to have been committed it is incumbent upon them to give

strictest proof of circumstances exonerating themselves. The burden is entirely on them.

In ***Bangalore Water Supply Case vs A. Rajappa*** a seven judges Bench of the Supreme Court exhaustively Considered the scope of the Industry and laid down the following test which has practically reiterated the test laid down in ***Hospital Mazdoor sabha case.***

Tripple Test
Where there is systematic activity, organised by cooperation between employer and employee for production distribution of goods and services calculated to satisfy human wants and wishes, prima facie, there is an industry in that enterprise.

The following points were also emphasised in this case:
1. Industry does not include spiritual or religious service or services geared to celestial bliss e.g. making on a large scale, Prasad or foods.
2. Absence of profit motive or gainful objective is irrelevant
3. The true focus is functional and decisive test is the nature of the activity with special emphasis on the employer employee relations.
4. If the organization is a trade or business it does not cease to be one because of philanthrophy animating the undertaking.

In ***State of Bombay v. Hospital Mazdoor Sabha AIR 1960 SC 610*** ruled that Government run hospitals are industry ***but Management of Safdarjung Hospital v. Kuldip Singh AIR 1970 SC 1406***.The decision of hospital mazdoor sabha case was overruled by safdarjung hospital case, Hospital was held not to be an industry because that was entirely charitable institution.