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SYLLABUS

INDUSTRIAL RELATIONS AND LABOUR ENACTMENTS

(M-239)

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UNIT II

Trade Unionism : Trade Union : origin and growth, unions after independence, unions in the era of liberalization; concept, objectives, functions and role of Trade Unions in collective bargaining; problems Of Trade Unions. Labour problems: Discipline and misconduct; Grievance Handling Procedure; Labour turnover; Absenteeism; Workers' participation in management.

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UNIT I OVERVIEW OF INDUSTRIAL RELATIONS: CONCEPT, SCOPE AND APPROACHES

★ STRUCTURE ★

1.0 LEARNING OBJECTIVES

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

- explain concept and scope of industrial relations;
- discuss the objectives of industrial relations;
- define industrial relations definition;
- understand the industrial relations in India;
- describe the consequence of strained industrial relations;
- discuss the essentials of retrenchments;
- discuss international Labour organization;
- describe the Governing body of industrial relations.

1.1 INTRODUCTION

Industrial relations constitute one of the most delicate and complex problems of the modern industrial society that is characterised by rapid change, industrial unrest and conflicting ideologies in the national and international spheres. It is a dynamic concept that depends upon the pattern of the society, economic system and political set-up of a country and changes with the changing economic and social order. It is an art of living together for the purposes of production, productive efficiency, human well-being and industrial progress. It comprises of a network of institutions, such as, trade unionism, collective bargaining, employers, the law, and the state, which are bound together by a set of common values and aspirations. Knowledge of such institutions is important if we are to understand every day industrial relations phenomena. These institutions are a social network of organisations, participants, processes and decisions: all of which interact and inter-relate together within the industrial relations environment and even beyond it.

1.2 CONCEPT AND SCOPE

There is no unanimity on the meaning and scope of industrial relations since different terms, such as labour-management relations, employer-employee relations, union management relations, personnel relations, human relations, are in use and are used synonymously. In its stricter sense, the term "industrial relations" means relationship between management and workmen in a unit or an industry. In its wider connotation, it means the organisation and practice of multi-pronged relationships between workers and management, unions and workers, and the unions and managements in an industry. Dale Yoder defines it as a "whole field of relationship that exists because of the necessary collaboration of men and women in the employment process of an industry."

Tead and Metcalfe observed that "industrial relations are the composite result of the attitudes and approaches of employers and employees towards each other with regard to planning, supervision, direction and coordination of the activities of an organization with a minimum of human efforts and frictions with an animating spirit of cooperation and with proper regard for the genuine well-being of all members of the organization."

According to Allan Flanders, "the subject of industrial relations deals with certain regulated or institutionalized relationships in industry. Personal or in the language of sociology, "unstructured" relationships have their importance for management and workers, but they lie outside the scope of a system of industrial relations."

Professor Clegg defines industrial relations in the broadest terms as encompassing the rules governing employment together with the ways in which the rules are made and changed and their interpretation and administration." To put it simply, industrial relations is that part of management which is concerned with the manpower of the enterprise. It is, thus, the relation created at different levels of the organisation by the diverse, complex and composite needs and aspirations and attitudes and approaches among the participants. It is a highly complex and dynamic process of relationships involving not only employees and managements, but also their collective forums and the State. In an organisation, these relationships may be personal and informal at one end, and may be highly institutional with legally prescribed structures and procedures, at the other end.

The four main parties who are actively associated with any industrial relations system are the workers, the managements, the organisations of workers and managements, and the State. Fundamentally, the term industrial relations refers to an organized relationship between two organised parties representing employers and employees regarding matters of collective interest. With the growth of professional management, the industrial relations scene is being represented by the representatives of both the employers and the employees. But the scope of industrial relations cannot merely be confined to common labour-management relations or employer-employee relations. It is a comprehensive and total concept embracing the sum total of relationships that exists at various levels of the organisational structure. More specifically, it connotes relations among workers themselves within the class of employees, relations among the managements within the managerial class, and relations between the two distinct classes of workers and management. It denotes all types of inter-group and intragroup relations within industry, both formal and informal. It consists of a complex network of relations that arise out of functional interdependence between workers and managements and between industrial organisations and society. Industrial relations is a social concept because it deals with social relationships in different walks of life. It is also a relative concept because it grows and flourishes or stagnates and decays in accordance with the economic, social and political conditions prevailing in a society and the laws made by the state to regulate them. The advances made in the field of science and technology also influence the state of industrial relations. There is greater divergence in industrial relations systems as a result of the divergent economic, social, political and cultural environments.

Objectives

Apart from the primary objective of bringing about sound and healthy relations between employers and employees, industrial relations aim:

(*i*) to facilitate production and productivity;

(*ii*) to safeguard the rights and interests of both labour and management by enlisting their co-operation;

(*iii*) to achieve a sound, harmonious, and mutually beneficial labour management relations;

(*iv*) to avoid unhealthy atmosphere in the industry, especially work, stoppages, goslows, gheraos, strikes, lockouts; and

(*v*) to establish and maintain industrial democracy.

The state endeavours to correct, through effective industrial relations, an imbalanced, disordered and maladjusted social and economic order with a view to reshaping the complex socio-economic relationships following technological and economic progress.

It also controls and disciplines the parties concerned and adjusts their conflicting interests. In this process, it protects some and restrains others, depending upon the situation. According to Kirkaldy, industrial relations in a country are intimately connected with the form of its political government; and the objectives of an industrial organization may vary from purely economic to purely political ends. He divides the objectives of industrial relations into four categories:

(*i*) improvement in the economic conditions of workers in the existing state of industrial management and political government;

(*ii*) control exercised by the state over industrial undertakings with a view to regulating production and promoting harmonious industrial relations;

(*iii*) socialisation or rationalisation of industries by making the state itself a major employer; and

(*iv*) vesting of a proprietary interest of the workers in the industries in which they are employed.

The industrial relations objectives must follow the determination of business objectives which they should be intended to facilitate. In this context, the industrial relations policies and practices should not negate its intentions in other areas. For instance, if a company wishes to encourage voluntary retirement, its salaries, pensions, and working conditions should not encourage its employees to stay at all costs.

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Approach

The problems posed in the field of industrial relations cannot be solved within the limits of a single discipline, and hence it is bound to be inter-disciplinary in approach. It is an interdisciplinary field that includes inputs from sociology, psychology, law, history, politics, economics, accounting and other elements of management studies. Industrial relations, then, has a dual character, it is both an interdisciplinary field and a separate discipline in its own right (Adams 1988). It is much more of an art than it is a science. Industrial relations is largely an applied field concerned with practice and the training of practitioners rather than with theory and measurement. It is thus related to the basic social sciences as engineering is to the physical sciences or medicine is to the biological sciences.

Any problem in industrial relations has to be approached on a multi-disciplinary basis, drawing from the contributions of the above disciplines. The causes of an industrial dispute may be, by nature, economic, social, psychological or political or a combination of any of them. Labour economics provides an economic interpretation of the problems growing out of employer-employee relationship. Industrial sociology explains the social background of the workers, which is essential for the understanding of industrial relations. Industrial psychology clarifies certain concepts and provides empirical tools in areas such as recruitment, placement, training, fatigue and morale. For instance, attitudes and morale surveys are powerful tools to discover causes of industrial strife and to evolve methods for their prevention. Labour laws and their interpretation by tribunals and courts contributes to the growth of industrial jurisprudence. Application of quantitative analysis and labour statistics throws light on the exact state of industrial relations during a particular period. Political aspects also assume importance in industrial relations, particularly in a developing economy dominated by centralised planning. In fact, the growth of industrial relations as a scientific discipline depends upon the extent to which it integrates the contribution of established disciplines in the social sciences.

There is no country where industrial relations is entirely a matter of tradition or custom nor is there a country where the employers, the workers or their organizations and the government do not at all interact to build up the country's industrial relations system. It has been a mixture of traditions, customs and a web of action, reaction and interaction between the parties. The industrial relations system may be conceived at different levels, such as national, regional, industrial and workplace. The concept of the system has been influential in establishing industrial relations as a discipline in its own right. The concepts of the system approach are operationally definable. An industrial relations system

may be defined as comprising the totality of power interactions of participants in a workplace, when these interactions involve industrial relations issues. It is viewed as an integral and non-separable part of the organisational structure and its dynamics. An industrial relations system includes all the individuals and institutions that interact at the workplace. Regardless of the level at which the system exists, an industrial relations system can be viewed as having three components: (*1*) a set of individuals and institutions that interact; (*2*) a context within which the interaction takes place; and (*3*) an output that serves to govern the future relationship of the parties. The components of industrial relations system are:

(*i*) **Participants:** The participants in the industrial relations sphere are composed of duly recognised representatives of the parties interacting in several roles within the system.

(*ii*) **Issues:** The power interactions of the participants in a workplace create industrial relations issues. These issues and the consequences of power interactions find their expression in a web of rules governing the behaviour of the parties at a workplace.

(*iii*) **Structure:** The structure consists of all forms of institutionalised behaviour in a system. The structure may include collective procedures, grievances, and settlement practices. Legal enactments relevant to power interactions may also be considered to be a part of the structure.

(*iv*) **Boundaries:** In systems analysis, it is possible to find an issue which one participant is totally indifferent to resolving while, at the same time, the other participant is highly concerned about resolution of the same. These issues may serve to delimit systems boundaries.

1.3 INDUSTRIAL RELATIONS DEFINITION

It is concerned with the relationships between management and workers and the role of regulatory machanism in resolving any industrial dispute. The relation between workers and management have undergone Himalayan changes in our country there had been a system of king and his subjects, all should work to improve the coffers of the king. Later Zamindars came and workers were at their mercy – some time bonded also, later with the formation of East India company and British Rule a heart less Hire and fire system was established Industrial workers were no man's child neither the employers nor government cared for them, there were no union also. Gradually enlightened leaders came in like, Gokale, MK Gandhi Roy, Tilak etc felt the need for worker's union. Their relentless efforts forced both governments and the employers to think of workers

lot small unions were formed, government enacted rules like Trade union Act 1926, Industrial disputes Act etc.

The workers began to realise their status and they were awakened. A sort of uprighting workers and reluctant management has started functioning. Soon workers motivated by different Industrial Acts enacted by parliament supporting them, and looking after their health, welfare, safety, social security etc. Got emboldened to raise their voice. At the same time management also has started improving, more and more industries were nationalised, public sector came in to existence at number of places, textile insurance, banks transport etc.

With increasing number of public sectors, workers life style changed, assured job arrogated unions, appeasing management, administration with less account ability—workers had their field day. Public sectors started doing more of social service than business and profit doling out public exchequer.

Slowly this trend is changing with the government's reversal policy, decentralization, Privatisation etc. Compelled by universal need to compete in business, activated by world. Trade organisation global economy etc government turned towards foreign investments and industrial set ups by foreign investors. Stringency of some of the laws are disappearing monopolies Restrictive Trade Practice, F.E.R.A etc consequently issues like productivity linking productivity with emoluments are also coming into fore front. With new companies coming in, formation of merry unions have come to a stand still, no union worth the name is there in 1.T sector in our Tradial Park, Chip's World etc. Job security is diminishing, legislations, are not coming as before because we have to live in a competitive world, of industries where down sizing out sourcing productivity, etc has become the 'watch word'.

1.4 INDUSTRIAL RELATIONS IN INDIA

Industrial Relations (IR) has undergone a wide change in Indian scererio, during the end of british period in India an awakening in working class was seen. The world wars forced the employers to become more friendly with the workers, to see un interrupted production is ensured during war time.

Out of their self interest they have to become benevolent, At the same time leaders also came up, Mr. Roy Tilak, Mahatma Gandhi and others were instrumental to organise workers union, and also force government to frame labour laws, to improve the lot of workers. In 1929 Industrial dispute Act was enacted later in 1947 it became industrial dispute, act where in machineries to solve industrial dispute were indicated.

1. The Directive principles of state policy, as enshrined in our constitution stipulate that the state should endevour to improve the workers conditions, working conditions, and also productivity of industries which will improve wealth of nations.
2. Several acts are enacted by parliament both before and after independence which were focusing on workers interests, welfare health etc. The 'Tric Act' Factory Act. Industrial Dispute Act; Trade union Act gives major direction to achieve the constitutional directives.
3. Besides this, wages Act 1948, Bonus Act 1965. Grativity Act 1972, Equal remuneration Act 1975, are some of the acts in the above direction.
4. In 1972, National commission on labour recommended setting up a permanent industrial Relations commission this was not well received by government.
5. National conference in 1982 made several recommendations
   - Emphasis on formation of permanent industrial Relations commission
   - Stringent action on contravention of a mutually agreed code of conduct
   - A check off system was prescribed where in by ballot election, how many are real members of a union how many, dual, boghus etc. could come to light. This did not find well with unions but some unions have arranged for deduction of their subscription through employers pay counter to some extent the check of system is working.

Causes of industrial unrest in India can be classified mainly under four heads they are:

1. Financial Aspects

(*a*) Demand for increase of wages, salaries and other perks. workers demand goes on increasing with the increase in cost of living

(*b*) Demand for more perks, and fringe benefits. Issue of bonus also has become a contentious one, even though Bonus Act has come fixing minimum rate payable as 81/3% of their total salary inspite of profit or loss incurred by the industry.

(*c*) Incentives festivals allowances, concessions etc requires a hike every now and then, workers compare these benefits with other industries and demand them – without comparing the capacity of the industry where they are working.

2. Non-financial aspects

(*a*) Working hours, rest hours, Traveling hours are source of disputes. If houses are provided some section of workers want to include travel time also as working hours.

(*b*) Introduction of machines, computers modernisation, automation – In effect any act of management which may result in economy in man power is resisted.

(*c*) More facilities like free meals free group travel etc. are sought every now and then.

3. Administrators causes

(*d*) Non-implementation of agreements awards and other local settlements – with full sprit

(*e*) Stifling with recognition of labour unions though registered,

(*f*) Attempt to weaken existing trade unions and trying to foist fake unions

(*g*) Unhealthy working conditions

(*h*) Lack of skill on the part of leaders supervisors

(*i*) Disproportionate works loads, favoritism

(*j*) Victimisation, nepotism attitude of management in recruitment, promotion, transfer etc

(*k*) Instead of re deployment or skill improvement easier way of retrenchment forced voluntary retirement schemes (C.R.S) are adopted.

4. Government and political pressures

(*l*) Industrial unions affiliating with political unions which are in power, resulting in frequent shift of loyalty and resultant unrest

(*m*) Politician influencing workers group closes examples is the Nalco – taken over by Sterlite, the state government supported (propped up) strike at chattisgrah state against Nalco, for months together resulting in total stoppage of the industry for some time.

(*n*) Some time unions, workers strike against mergers, acquisition, taken over, disinvestments policies, of government and private sectors.

5. Other causes of strained relations

(*o*) Refusal to have workers participation in the running of the industry.

(*p*) Non adherence to laid out 'standing orders' grievances procedures.

(*q*) Refusal to have free frank, and transparent collective bargaining.

(*r*) Sympathetic strike – a show of readership to workers of neighboring industries, and conducting a token strike when they are in full strike. This may cause internal bitterness.

Consequences of strained Industrial relations

1. May result in go slow tactics, Strike, lock out etc.
2. Industrial production and productivity may be affected, growth of industries will be stunted.
3. May result in recited atmosphere, law and order situation will deteriorate.
4. Employer, Management, labour relations will be affected mutual faith and team spirit will vanish.
5. Absence of mutual co operation affects, participation forums and Bargaining Plot forms.
6. Government also will loose revenue, and may need to spend more to keep law and order around the industry.
7. National income, per capital income will go order.
8. Will result in loss in earnings of workers with added suffering.
9. The industries also will suffer loss, and it is a loss to common consumers also.

The manifestation of industrial strife, disputes come in the form of strike lockout, layoff and retrenchment. To maintain good Industrial Relations we should know what are these weapons in the hands of employers and workers and to diffuse it. Our law markers in India have enacted about these manifestation of disputes

Strike: Section 2 (q) Means a cessation of work by a body of persons employed in any industry acting in combination or a concerted refusal or 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 ingredients can be summed up as:

1. A cessation of work.
2. This abstinence of work must be by a body of persons employed in an industry.
3. The strikers must have been acting in combination.
4. They must be persons working in an industry as per this I.D Act 1947.

5. There must be concerted refusal or refusal in a common understanding, they must stop work for some demands relating to this employment or its terms, or conditions of labour.

The strike may be manifested in different forums like, hunger, sit down, solve down, pend own, lighting etc.

Lock out : As per section 2 (1) of 1.D Act, it 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 person employed by him. There is temporary closing of employment. The elements of demand for which the industry is locked out must be present. The intention to reopen or take the workers back if they accept the demands, must exist lock out is not closure it is a tactics in bargaining it is intended for the purpose of compelling the employee to accept any terms or conditions affecting employment. It is a weapons in the hands of employers, A lock out declared in consequence of an illegal strike or a strict declared in consequence of a illegal lock out shall not be deemed to be illegal.

Lay off : As per section 2 (kkk) of 10 Act means, failure, refusal or inability of an employer on account of shortage of fuel power or raw materials, or the accumulation of stock or the breakdown of machinery to give employment to a workman whose name is on the master rells of his industrial establishment and who has not been retrenched. It is a short term removal of workers.

The essentials of a lay off are failure refusal in ability of the employers to give work. The employees must be permanent in nature at the time of lay off. The failure to give work should be due to reason beyond his powers like

(*a*) A major break down of machinery

(*b*) Shortage of raw material, power, coal etc.

(*c*) Marketing problem of stocks resulting in accumulation

(*d*) Any other act of god beyond employer's control.

The workman must not have been retrenched Retrenchment section 2 (oo) of 1.D Act means termination of the services of a workman by employer for any reason whatsoever otherwise them as a punishment inflicted by way of disciplinary action, but does not include,

(*a*) Voluntary retirement of the workmen, or

(*b*) retirement of the workman or reaching the age of supermuation

(*c*) 10 Termination (natural) at the end of a contract

(*d*) Termination due to continuous ill health.

1.5 ESSENTIALS OF RETRENCHMENT

1. Termination of services of a workman not amounting to dismissal
2. Termination on the ground of surplus labour or staff
3. Service terminated must be a continuous one perpetual in nature.
4. Termination not to victimize or due to unfair labour practice.
5. The above 4 weapons may create industrial relations strain, cause dispute etc.

Attempts by Government to Safeguard 1R

1. The strikes may be declared illegal if adequate notices are not given if given it becomes legal and they may get compensation etc if any action is taken by employer.
2. During lay of which is beyond the control of employers, workers should be paid ½ the wages for sustenance at least up to 45 days.
3. Lockout can be as a consequence to illegal strike. If strike is withdrawn work can resume, of course punitive action can be completed.
4. Retrenchment is an extreme action, but when industry comes back to normal running, the retrenched workers can re establish their lien, and they will be given preference for absorption.

Thus, it can be seen every attempt is made by government and various acts to retain relationship between worker and management which only can give industrial peace for progress.

1.6 INTERNATIONAL LABOUR ORGANISATION

Conference as an autonomous body associated with League of Nations. It was born as a result of the peace conference at the end of World War I at Versailles. India became member of ILO in 1919, as an original signatory to the treaty of peace. The ILO was the only international organization that survived the second world war even after the dissolution of its parent body the League of Nations. It became specialized agency of United Nations (UN) in 1946. The ILO is now social institution trying to make the word conscious that world peace may be affected by unjust conditions of its working.

The International Labor Organization was established on April 19, 1919 by Versailles Peace population. It deals with International Labor Problems. The Unique feature of ILO is that it is a tripartite body consisting of representations of employers, labor government. There are three constituents

namely the governments, which finances it, the workers; for whose benefit it, is created and the employers who share responsibility for the welfare of the workers.

Objectives of the I.L.O

The objectives of the ILO are enumerciated in the preamble to its constitution and in the Declaration of Philadelphia(1944) supplemented by Article 427 of the Peace Treaty of Versailles (1919). The Preamble affirms (*i*) where as universal and lasting peace can be established only if its is based upon social justice, (*ii*) and where as conditions of labour exist involving such injustice, hardship and privation to large numbers of people as to produce unrest so great, that the peace and harmony of the works is imperiled, (*iii*) whereas also the failure of any nation to adopt however the conditions of labour is an obstacle in the way of other nations which desire to improve the conditions in their own countries.

Thus, ILO has been "attempting to promote world-wide respect for the freedom and dignity of the working men and to create conditions in which that freedom and dignity can be more fully and effectively enjoyed". In April 1914, during the second world war a conference was convened at Philadelphia. During the discussions at this conference the aims of ILO were redefined. This was termed as "Declaration of Philadelphia". This was incorporated in the constitution of ILO. The conference reaffirmed the principles of ILO namely: (*i*) labour is not a commodity, (*ii*) freedom of expression and of association are essential to substantial progress, (*iii*) poverty any whose constitutes a danger to prosperity everywhere, (*iv*) the war against want requires to be carried on with unrelenting vigour within each nation, and by continuous and concerted international effort in which the representatives of workers and employees enjoying equal status with those of governments form with them in free discussion and democratic decision with a view to the promotion of the common welfare.

The Declaration of Philadelphia enunciated 10 objectives with the ILO was to further promote among the nations it the world. These are:

1. Full employment and the raising of standards of living.
2. The employment of workers in the occupation in which they can have the satisfaction of giving the fullest measure of their skill and make their contribution to the common well-being.
3. The provision, as a means to the attachment of this e3nd and under adequate guarantees for all concerned, of facilities for training and the transfer of labour including migration for employment and settlement.

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4. Policies in regard to wages and earnings bonus and other conditions of work calculated to ensure a just chare of the fruits of progress to all and a minimum living wage to all employed and in need of protection.
5. The effective recognition for the right of collective bargaining, the co-operation of management and labour in continuous improvement of productive efficiency and the collaboration of workers and employers in social and economic measures.
6. The extension of social security measures to provide a basic income to all in need of such protection and comprehensive medical care.
7. Adequate protection for the life and health of workers in all occupation.
8. Provision for child welfare and maternity protection.
9. The provision of adequate nutrition, housing, and facilities for recreation and culture
10. The assurance of educational and vocational opportunity.

Procedure for Admission as a Member

The constitution of ILO provides that all the states, who are members of ILO on 1 November, 1945 and any original member of UN can become member of ILO by accepting its obligations of its constitution.

The constitution of ILO was amended in 1945, and the ILO entered into arrangement with the UN. The new rules say that:

1. Membership of the UN does not mean membership of ILO, any original member of the UN and any state subsequents admitted to the membership of UN may become member of ILO by communicating to the Director General, its formal acceptance of the rules and obligations of the ILO.
2. If a state is not a member of the UN, the ILO confess on the International Labour Conference (ILC–parliamentary wing of the ILO), the right to admit that state to membership, which it had assumed defects during the period of the relationship of the ILO with the league.

In 1919, there were 45 states who were members of ILO by – the membership of the ILO had referred to. The ILO consists of three principal organs namely (*i*) the International Labour Conference and the Governing Body is supplemented by that of Regional Conferences, Regional Advisory Committee and Industrial Committees.

The conference is the supreme policy making and legislative body. The Governing Body in the Executive Council and the International Labour

Office is the secretarial, operational headquarters and information center.

The structure of ILO and various functions are depicted below in Chart.

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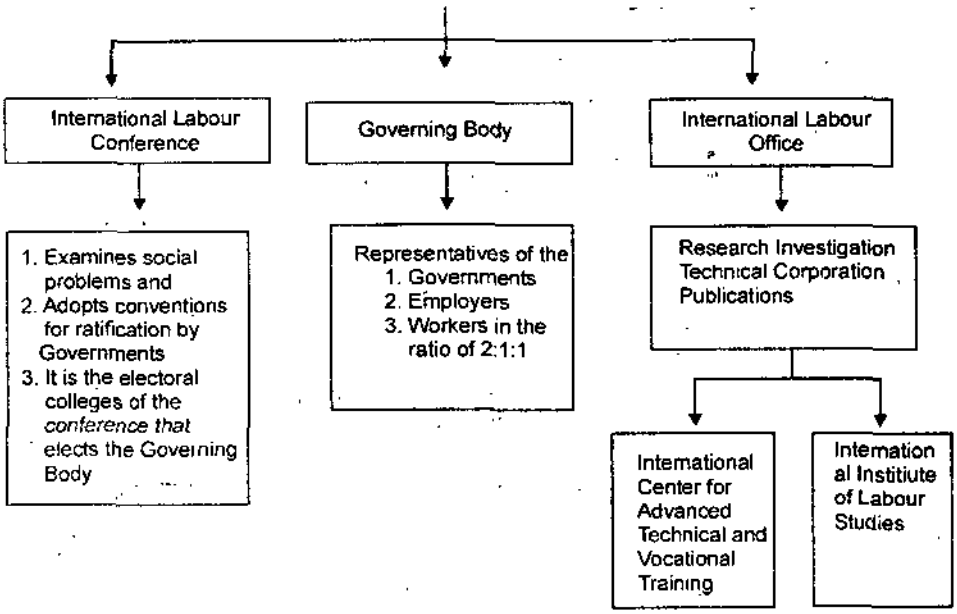

1.7 THE GOVERNING BODY

It is another principal organ of the ILO. It is now political, non-legislative partite body. In implements decision of the ILC with the help of the international labour office. Out of the 56 members in it, 28 represent the governments,14 employers and 14 labour. Out of 28 government members,10 are appointed by the members of the states of chief of industrial importance and the balance are delegates of the other governments. The criteria laid down for the selection of members of the chief industrial importance is the strength of its total industrial population . India of the ten states of chief industrial importance. The tenure of office of this body is 3 years. It meets several times a year to take decisions on the programmes of the ILO. The functions of this body are:

1. To co-ordinate work of the organization.
2. To prepare agenda for each session and subject to the decision of the ILC to decide what subject should be included in the agenda of the ILC.
3. To appoint the director general of the office.
4. To scrutinize the budget.
5. To follow up the implementation of the conventions and recommendations adopted by the ILC by member states.

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6. To fix the date, duration and agenda of the regional conference.
7. To seek advisory opinion from the international court of Justice with the consent of ILC.

1.8 FINANCE OF THE ILO

The budget is prepared and fixed on the recommendation of the governing body and member states make their contribution. Contribution are fixed on *adhoc* basis from year to year. India contributes 2.77% of the annual budget of the ILO.

1.9 IMPACT OF THE ILO ON THE INDIAN LABOUR

India is a member of the ILO since its inception and it gave great fillip to labour legislation in India. India has adopted many of the conventions and recommendations on international standards for improvement in labour conditions, under Article 3 of the constitution of the ILO. India has been nominating non-government delegates and advisors to the ILC every year.

One of the main functions of the ILC the legislative wing of the ILO is to formulate international labour standards. The ILC provides a forum for discussion and deliberation of international labour problems and then formulate the standard in the form of conventions and recommendations.

A convention is a treaty, which when rectified by a members stat, creates binding international obligations on that state. A recommendation creates no such obligation but is essentially a give to the nation action. The ILO adopted a series of conventions and recommendations covering hours of work employment of women, children and young persons, weekly rest, holiday, leave with wages, night work, industrial safety, health hygienic, social security, labour management relation, freedom of association wages and wage fixation productivity, one of the fundamental obligations, imposed on governments by the constitution of ILO is that they a submit the instrument before the competent national or state authorities, written a maximum period of 18 months of their adoption by the conference for such action as might be considered practicable.

India has been one of the founder members of the ILO and has been taking advice part in its deliberations. The ILO has so far adopted 173 conventions and 180 recommendations. India has ratified 36 conventions. The ILO standards have a decisive have been incorporated in the labour lagislation. The ILO standards have a decisive impact on the factory,

mines, social security and wage legislation in India. The AITUC owes its immediate origin to it. India commitment to the ILO is reflected in its adherence to the institution of tripartism as a novel method of researching labour management conflicts. The ILO standards have influenced Indian labour legislation. The ILO conventions have formed the sheet anchor of Indian labour legislation especially after 1947 when the Indian national government assumed office at the center.

The directive principles of the state policy in articles 34,41,42, and 43 of the constitution lay down policy objectives in the field of labour having close resemblance and influence to the ILO constitution and the Philadelphia charter of 1944.

SUMMARY

- Industrial relations constitute one of the most delicate and complex problems of the modern industrial society that is characterised by rapid change, industrial unrest and conflicting ideologies in the national and international spheres.
- There is no unanimity on the meaning and scope of industrial relations since different terms, such as labour-management relations, employer-employee relations, union management relations, personnel relations, human relations,
- The industrial relations objectives must follow the determination of business objectives which they should be intended to facilitate. In this context, the industrial relations policies and practices should not negate its intentions in other areas.
- It is concerned with the relationships between management and workers and the role of regulatory machanism in resolving any industrial dispute.
- The International Labour Organization was established on April 19, 1919 by Versailles Peace population. It deals with-International Labor Problems.
- It is another principal organ of the ILO. It is now political, non-legislativepartite body. In implements decision of the ILC with the help of the international labour office.
- One of the main functions of the ILC the legislative wing of the ILO is to formulate international labour standards. The ILC provides a forum for discussion and deliberation of international labour problems

REVIEW QUESTIONS

1. What is industrial relations?
2. Explain strike and lay off.
3. What is lockout? State its consequences.
4. What are causes of industrial unrest?
5. What are the determinants of Industrial Relations.?
6. Explain retrenchment.
7. Briefly explain about the ILO and its objectives.
8. Explain about the declaration of Philadelphia enunciated 10 objectives.
9. Write the procedure for Admission as a member in ILO.
10. Explain the structure of the ILO.

FURTHER READINGS

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UNIT II TRADE UNIONISM

NOTES

★ STRUCTURE ★

2.0 LEARNING OBJECTIVES

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

- discuss the meaning and definitions of trade union;
- explain nature, scope and characteristics of trade union;
- understand Historical evolution of trade union in India;
- discuss the structure of trade unions in India;
- discuss the trade unions Act, 1926;
- define the registration of trade unions;
- know the Rights and Responsibilities of registered unions;
- understand the meaning and concept of collective Bargaining;
- describe the types of collective bargaining;
- discuss collective bargaining process;
- explain the issues in collective Bargaining;
- discuss the industrial discipline and misconduct;
- define Grievances and its causes;
- discuss the concept and meaning of discipline;
- explain the purpose and objectives of disciplinary action;

- understand workers participation in management.
- discuss the need of workers participation;
- define the objectives of workers' participation, in management;
- describe essential conditions for successful working of WPM.

NOTES

2.1 TRADE UNION: MEANING AND DEFINITION

The trade union is an association, either of employees or employers or of independent workers. It is a relatively permanent combination of workers and is not temporary or casual. It is an association of workers engaged in securing economic benefits for its members.

Definition

According to Section 2(b) of the Trade Unions Act of 1926, *"a trade union is any combination of persons, whether temporary or permanent, primarily for the purpose of regulating the relations between workers and employers, or between workers and workers and for imposing restrictive conditions on the conduct on the conduct of any trade or business, and includes the federation of two or more trade unions."*

Sydney and Beatrice Web have defined Trade Union as a *"Continuous association of wage earners for the purpose of maintaining or improving the conditions of their working lives."* G.D.H. Cole defines *"Trade Union as an association of workers in one or more occupations – an association carried on mainly for the purpose of protecting and advancing the member's economic interests in connection with their daily work."*

Laster defines Trade Union as an association of employees designed primarily to maintain or improve the condition of employment of its members. According to Cunnison, Trade Union is a monopolistic combination of wage earners who stand to the employers in a relation of dependence for the sale of their labour and even for the production, and that the general purpose of the association in view of that dependence is to strengthen their power to bargain with the employers.

2.2 CHARACTERISTICS OF A TRADE UNION

Association of employees: A trade union is essentially an association of employees belonging to a particular class of employment, profession, trade or industry. For example, there are unions for teachers, doctors, film, artistes, weavers, mine workers and so on.

Voluntary Association: An employee joins the trade union out of his free will. A person cannot be compelled to join a union.

Permanent Body: A trade union is usually a permanent body. Members may come and go but the trade union remains.

Common Interest: The member of a trade union have certain matters of common interest-job security, better pay and working conditions and so on, which bring them together.

Collective Action: Even when an individual employee has any grievance over certain management decisions, the matter is sorted out by the intervention of the trade union Employees are able to initiate collective action to solve any problem concerning any particular employee or all the employees.

Rapport with the Management: The trade union seeks to improve relations between the employees and employers. The officials of the trade union hold talks with the members of the management concerning the problems of the employees in order to find an amicable solution. It is thus possible for the employees to have better rapport with the management.

Need for Trade Union

Workers join trade unions to achieve certain objectives that they may not be able to achieve in their personal capacity. Trade unions are necessary.

1. *To ensure job security and right pay for the members:* One of the basic needs of any employee is security of service. The main reason why an employee joins a union is to get him secured. Apart from job security and employees need to get pay commensurate with their qualifications and skills. Trade unions strive to get both job security and correct pay for all employees.
2. *To ventilate the grievances of employees to the management:* When the employees in general or some in particular have any grievance, they may not be able to convey the same to the management in their personal capacity. Such grievances maybe brought to the knowledge of the management through the trade union. The members of the management may be indifferent to the demands of the individual employees but they cannot be so when it comes to union demands.

2.3 NATURE AND SCOPE OF A TRADE UNION

The employer's association or professional bodies were not included in any of the above definitions. The employee's unions are different from that of the employers or professional bodies. The employee's unions are primarily concerned with the terms and conditions of employment of their members. The employer's associations on the other hand are concerned among other things with influencing the terms of purchase of services in favour of their members. Hence, the two should not be placed in one category. The associations of professional members also differ fundamentally from employees unions. Professional associations include self employed

as well as the employees where as trade unions consist only of the people who are employed by others. In India the term Trade Union refers besides employee's organizations to employers association also. Similarly in Britain, even the associations of professional people such as Artists Federation or Musicians Unions are also recognized as Trade Unions.

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Thus, trade unions are a major component of the modern industrial relation system. A trade union of workers is an organization formed by workers to protect their interests, *i.e.* improve their working conditions etc. All trade unions have objectives or goals to achieve, which are contained in their constitution and each has its own strategy to reach those goals. Trade Unions are now considered a sub-system which seeks to serve the specific sub-groups interest and also considers itself a part of the organization, in terms of the latter's viability and contribution to the growth of the community of which it is a part.

2.4 PURPOSE OF TRADE UNION

Trade Union came into being for a variety of purposes. Individual workers found it more advantageous to band together and seek to establish their terms and conditions of employments. They realized that if they bargained as individuals, the employer would have a better leverage, for an individual would not matter as much as a group in terms of the running of the enterprise. A group's contribution is much larger than an individual's so are the effects of its withdrawal. An individual may not be able to organize and defend his interests as well as a group can. Therefore, workers saw the advantages of organizing themselves into groups to improve their terms and conditions of employment. Employers also found it advantageous to deal with a group or a representative of a group rather than go through the process of dealing with each individual over a length of time.

With the changed political, social and equational environment in terms of awareness of rights the right to organize, the right to bargain and settle terms and conditions of employment – labour or worker unions sprang up in order to protect and further worker in acquiring a foot hold in the labour movement also provided the impetus for the formation of labour unions.

Precisely, the major objectives of trade union are the following:

1. Better wages
2. Better working conditions
3. Protection against exploitation

4. Protection against victimization
5. Provide welfare measures
6. Promote industrial peace
7. Take up Collective Bargaining
8. Look after the interest of trade

2.5 HISTORICAL EVOLUTION OF TRADE UNIONS IN INDIA

Between 1850 and 1870, foundation of modern industry was laid. Indian working class started emerging at this point of time. In the national economy, one could see the growth of Indian enterprises along with English ones, growing steadily. During this period, the working and living conditions of the labour were poor and their working hours were long. The Indian Factory Labour Commission (1908) and the Royal Commission of Labour (1931) have rectified the fact in their reports. The working hours were longer, but the wages were low and the general economic condition was poor in industries. Indian Factories Act (1881) was enacted to regulate the working hours and other service conditions of the Indian textile labourers. As a result, child labour was prohibited. This act required the formation of machinery for the inspection of factories. In 1885, the birth of the Indian National Congress has provided the background for the emergence of Trade Union.

The Trade Union movement in India can be divided into three phases. The first phase falls between 1850 and 1900 during which the inception of trade unions took place. Guided by educated philanthropists and social workers the growth of the trade union movement was slow in this phase. In all industrial cities many strikes took place in the two decades following 1880 due to the prevailing poor working conditions and long hours of work. Small associations came out in Bombay and Calcutta.

The second phase falls between 1900 and 1947. This phase was characterized by the development of organized trade unions and political movements of the working class. It also witnessed the emergence of militant trade unionism. Organised trade unionism was prepared during 1900–1915. End of Ist World War, and the Russian Revolution of 1917 gave a new turn to the Indian Trade Union movement and led to organized efforts on the part of workers to form Trade Unions. It was estimated that in 1920 there were 125 unions, with a total membership of 2, 50,000. In 1920, the first national trade union organization was established. Many of the leaders of the organization were leaders of the national movement (Monappa, 1937).

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The third phase began with the emergence of independence India. The government sought the cooperation of the unions for planned economic development. The working class movement was also politicized along the lines of the political parties. Indian National Trade Union Congress is the Trade Union arm of the Community part of India. Subsequently, the socialists left to set up another national worker federation, the Hind Mazdoor Sabha. The center of Indian Trade Unions organized in 1970, has close links with the Community Party of India – Marxist. Besides workers, white collar employees, supervisors and managers are also organized by the trade union. For example, in the banking, insurance, petroleum industries and Aviation the Trade Union exist.

Trade Union Growth

In India the trade union remains as *adhoc* bodies or strike committees but as features of the industrial society. The various factors like political, economic historical and industrial have all helped the unions to get a legal status and represent the workers. However, the unions are handmaids of political parties. They joined with one or the other political parties as more adjuncts of the parties, instead of partnership based on equality and independence as in England. The Trade union rivalries also have become chapter in free India. Most of the viable unions are split into new unions having sympathies with political parties have permeated unions operating in different levels. But they have been able influence public policy, labour and industrial legislation. They have played an important role in involving suitable machinery for joint consultation in negotiate various issues between labour and management.

Comparing other countries India has large number of trade unions for a single country. In India, thought there are more than 52000 registered trade union sin the country, only 17% of them are submitting returns and whose activities are on the record. Further, the density of the trade unions in India is as low as 9.1% as against 81% in Sweden, 54% in Norway, 39% in U.K, 32% in Germany, 30% in Canada. the Indian trade union movement also suffers from problems like small size, poor finance, outside leadership, dormination by political parties, intense inter union, ect. Due to new political and economic trends these problems are further multiplying at a rapid pace. Inspite of these problems trade unions have brought about some economic, political, and social changes for the better conditions of workers. Economically, they have improved the relative lot of the workers. Politically, they have produced a mighty secular, anticapitalist, anti-imperialist, egalitarian and socialistic force in the country. Socially, they have emerged as a unique force of national integration.

Functions of Trade Unions in the India

As per the Indian Trade Union Act, 1926, the primary function of a trade union is to protect and promote the interests of the workers and the conditions of their employment. They can also have other objectives, which are not inconsistent with this primary purpose or opposed to any law. In India, trade unions generally undertake the following functions:

(*i*) To achieve higher wages and better working and living conditions for the members.

(*ii*) To acquire control over running of the industry by workers.

(*iii*) To minimize the helplessness of the individual workers by making them stand-up unitedly and increasing their resistance power through collective bargaining; protecting the members against victimization and injustice by employers.

(*iv*) To raise the status of the workers as partners in industry and citizens of society by demanding an increasing share for them in the management of industrial enterprises.

(*v*) To generate self-confidence among the workers.

(*vi*) To encourage sincerity and discipline among workers.

(*vii*) To take up welfare measures for improving the morale of the workers.

The National Commission on Labour has underscored certain basic functions to which trade unions have to pay greater attentions such as:

(*i*) To secure fair wages for workers.

(*ii*) To safeguard the security of tenure and improve conditions of service.

(*iii*) To enlarge opportunities for promotion and training.

(*iv*) To improve working and living conditions.

(*v*) To provide for educational, cultural and recreational facilities.

(*vi*) To cooperate and facilitate technological advancement by broadening the understand.

(*vii*) To promote identity of interests of the workers with their industry.

(*viii*) To offer responsive cooperation in improving levels of production and productivity, discipline and high standards of quality.

(*ix*) To promote individual and collective welfare.

Besides these basic functions of trade unions, the Commission enjoined the following responsibilities upon the unions:

(*i*) Promotion of national integration.

(*ii*) Generally, influencing the socio-economic policies of the community through the active participation in their formulation at various levels.

(*iii*) Instilling in their members a sense of responsibility to industry and the community.

The First Five Year Plan while spelling out the role of trade unions emphasized that they should:

(*a*) Present plans to workers so as to create enthusiasm among them for the plans.

(*b*) Exercise the utmost restraint in regard to work stoppage.

(*c*) Formulate wage demands which are attuned to the requirements of economic development and are in keeping with considerations of social justice.

(*d*) Assume greater responsibility for the success of the productive effort.

2.6 STRUCTURE OF TRADE UNIONS IN INDIA

In India, the structure of trade union consists of three levels: plant/ shop or local, the state and the centre. It is generally from the central level that the ideology of the important central federations of labour in India percolates down to the state and local levels. Every national or central federation of labour in India has state branches, state committees or state councils, from where its organization works down to the local level. There are two types of organizations to which the trade unions in India are affiliated:

(*i*) National Federations, and

(*ii*) The Federations of Unions

Here a brief discussion of this trade union form is given.

1. **The National Federations** have all the trade unions in a given industry as their affiliated members. Every trade union, irrespective of the industry to which it belongs, can join a general national federation. Such federations are the apex of trade union policies a national character. The central union organizations are national federations of labour based on different political ideologies. Because of their political leanings, the affiliated trade unions in the field of labour relations follow either a militant policy or a policy of cooperation with the employers and the government, or a policy of continuous strife and litigation. The trade union leadership to these national organizations is generally provided by the

politicians. Such leaders are found leading a dozen or more unions in a particular state. These unions may be in the petroleum industry, the transport industry, electricity supply undertakings or craft unions, such as the rickshaw pullers' union or taxi drivers' union. Some of the trade union leaders and MPs and MLAs, corporators of city corporations and members of important committees dealing with the labour policy of the country. The national/central federations are empowered to decide the question of jurisdiction of the various local and national unions. A majority of these federations allow their affiliates to bargain independently with their respective employers. The federations only act as coordinating authorities for different unions under their control. They also select delegates to represent workmen in international conferences organized by the International Labour Organisation or the International Confederation of Free Trade Unions. The all-India federation of trade unions has a regular structure. For example: The INTUC consists of a central organization, affiliated unions, industrial federation, regional branches and councils functioning under the direct control or supervision of the central organization, the assembly of delegates, the general council and the working committees. The INTUC functions through its affiliated unions, delegates, assembly, general council (including office-bearers), the working committees of the general council and the Pradesh bodies. The UTUC consists of the general body (.delegates' assembly) general council, and the working committee of general council. The Hind Mazdoor Sabha (HMS) works through the general council, the working committee and affiliated organization.

2. **Federations of Unions:** These are combinations of various unions for the purpose of gaining strength and solidarity. They can resort to concerted action, when the need for such action arises, without losing their individuality. Such federations may be local, regional, state, national and international. There are a few organizations which are local in character, such as the Bharatiya Kamgar Sena, the Labour Progressive Federation, Chennai, the National Front of Indian Trade Unions and the Co-ordinating Committee of Free Trade Unions.

2.7 THE TRADE UNIONS ACT, 1926

Introduction

The origin of the passing of Trade Union Act in India was the historic Buckingham Mills Case of 1920 in which the Madras High Court granted

an interim injunction against the Strike Committee of Madras Labour Union forbidding them to induce certain workers to break their contract of employment by refusing to return to work. Trade Union leaders found that they were liable to prosecution and imprisonment for *bona fide* union activities and it was felt that some legislation for the protection of trade unionism was necessary. In March, 1921, Mr. N.M. Joshi, the then General Secretary of the all India Trade Union Congress successfully moved a resolution in the Central Legislative Assembly that Government should introduce legislation for registration and protection of trade unions. But opposition from employers to adoption of such measure was so great that it was only in 1926 that Trade Union Act was passed.

Object of the Act

The object of passing the Act was to make necessary provisions in regard to the registration of Trade Unions and to define the law relating to registered Trade Unions. The Royal Commission on Labour in India observed that the object is to give trade unions the necessary protection from civil suits and criminal laws relating to conspiracy in order to enable them to carry on their legitimate activities.

The Act extends to the whole of India including the state of Jammu and Kashmir. It came into force on the first day of June, 1927.

Trade Dispute

A trade dispute means any dispute:

(a) between employers and workmen

(b) between workmen and workmen

(c) between employers and employers.

Any such dispute as mentioned to be a Trade Dispute must also be associated with–

(a) the employment

(b) non-employment

(c) the terms of employment

(d) the conditions of labour of any person.

The definition of Trade Dispute in this Act is almost similar to the definition of Industrial Dispute given in the Industrial Disputes Act, 1947. In Trade Dispute, it is necessary that there must be a demand from one party and refusal to accept those demands by other party. There can be real and substantial between parties to such dispute.

Trade Union

The term trade union can be expressed both in an ordinary sense and in broad sense. In ordinary sense it is a combination of workmen and in a broader sense it includes combination of employers and federation of two or more such combinations. The trade union means: Any combination whether temporary or permanent formed for the purpose of regarding relations between–

(a) workmen and employers

(b) workmen and workmen

(c) employers and employers

The above combinations put restrictions on the conduct of any trade or business but certain agreements given below have been excluded from the scope of the term trade union.

(a) Agreement between partners in a business

(b) Agreement in consideration of the sale of the goodwill of a business or of instruction in any profession, trade or handicraft.

Similarly an association whose main object was to acquire patent right was held not to be a trade union. Similarly federation of teachers cannot be referred as association of trade union for teachers not being in the employment of industry.

Trade union should send an application for registration to the Registrar and shall be accompanied by the following:

(1) Name and addresses of members making the application.

(2) The name of the Trade Union and address of its head office.

(3) The titles, names, ages, addresses and office bearers of the Trade Union.

(4) General statement of the assets and liabilities of the Trade Union, if the union is in existence for over one year.

The Trade Union can be registered only under the Trade Unions Act, 1926 and the registration of the Trade Unions under any other Act such as the following shall be void:

(1) The Societies Registration Act, 1860

(2) The Cooperative Societies Act, 1912

(3) The Companies Act, 1956.

The registration of Trade Union is not legally necessary but it brings certain advantages which are:

(1) It becomes a corporate body by name

(2) It can enter into a contract

(3) It attains a legal entity

(4) It can sue and be sued in its registered name.

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The registrar can cancel or withdraw the registration and can exercise power on Trade Unions for the following issues where:

(1) Certificate of registration has been obtained by f\fraud or mistake

(2) Trade Union has ceased to exist

(3) Trade Union has violated any provision of this Act

(4) The primary objects of the Union are no longer statutory objects.

The Trade Union can request the registrar to cancel their registration after the approval of the general meeting of Trade Unions or majority of members of Trade Union.

The Registrar must give atleast two months notice in writing giving the grounds on which he proposes to cancel the certificate of registration. Registration confers on the Trade Unions certain rights and privileges which are as follows:

(1) Body corporate

(2) Separate fund to political purposes

(3) Immunity from criminal conspiracy

(4) Immunity from civil suit

(5) Enforceability of agreements

(6) Right to amalgamate

(7) Right to inspect books of Trade Union.

2.8 REGISTRATION OF TRADE UNIONS

Appointment of Registrars (Section 3)

As regards registration of a trade union, the Act empowers the appropriate Government to appoint a person to be the Registrar of Trade Union for each state. The appropriate Government may appoint as many additional and deputy registrars trade unions as it thinks fit. They shall work under the superintendence and direction of the Registrar. The appropriate Government shall specify and define the local limits within which any additional and Deputy Registrar shall exercise and discharge his powers and functions.

Mode of Registration

A Trade Union can be registered only under the Trade Union Act., 1926. The Societies Registration Act, 1860, the Co-operative Societies Act, 1012, and the Companies Act, 1956, shall not apply to any registered Trade Union, and the registration of a Trade Union under any such Act shall be void (Section 14). Any seven or more members of a Trade Union may apply for registration of the Trade Union. All the members applying for registration must subscribe their names to the rules of the Trade Union and also comply with the provisions of the Act relating to registration.

Application for Registration (Section 5)

Every application for registration of a Trade Union shall be made to Registrar. It shall be accompanied by a copy of the rules containing matters as given in Section 6. It also contains a statement of the following particulars:

(1) the names, occupations and addresses of members making the application

(2) the name of the Trade Union and the address of its head office; and

(3) the titles, name, age, addresses and occupations of the office-bearers.

Trade Union

Where a Trade Union has been in existence for more than one year before its registration, a general statement of the assets and liabilities of the Trade Union in the prescribed form must be submitted along with the application.

Rules of Trade Union – To provide the following (Section 6)

(a) Name of the Trade Union

(b) Objects

(c) Purposes for which the general funds shall be applicable

(d) Maintenance of a list of its members – facilities for its inspection

(e) Admission of the number of honorary or temporary members

(f) Payment of subscription – not less than 25 paise per month per member

(g) Conditions under which members can enjoy the benefits and under which fines may be imposed on them

(h) Manner in which rules may be amended

(i) Manner of appointment and removal of the members

(j) Safe custody of the funds, an annual audit, facilities for inspective of the accounts

(k) Manner in which Trade Union may be dissolved

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Registration (Section 7)

The Registrar will register the Trade Union, if he is satisfied that the trade union has complied with all the requirements of this Act in regard to registration. The Registrar shall register; the Trade Union by making necessary entries in the 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 shall be entered in the register.

Where the Registrar takes no action on an application for more than three months, writ under Article 226 can be issued commanding the Registrar to deal with the application.

Certificate of Registration (Section 9)

The Registrar, on registering a Trade Union, shall issue a certificate of registration which shall be conclusive evidence that the Trade Union has been duly registered under the Act.

It is obligatory on the part of the Registrar to register a Trade Union provided the provisions of the Act are complied with. He is not entitled to question whether the Union is lawful or unlawful.

Advantages of Registration

Although it is not legally necessary for a Union to be registered, registration does provide it with certain advantages. Some of the advantages gained by registration as given in Section 13 are as under:

(1) A Trade Union becomes a body corporate by name under which it is registered and it a legal entity distinct from its members of which it is composed.

(2) It gives perpetual succession and common seal.

(3) It can acquire and hold both movable and immovable property.

(4) It can enter into a contract.

(5) It can sue and be sued in its registered name.

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Cancellation of Registration (Section 10)

Power to withdraw or cancel registration of a Trade Union is given to the Registrar. The Registrar can exercise the power in the following case, namely:

(1) On the application of the Trade Union for such a course

(2) Where the certificate of registration has been obtained by fraud or mistake

(3) Where the Trade Union ceased to exist

(4) Where the Trade Union has willfully and after notice from the Registrar allowed any rule to continue in force which is inconsistent with the provision of this Act

(5) Where the Trade Union has wilifully and after notice from the registrar violated any provisions of this Act

(6) Where the primary objects of the Union are no longer statutory objects

Where the Union desires to have its certificate of registration withdrawn or cancelled, the Registrar on receiving much application, must, before granting the application satisfy himself that the withdrawal or cancellation was approved by a general meeting of the Trade Union or if it was not so approved, it had the approval of the majority of the members of the Trade Union.

The Registrar is not competent to cancel registration of a Trade Union without giving requisite notice and giving an opportunity to the Trade Union to show cause against the proposed action. The Registrar must be given not less than two months, previous notice in writing giving the grounds on which it is proposed to withdraw or cancel the certificate of registration. No such notice is required where such application is made by the Trade Union itself.

Appeal (Section 11)

Section 11 of the Act gives a limited right of appeal from the decisions of the Registrar. Any person who is aggrieved by the refusal of the Registrar to register a Trade Union or the withdrawal or cancellation of certificate of registration is given the right of appeal. The appeal must be within 60 days of the date of which Registrar passed the order against which appeal is made.

Trade Union can be restrained by injection from applying its funds for an unauthorized object or for an unlawful purpose, because such expenditure shall be ultra virus the Act. Thus, it would be illegal it devote Union funds in support of any illegal strike or lock out.

Rights and Privileges

Registration confers on the Trade Union certain rights and privileges. Similarly some rights are granted to the member of a registered Trade Union both collectively and individually. These are as under:

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Body Corporate (Section 13)

Every registered Trade Union is a body corporate by the name under which it is registered. A registered Trade Union is an artificial person in the eyes of law capable of enjoying rights like a natural person. It has a perpetual succession and a common seal. It has the right to acquire and hold both movable and immovable property. It can enter into a contract and can sue and be sued in its registered name.

The Objects on which General Funds may be spent (Section 15)

(a) Salaries, allowances and expenses to office bearers

(b) Expenses for administration and audit of the accounts of funds of the union

(c) Towards Prosecution or defence of any legal proceeding to which the union or its member is a party

(d) The conduct of trade disputes on behalf of the union or its members

(e) Compensation for the members at the time of dispute.

2.9 PENALTIES AND PROCEDURE TRADE UNION

Under Sections 31 to 33 the Registrar of Trade Unions is empowered to impose penalty on the trade union for default in submitting returns or for supply of false information or statements.

(i) Failure to submit returns (Section 31):

(a) failure to give notice which is required to be given by a registered trade union;

(b) failure to send any return, required to be sent by a registered trade union; or

(c) failure to send any documents, required to be sent by a registered trade union.

Every office-bearer or other member of the executive committee is bound to give such information, or send statements or documents as required under the provision of the Act, and if this is not done, they are punishable with fine which may extend to Rupees Twenty-five. In

the case of a continuing default, an additional fine extending to Rupees Twenty-five may be imposed for each week after the first week during which the default continues. But in no case the total fine shall exceed rupees five hundred.

The following information or statements are required to be submitted by the registered trade union:

(*i*) Notice of change in the address of the head office of the trade union;

(*ii*) Notice of change of the name on amalgamation of the unions;

(*iii*) Notice of change in the officers of the trade union;

(*iv*) Copies of the corrected rules ;

(*v*) Copy of every alteration made in the rules;

(*vi*) Notice of dissolution of the trade union; and

(*vii*) Annual returns for he period ending March 31.

Any person who willfully makes, or causes to make, any false entry in, or any omission from the general statement, or the copy of the rules or the copy of altered rules, which are required to be submitted to the Registrar in the case of a registered trade union, shall be punishable with fine which may extend to ₹ 500 (Section 31).

Any person who contravenes any of the orders of the Registrar for verification of the membership of a registered trade union (under Section 28A) shall be punishable with fine which may extend to five hundred rupees (Section 31).

(*ii*) **Supplying False Information about Trade Unions (Section 32):** The Act also lays down that where any person with intent to deceive gives:

(a) to any member of a registered trade union, or

(b) to any person including or applying to become a member of such trade union, or

(c) any alteration as are for the time being in force, shall be punishable with fine which may extent to ₹ 200.

Similarly, any person who with intent to deceive gives a copy of any rules of an unregistered trade union to any person, on the pretence that such rules are the rules of a registered trade union, shall be punishable with fine which may extend to ₹ 200.

(*iii*) **Cognizance of Offence (Section 33):** Any **offence** under this Act cannot be tried by a court inferior to that of Metropolitan Magistrate or a Judicial Magistrate First Class. Further, no court

shall take cognizance of any offence unless complaint thereof has been made by both or with the previous sanction of the Registrar of 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.

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Individual employees, if not required to become members in good standing in the union, may refuse to follow contract provision. Other employees, although benefiting from union activities, may also refuse to support the union. These "free riders" can create dissatisfaction among union members, who may also likewise refuse to continue their support to union activities. For these reasons, unions often propose some system of union security, of which all employees are required to be or to become and to remain union members.

The Union Security covers:

(a) **Sole or Exclusive Bargaining Agent:** Under this type of security, the union is accepted as a bargaining agent for all employees (members and non-members) in the unit.

(b) **Preferential Union Shop:** Under this, additional recognition is granted to a union by agreement that management shall give the first chance to union members in recruitment.

2.10 UNIONIZATION IN THE INDIAN CONTEXT

Trade union law and political parties and their strategy are relevant for the process of unionization in the Indian context. The Trade Union Act 1926 states, "Any seven or more members of a trade union may be 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."

This has resulted in a large number of registered and unregistered trade unions. Another factor is that the major political parties have a federation at the apex or national level to which unions at the plant and state level are affiliated. The organization pattern of a trade union federation is usually three-tired. Units exist at the plant or shop, state and the national level.

National Level Federation

Historically, four major federations have been in existence and have established a national net work of federal unions. They are:

1. The All India Trade Union Congress (AITUC)

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2. India National Trade Union Congress (INTUC)
3. United Trade Union Congress (UTUC)
4. Hind Mazdoor Sabha (HMS)

Of the four, the penultimate one, UTUC, has to a certain extent merged with the Center of Indian Trade Union (CITU).

Other than the above,

1. National Labour Organisation (NLO)
2. Bhartiya Mazdoor Sangh (BMS) and
3. Hind Mazdoor Panchayat (HMP)

are a few having stronger regional affiliations than a national coverage.

2.11 INDUSTRY LEVEL UNIONS

Textile Labour Association

Ahmedabad is an example of the industry level union. TLA has diversified into an unorganized sector. However, its strength and major contribution has been in the textile industry.

Local Level Unions

Many Indian Unions are not affiliated to an industry level federation and in many cases may not have any affiliation to the national federation. They are thus independent local unions centered on a particular plant or a multi plant organization. Irrespective of occupational groups all are admitted to this union. The numbers may vary among the small, medium and large ones. In specific situations, the assistance or guidance of the larger federations or other large unions in related industries are sought.

2.12 RIGHTS AND RESPONSIBILITIES OF REGISTERED UNIONS

While the main clauses of the Trade Union Act of 1926, concern the formation of unions, certain other features are also worth noting. Registration, which means formal recognition of a representative body, also entails certain pre-conditions. A registered union must allow membership to anyone over 15 years of age and have 50% of the office bearers from within the industry. It must keep its books of account in order and send its income and expenditure statements to the registrar of trade unions on or before 31st March.

The union can spend its funds on salaries of office bearers, prosecution, defence, etc. for protecting its trade union rights, to provide compensation to members, levy subscription fees, publish periodicals, etc. More important, a registered union can claim protection from being prosecuted for legitimate trade union activities. This protection is under Section 120 B, subsection 2 of the Indian Penal Code.

The issue that arises, therefore, is the distinction between a recognized union under the Code of Discipline and a registered union under the Trade Union Act of 1926. The former is a voluntary act and may well concern a representative union, while the latter may not always cover a representative union, especially in multi-union situations where there are many small unions or two or three factions. In the absence of any statute, the recognition of a majority bargaining union of the workers still remains a cumbersome process.

2.13 COLLECTIVE BARGAINING

The term "collective bargaining" originated in the writings of Sidney and Beatrice Webb, the famed historian of the British labour movement, towards the end of the nineteenth century. It was first given currency in the United States by Samuel Gompers. Collective bargaining is a process of joint decision-making and basically represents a democratic way of life in industry. It establishes a culture of bipartism and joint consultation in industry and a flexible method of adjustment to economic and technical changes in an industry. It helps in establishing industrial peace without disrupting either the existing arrangements or the production activities.

2.14 MEANING AND CONCEPT OF COLLECTIVE BARGAINING

Collective bargaining has been defined in the *Encyclopaedia of Social Sciences,* as "a process of discussion and negotiation between two parties, one or both of whom is a group of persons acting in concert. The resulting bargain is an understanding as to the terms and conditions under which a continuing service is to be performed....More specifically, collective bargaining is a procedure by which employers and a group of employees agree upon the conditions of work."

Stevens defines collective bargaining as a 'social-control technique for reflecting and transmitting the basic power relationships which underlie the conflict of interest in an industrial relations system.' The definition emphasises important characteristics of collective bargaining, that it

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is concerned with the application of power in the adjustment of inherent conflicts of interest. The Webbs described collective bargaining as an economic institution, with trade unionism acting as a labour cartel by controlling entry into the trade.

Prof. Allan Flanders has argued on the other hand, that collective bargaining is primarily a political rather than an economic process. He describes collective bargaining as a power relationship between a trade union organisation and the management organisation. The agreement arrived at is a compromise settlement of power conflicts. In Flanders' view collective bargaining is joint administration, synonymous with joint management. Collective bargaining has been described by Dubin as "the great social invention that has institutionalised industrial conflict" and by the Donovan Commission as "a right which is or should be the prerogative of every worker in a democratic society." It may be defined as: a method of determining terms and conditions of employment and regulating the employment relationship which utilises the process of negotiation between representatives of management and employees intended to result in an agreement which may be applied across a group of employees.

Marxists contend that collective bargaining is merely a means of social control within industry and an institutionalised expression of the class struggle between capital and labour in capitalist societies. It is a method by which management and labour may explore each other's problems and viewpoints, and develop a framework of employment relations and a spirit of cooperative goodwill for their mutual benefit. It has been described as a civilised bipartite confrontation between the workers and the management with a view to arriving at an agreement. In brief, it can be described as a continuous, dynamic process for solving problems arising directly out of the employer-employee relationship.

There are three concepts of collective bargaining with different emphasis and stress, namely, marketing concept, governmental concept, and the industrial relations or managerial concept. The marketing concept views collective bargaining as the means by which labour is bought and sold in the market place. In this context, collective bargaining is perceived as an economic and an exchange relationship. This concept focuses on the substantive content of collective agreements *i.e.,* on the pay, hours of work, and fringe benefits, which are mutually agreed between employers and trade union representatives on behalf of their members. The governmental concept of collective bargaining, on the other hand, regards the institution as a constitutional system or rule-making process, which determines relation between management and trade union representatives. Here collective bargaining is seen as a political and power relationship. The industrial relations or managerial concept of collective bargaining views

the institution as a participative decision-making between the employees and employers, on matters in which both parties have vital interest.

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2.15 FUNCTIONS OF COLLECTIVE BARGAINING

Collective bargaining serves a number of important functions. It is a rule making or legislative process in the sense that it formulates terms and conditions under which labour and management may cooperate and work together over a certain stated period.

It is also a judicial process for in every collective agreement there is a provision or clause regarding the interpretation of the agreement and how any difference of opinion about the intention or scope of a particular clause is to be resolved. It is also an executive process as both management and union undertake to implement the agreement signed.

John Dunlop and Derek Bok have listed five important functions of collective bargaining: (*i*) establishing the rules of the workplace; (*ii*) determining the form of compensation; (*iii*) standardising compensation; (*iv*) determining priorities on each side; and (*v*) redesigning the machinery of bargaining. According to Flanders (1974) collective bargaining serves two employers interests.

One is market control. By negotiating pay and conditions that are more or less standard, employers effectively take the costs of one of the most important factors of production out of competition. The second interest served by collective bargaining is a contribution to managerial control.

2.16 NATURE OF COLLECTIVE BARGAINING

The essential characteristic of collective bargaining is that employees do not negotiate individually and on their own behalf, but do so collectively through representatives. It can only exist and function in the following circumstances:

- If employees identify a commonality of purpose, organise and act in concert.
- If management is prepared to recognise their organisation and accept a change in the employment relationship which removes, or at least constraints, its ability to deal with employees on an individual basis.

Joseph Shister has opined that collective bargaining can best be analysed by listing its principal characteristics. He lists five characteristics:

(*i*) collective bargaining involves group relationships; (*ii*) it is both continuous and evolutionary; (*iii*) it interacts with the socio-economic climate; (*iv*) it is private, but at times involves government action; and (*v*) it varies from setting to setting.

In collective bargaining, the employer does not deal with workers directly, but he deals with a collective authorised institution. It is an institutional mechanism for:

(a) fixing up the price of labour services;

(b) establishing a system of industrial jurisprudence; and

(c) providing a machinery for the representation of individual and group interests.

It covers the entire range of organised relationship between union and management, including negotiation, administration, interpretation, application and enforcement of written agreements. It sets forth joint understandings as to policies and procedures governing wages, rates of pay, hours of work and other conditions of employment. It is recognised as the central institution or 'heart' of industrial relations in all democratic nations.

Collective bargaining is essentially a multi-dimensional institution. It is also an important means of extending industrial democracy to employees within the workplace. Several conditions are necessary for its emergence and survival. These include freedom of association for employees to organise into trade unions, which are independent both of their employers and of the state, employer recognition, bargaining in good faith, and mutual acceptance of the agreements entered into by employers and employees.

For Clegg, collective bargaining covers both the negotiation and the administration of agreements. He holds that collective bargaining is the principal influence on union behaviour. He identifies six dimensions of collective bargaining as: extent, level, depth, union security, degree of control and scope. Further, he argues that the dimensions of collective bargaining are themselves mainly determined by the structures of management and of employers' organisations.

2.17 TYPES OF COLLECTIVE BARGAINING

There are two types of bargaining exercises. One is known as conjunctive or distributive bargaining and the other integrative or cooperative bargaining. Though both aim at joint decision-making, their processes are dissimilar. Distributive bargaining has the function of resolving pure conflicts of interest. It serves to allocate fixed sums of resources and hence often has a "win-lose" quality. In distributive bargaining, the relationship is a forced one, in which the attainment of one party's goal appears to be in

basic conflict with that of the other. It deals with issues in which parties have conflicting interests and each party uses its coercive power to a maximum extent possible. In such a situation, one party's gain is the other's loss. Wage bargaining is an obvious example of distributive or conjunctive bargaining. In contrast to the win-lose syndrome of distributive bargaining, integrative bargaining is concerned with the solution of problems confronting both parties. It is a situation where neither party can gain unless the other gains as well. Integrative bargaining has the function of finding common or complementary interests and solving problems confronting both partners. It serves to optimise the potential for joint gains and hence often has a "win-win" quality. It makes a problem-solving approach in which both the parties make a positive joint effort to their mutual satisfaction. Productivity bargaining is an instance of integrative bargaining.

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2.18 ELEMENTS OF COLLECTIVE BARGAINING

There are three elements in the system of collective bargaining:

1. **Issues for Consideration:** The issues pertaining to union recognition and union security come up for consideration when the organisation of workers are weak and they struggle for recognition by the employers. The issues which are generally taken up for consideration are on several aspects of employment relationship, such as wages, fringe benefits, working conditions, and personnel matters such as promotion, transfer, discharge and dismissal.

2. **The Procedure for Consideration:** The bargaining machinery and procedure for consideration of various issues differ in relation to whether the two parties, employers, managements and workers and their unions, conduct bargaining on their own or whether a third party, such as the government intervenes to bring about a settlement between them.

3. **Collective Agreements and their Implementation:** The term "collective agreement" means all agreements in writing regarding working conditions and terms of employment concluded between an employer, a group of employers or one or more employers' organisations, on the one hand, and one or more representative workers' organisations or, in the absence of such organisations, the representatives of the workers duly elected and authorised by them in accordance with national laws and regulations, on the other (ILO Recommendation No. 91).

The collective bargaining agreement may be described in a number of ways. It is a compromise between the self-interest of the two parties that they have agreed upon as a guide to their relationships on certain matters for a specified period of time. Collective agreement patterns may vary from country to country depending upon: (*i*) the scope of legislation of the country where the agreement is signed; (*ii*) the level at which the agreement is negotiated and the industry to which it is to apply; and (*iii*) the government policy towards labour and industrial relations and propensity of the parties to bargain with each other. The negotiators have to decide at which level the collective agreement has to be applied: (*i*) to the undertaking, plant or work site; (*ii*) to a particular place or an area; or (*iii*) to the whole country. In some countries, negotiations at the level of a single undertaking are considered to be more appropriate in view of the special conditions prevailing there. The advantage of negotiating at the level of industry is that it tends to harmonise working conditions and provides uniform benefits to all concerned.

The contents of collective agreements vary considerably from plant to plant and from industry to industry. Usually, they cover items relating to wages, working conditions, working hours, fringe benefits, and job security. Legally, a collective agreement binds only the parties to it and the persons on behalf of whom they were acting. It often happens that all workers in a given undertaking may not belong to the union which signed the agreement, or that they are non-unionised. Therefore, in a number of countries the law provides for compulsory coverage of agreements or settlements on the employers and all the employees in an establishment. The implementation and supervision of collective agreements, in some countries, depends on the good faith of the parties. They are "gentlemen's agreements" without any legal sanction, for instance, in the United Kingdom.

In India, there are three types of agreements, namely, (a) voluntary agreements, (b) settlements, and (c) consent awards. Collective agreements are voluntary when they are the result of direct negotiations between the parties and when the parties rely on themselves for their implementation. Settlements are collective agreements that are backed by the intervention of government agencies. Consent awards are agreements reached between the parties when the matters in dispute are under reference to industrial tribunal/courts.

2.19 COLLECTIVE BARGAINING PROCESS

Collective bargaining is a two-edged sword; what is won may also be lost. Today's collective bargaining process is based upon statutory law: What makes collective bargaining possible in this context is that both labour and management have an ultimate harmony of interest; that is,

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the desire to assure that the firm for which they work – and from which they are both paid – will remain in business. In order to stay in business, it must be competitive with other firms. The bargaining process includes preparation of initial demands, negotiations, and settlement. Adequate preparation for bargaining is often the key to success – preparation for negotiations is a comprehensive on-going job for both the management and the union.

Preparation allows each bargaining team to determine their bargaining objectives; a negotiating team to defend its proposals; and to anticipate the opponent's demands. Among the more important steps to pre-negotiation preparations are the following:

(1) Coordinating preparations among persons responsible for gathering and analysing information relevant to the bargaining process.

(2) Selection of a chief negotiator and bargaining team members.

(3) Reviewing previous negotiations because it provides insights into the opponent's bargaining tactics and probable demands.

(4) Gathering data on internal operations and policies of comparable firms through wage and salary surveys.

(5) Formulate proposals and priorities.

(6) Select a suitable site for negotiations.

(7) Organise the relevant information in a bargaining book for easy access at the bargaining table.

(8) Notify the opponent the intent to bargain by serving required notice.

One of the most difficult aspects of the collective bargaining process is to determine appropriate bargaining units. The principle to be followed is that there should exist a community of interest among the employees to be represented. Otherwise, a single bargaining agent would find it impossible to represent all of their interests equally well.

The first step in the collective bargaining process is establishing a relationship for ongoing negotiations and the formulation of agreements covering conditions in the workplace. It is obvious that a great deal of effort can go into the process of establishing a collective bargaining relationship. It is an anxiety producing process and that each step may involve bitter conflict between the parties. Sometimes, this conflict escalates to litigation; and sometimes it even spills over to violence. Hence, one of its objectives should be promotion of rational and harmonious relations between employers and unions.

The second step in the bargaining process relates to the scope of bargaining, *i.e.*, the matters on which to bargain. It consists of three broad categories

of items – subjects over which bargaining is mandatory, subjects considered illegal or prohibited, and subjects on which bargaining is permitted but not required. In case of subjects, which are mandatory, the relevant statute or common law makes it unfair labour practice or breach of good faith to refuse to bargain over them. The second category of items in the scope of bargaining is practices considered illegal or prohibited. These are the matters that cannot be bargained under law. Falling between these two categories are items upon which bargaining is permitted, but not required. Either side may refuse to discuss such a matter. To do so is not considered a breach of fair labour practice or good faith.

The third step in the bargaining process is careful structuring. Many observers agree that some structural aspects are crucial in facilitating the ability to reach agreements. The personnel department should take the initiative of forming a negotiating team consisting of two or three members, besides the industrial relations expert. The management team should include representatives of the departments, a personnel specialist, and some one competent to assess the various proposals and counter proposals. The bargaining teams should also be balanced in terms of number of individuals present. Both the sides should agree in advance on the timing, location, and length of bargaining sessions.

An agenda should be prepared indicating which items are to be taken up first – economic or non-economic. A decision must be made as to whether to treat each item separately, or to seek to bargain an entire package at once. The task of management team should range from formulation of management's charter of demands to the full participation in the actual bargaining sessions; and above all, the preparation of the draft of the settlement and, then, the readiness to negotiate.

An absence of good faith bargaining has been found to include:

(1) An unwillingness to make counter proposals.

(2) Constantly changing positions in bargaining.

(3) The use of delaying tactics.

(4) Withdrawal of concessions after they have been made.

(5) Unilateral actions over topics of bargaining.

(6) Refusal to furnish necessary data for negotiations.

Steps to improve the process of collective bargaining are:

- Begin the process of negotiations with proposals, not demands.
- Avoid taking public positions for or against certain proposals in advance of negotiations.

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- Avoid taking strike votes before the process of negotiation begins.
- Give negotiators proper authority to bargain.
- Avoid unnecessary delays in beginning negotiations and in conducting them.
- Insist on offering facts and arguments.
- Make plenty of proposals to enhance the opportunities to find compromises.
- Be prepared to compromise.
- Be prepared to get results gradually.
- Preserve good manners and keep discussion focused on relevant issues.
- Be prepared to stand for a long and hard strike or lockout (as the case may be) in order to force a settlement justified by facts and arguments.

2.20 SETTLEMENTS AND AGREEMENTS COLLECTIVE BARGAINING

"Settlement" as defined in Section 2(p) of the Industrial Disputes Act envisages two categories of settlement –

(a) a settlement which is arrived at in the course of conciliation proceedings *i.e.*, which is arrived at with the assistance and concurrence of the Conciliation Officer, and;

(b) an agreement between the employer and workmen arrived at otherwise than in the course of conciliation proceedings.

To be valid, an agreement under the second category should be in writing signed by the parties thereto and copies should be sent to an officer authorised for this purpose by the appropriate Government and the Conciliation Officer. Thus, every settlement is an agreement though every agreement is not a settlement. A settlement arrived at otherwise than in the course of conciliation proceedings is binding only on the parties to the agreement. It does not bind anyone other than the parties thereto. A settlement arrived at in the course of conciliation proceedings under the Act will be binding on all the persons employed in the establishment to which the dispute relates on the date of the dispute and all persons who become subsequently employed in that establishment.

2.21 EMERGING ISSUES IN COLLECTIVE BARGAINING

Union and management are going to face many substantive and procedural issues in collective bargaining. Some of the issues can probably be handled at the bargaining table by using existing structures and strategies. Some of the traditionally handled issues are as follows:

Wage Bargaining

Wages will remain at the centre stage of future contract negotiations because the size and security of income will continue to be of vital importance to workers.

Women's Issues

The explosive growth in the number of women employees may give rise to fresh challenges to both employers and unions to squarely face the particular concerns and problems of females on-the-job. That process has been going on for some time now but will probably accelerate in the future as women become firmly and permanently entrenched in the labour force and in the unions. Women issues are going to figure more and more in future collective bargaining.

Job Security

The potential loss of jobs due to technological change has always been a major concern for the unions. Use of automation and computers will expand as Indian companies attempt to increase productivity and remain competitive in domestic and international markets. This will continue in the future and may even accelerate the collective bargaining process.

Productivity

Time has come, according to many economists, for the unions to be vitally concerned with productivity and to realise that employee welfare is tied directly to the success of the enterprise and industry. At the same time, management must recognise that to obtain an increase in productivity, it must seek the co-operation of the employees and the union. In short, what is needed in collective bargaining is re-approachment between union and management that recognises the necessity of co-operating to raise productivity.

Technological Change

Management cannot expect workers and their unions to moderate their wage demands and attitude toward technological change unilaterally. As

in every constructive collective bargaining situation, there must be a give and take. Further, the society cannot expect labour to bear the full cost of technological change. It is true that workers will ultimately benefit from a competitive product, but so will management, stockholders, and the consumer. It seems only equitable that all parties bear some of the cost. In Japan and some European countries, technological change is not normally opposed because jobs are guaranteed.

Quality of Work Life (QWL)

The issue of quality of work life is related to the need for organised labour and management to work co-operatively toward the goal of greater productivity. The attention now being paid to the QWL reflects the growing importance being attached to it. It is apparent that a substantial number of employees are unhappy with their jobs and are demanding more meaningful work. Employees are beginning to demand improvements in both economic and non-economic benefits from their jobs. The importance of non-economic rewards is increasing relative to the importance of economic ones, especially among white-collar and highly educated employees. People are demanding greater control and involvement in the jobs. They do not want to be treated as a cog in a wheel. QWL experiments will continue in the years ahead and may eventually provide some impetus to the collective bargaining across countries.

2.22 PRODUCTIVITY BARGAINING

Productivity bargaining has been described as "an agreement in which advantages of one kind or another, such as higher wages or increased leisure, are given to workers in return for agreement on their part to accept changes in working practices or in methods or in organisation of work which will lead to more efficient working. The prime purpose of productivity bargaining is to raise labour productivity and lower unit labour costs. It aims at improving labour productivity, not so much by requiring workers to make greater efforts, but by eliminating the impediments to higher productivity. Moreover, it is an exercise in problem solving and creating new gains for both management and labour.

Productivity bargaining is a complex process. It involves lengthy, detailed negotiations about the implementation of a variety of management techniques such as work-study and job evaluation. The content of negotiation is more or less comprehensive in the sense that it includes not only bargaining over earnings but bargaining over other related matters such as reduction in hours of work, introduction or extension of shift working, manning of machines, the introduction of new payment systems

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and reallocation of job control. Productivity bargaining generally occurs at the level of the enterprise or company and covers almost all employees.

2.23 INDUSTRIAL DISCIPLINE

(i) Meaning

Industrial discipline means working by employees according to rules, regulation and code of conduct in the industry. Industrial discipline signifies orderliness. It is the opposite to disorder in employees behaviors and action. It is said to be good when the members of organisation willingly follow the rules and regulation within the standards of acceptable behaviors and willingly follow the rules and regulations of the enterprise. It is said to be bad when subordinates either do this reluctantly and unwillingly or actually disobey regulations and standards of acceptable behaviour as promulgated by the need of enterprises,

(ii) Objectives of Industrial Discipline

The main objective of Industrial discipline is to:

(a) get co-operation of subordinates within the framework of management's policy for fulfilling the target and not merely to enforce authority;

(b) to reform the offender causing displeasure, deter others from making the same mistake.

2.24 INDUSTRIAL MISCONDUCT

The word "misconduct" has not been defined either in the Industrial Disputes Act, 1947 or in the Industrial Employment (Standing Orders) Act, 1946. The meaning given to the word misconduct in the Oxford Dictionary in "malfeasance or culpable neglect of an official in regard to his office".

The expression is also used in the sense of "improper misconduct" or "wrongful behaviour". In Ramnath Ayyar, Law Lexicon, it has been stated that the term misconduct implies wrongful intention and not a mere error of judgement. In "Words and Phrases", permanent edition, the meaning given to 'misconduct' is: Improper or wrongful behaviour or unlawful behaviour or conduct of malfeasance [Kanshi Parsad Saxena v. State of U. E, (1967)2 L.L.J., 589]. In Ballentine's Law Dictionary, 1981, p. 390 it has been defined as a transgression of some established and defined rule of action, where no discretion is left except what necessity may demand: It is a violation of definite law, a forbidden act. It differs from carelessness. The word 'misconduct' has been defined

by the Calcutta High Court in Bengal Nagpur Rly. Co. vs. Moolji, A.I.R. 1930, Cal. 815 to mean "The intentional doing of something which the doer knows to be wrong, or which he does wrecklessly, not caring what the results may be". So the word misconduct is a generic term while the specific misconducts like insubordination, neglect of work etc. are species thereof (G.W Misra v. Union of India, 1961(3) F.L.R. 195).

Mere negligence is not a misconduct. Misconduct is a specific word and it cannot be mere inefficiency or slackness. It is something far more positive (Presidency Talkies vs. M.S. Natrajan, A.I.R. 1969, Mad. 121).

The following three different meanings of the word "misconduct" have been given by the Supreme Court:

(a) Misconduct is not established by proving even culpable negligence. It is something opposed to accident or negligence and is doing of something which the doer knows to be wrong, or which he does recklessly not caring what the result will be.

(b) Misconduct is distinguished from accident and is not far from negligence-not only gross and culpable negligence, and involves that a person misconduct, himself when it is 'wrong conduct on his part in the existing circumstances to do or fail or omit to do a particular thing or to persist in the act, failure or omission or acting with carelessness. It is incorrect that misconduct only refers to acts of gross or culpable negligence and not to mere negligence.

(c) Misconduct does not ordinarily cover acts of negligence. The test of misconduct is not what a reasonable man would have done in the circumstances. It means that a servant is guilty of something which was inconsistent with the conduct expected of him by the rules of the company.

Thus whether the mere negligence is misconduct or not will depend upon the nature of negligence and the requirement of the employment relationship.

(ii) Types of Misconduct

There are various types of misconducts which a worker may commit. They are generally given in the standing orders of the establishment, and it is only for these that a worker can be punished (Management of Debranpur Division v. Labour Court, A.T.R. 1967, Ass.\68; Andhra Scientific Co. Ltd. v, Rao, 1961 11 L.L.J. 117, S.C.). However where there are no standing orders in the establishments, the model standing orders [Cl. 14(3) of the model standing orders has given acts or omissions which will constitute misconduct], in schedule I to the Industrial Employment (Standing Orders) Act, 1946 shall apply.

(iii) Misconduct in Model Standing Orders

Industrial Employment (Standing Orders) Central Rules, 1946 have been framed by the Central Government in exercise of the powers. Conferred by Section 15 (2)(b) of the , Industrial Employment (Standing Orders) Act, 1946—Schedule I appended to the Central Rules, specify the model standing orders in respect 'of industrial establishments not being 'the industrial establishments in coal mines. Under the model standing orders the following acts and omissions are misconducts: (O.P. Malhotra, 'The Law of Industrial Disputes', N.M. Tripathi Private Ltd., Bombay, 1981, P. 750–751)

(a) willful insubordination or disobedience, whether alone or in combination with others, to any lawful and reasonable order of a superior.

(b) theft, fraud or dishonesty in connection with the employer's business or property.

(c) willful damage to or loss of employer's goods or property.

(d) taking or giving bribe or any illegal gratification.

(e) habitual absence without leave or absence without leave for more than ten days.

(f) habitual late attendance.

(g) riotous, or disorderly behaviour during working hours at the establishment or any act subversive of discipline.

(h) habitual negligence or neglect of work.

(i) frequent repetition of any act or omission for which a fine may be imposed to a maximum of 2% of the wages in a month; and

(j) striking work or inciting others or strike work in contravention of the provisions of any law or rule having the force of law.

The Bombay High Court in Sharda Prasad, Tewari v. Central Railway, (1960, 1 L.L.J. 167 Bombay) enumerated broadly the following specific illustrative cases of acts of misconduct, the commission of which would justify dismissal of the delinquent employee are:

(1) Where the act or conduct prejudicial or likely to be prejudicial to the interests or reputation of the master.

(2) Where the act or conduct inconsistent or incompatibly with the due or peaceful discharge of his duty to his master.

(3) An act or conduct making it unsafe for the employer to retain him in service.

(4) An act or conduct making it unsafe for the employer to retain him in service.

(5) An act or conduct of the employees which may make it difficult for the master to rely on faithfulness of the employee.

(6) An act or conduct of the employee opening before him temptation for not discharging his duties properly.

(7) An abusive act or an disturbing the peace at the place of employment.

(8) Insulting or insubordination to such. a degree as to be incompatible with the continuance of the relation of master and servant.

(9) Habitual negligence in respect of the duties for which the employee is engaged; and

(10) An act of neglect, even though isolated, which tends to cause serious consequences.

2.25 GRIEVANCES

In their working life, employees do get dissatisfied with various aspects of working may be with the attitude of the manager, policy of the company, working conditions, or behaviour of colleagues. Employers try to ignore or suppress grievances. But they cannot be suppressed for long. Grievance acts as rust which corrodes the very fabric of organisation. An aggrieved employee is a potent source of indiscipline and badworking.

According to **Julius,** a grievance is *"any discontent or dissatisfaction, whether expressed or not, whether valid or not, arising out of anything connected with the company which an employee thinks, believes or, even feels to be unfair, unjust or inequitable."*

2.26 DISSATISFACTION, COMPLAINT AND GRIEVANCE

To understand what a grievance is, you must clearly be able to distinguish between dissatisfaction, complaint and grievance. Torrington (1987) provides us with a useful categorisation in this regard:

(a) ***Dissatisfaction:*** Anything disturbs an employee, whether or not the unrest is expressed in words.

(b) ***Complaint:*** A spoken or written dissatisfaction brought to the attention of the supervise or or the shop steward.

(c) ***Grievance:*** A complaint that has been formally presented to a management representative or to a union official.

In addition, there are other definitions of a grievance that distinguish it from the other two. Few such definitions are:

- A grievance is a formal dispute between an employee and management on the conditions of employment. (Glueck, 1978)
- Grievances are complaints that have been formally registered in accordance with the grievance procedure. (Jackson)
- A grievance is any dissatisfaction or feeling of injustice in connection with one's employment situation that is brought to the attention of the management (Beach, 1980).

Therefore, you will see that a grievance is a formal and a relatively drastic step, compared to dissatisfactions and complains. However, instances where complaints turn into grievances are not common, since few employees will question their superior's judgement. Further, many people do not initiate grievances because they fear negative consequence as a result of their attempt.

Features

If we analyse these definitions of grievance, some noticeable features emerge clearly:

(a) A grievance refers to any form of discontent or dissatisfaction with any aspect of the organisation.

(b) The dissatisfaction must arise out of employment and not due to personal or family problems.

(c) The discontent can arise out of real or imaginary reasons. When the employee feels that injustice has been done to him, he has a grievance. The reasons for such a feeling may be valid or invalid, legitimate or irrational, justifiable or ridiculous.

(d) The discontent may be voiced or unvoiced. But it must find expression in some form. However, discontent *per se* is not a grievance. Initially, the employee may complain orally or in writing. If this not looked into promptly, the employee feels a sense of lack of justice. Now the discontent grows and takes the shape of a grievance.

(e) Broadly speaking, thus, a grievance is traceable to perceived non-fulfillment of one's expectations from the organisation.

2.27 FORMS OF GRIEVANCES

A grievance may take anyone of the following forms:

(a) ***Factual:*** A factual grievance arises when legitimate needs of employees

remain unfulfilled, e.g., wage hike has been agreed but not implemented citing various reasons.

(b) ***Imaginary:*** When an employee's dissatisfaction is not because of any valid reason but because of a wrong perception, wrong attitude or wrong information he has. Such a situation may create an imaginary grievance. Though management is not at fault in such instances, still it has to clear the 'fog' immediately.

(c) ***Disguised:*** An employee may have dissatisfaction for reasons that are unknown to himself. If he/she is under pressure from family, friends, relatives, neighbours, he/she may reach the work spot with a heavy heart. If a new recruit gets a new table and almirah this may become an eyesore to other employees who have not been treated likewise previously.

2.28 CAUSES OF GRIEVANCES

Grievances may occur for a number of reasons:

Economic: Wage fixation, overtime, bonus, wage revision, etc. Employees may feel that they are paid less when compared to others.

Work Environment: Poor physical conditions of workplace, tight production norms, defective tools and equipment, poor quality of materials, unfair rules, lack of recognition, etc.

Supervision: Relates to the attitudes of the supervisor towards the employee such as perceived notions of bias, favouritism, nepotism, caste affiliations, regional feelings, etc.

Work group: Employee is unable to adjust with his colleagues; suffers from feelings of neglect, victimisation and becomes an object of ridicule and humiliation, etc.

Miscellaneous: These include issues relating to certain violations in respect of promotions, safety methods, transfer, disciplinary rules, fines, granting leave, medical facilities, etc.

2.29 EFFECTS OF GRIEVANCE

Grievances, if they are not identified and redressed, may affect adversely the workers, managers and the organisation. The effects are:

1. On production include:
   - Low quality of production.
   - Low quality of production and productivity.

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- Increase in the wastage of material, spoilage/leakage of machinery.
- Increase in the cost of production per unit.

2. On the employees:
   - Increases the rate of absenteeism and turnover.
   - Reduces the level of commitment, sincerity and punctuality.
   - Increases the incidence of accidents.
   - Reduces the level of employee morale.
3. On the managers:
   - Strains the superior-subordinate relations.
   - Increases the degree of supervision, control and follow up.
   - Increases in discipline cases.
   - Increase in unrest and thereby machinery to maintain industrial peace.

Beach also refers to several reasons why there should be a formal procedure to handle grievances:

- All employee complaints and grievances are in actual practice not settled satisfactorily by the first level supervisor, due to lack of necessary human relations skills or authority to act.
- It serves as a medium of upward communication, whereby the management becomes aware of employee frustrations, problems and expectations.
- It operates like a pressure release valve on a steam boiler, providing the employees with an outlet to send out their frustrations, discontents and grips.
- It also reduces the likelihood of arbitrary action by supervision, since the supervisors know that the employees are able to protest such behaviour and make their protests heard by higher manager.
- The very fact that employees have a right to be heard and actually heard helps to improve morale.

2.30 GRIEVANCE HANDLING PROCEDURE

As already discussed, there are valid reasons to have the grievances processed through a machinery or a procedure.

Objectives of a Grievance Handling Procedure

Jackson (2000) lays down the objectives of a grievance handling procedure as follows:

- To enable the employee to air his/her grievance.
- To clarify the nature of the grievance.
- To investigate the reasons for dissatisfaction.
- To obtain, where possible, a speedy resolution to the problem.
- To take appropriate actions and ensure that promises are kept.
- To inform the employee of his or her right to take the grievance to the next stage of the procedure, in the event of an unsuccessful resolution.

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The Benefits of a Grievance Handling Procedure

According to Jackson (2000), further benefits that will accrue to both the employer and employees are as follows:

- It encourages employees to raise concerns without fear of reprisal.
- It provides a fair and speedy means of dealing with complaints.
- It prevents minor disagreements developing into more serious disputes.
- It saves employers time and money as solutions are found for workplace problems. It helps to build an organisational climate based on openness and trust.

Processing of Grievance

The details of a grievance procedure/machinery may vary from organisation to organisation. Here, a four phase model (Figure 2.1) is suggested. The first and the last stages have universal relevance, irrespective of the differences in the procedures at the intermediate stages. The four stages of the machinery are briefly discussed here:

The level at which grievance occurs: The best opportunity to redress a grievance is to resolve it at the level at which it occurs. A worker's grievance should be resolved by his immediate boss, the first line supervisor. The higher the document rises through the hierarchy, the more difficult it is to resolve. Bypassing the supervisor would erode his authority. When the process moves to a higher stage, the aggrieved employee and the supervisor concerned may shift their focus to save face by proving the other wrong. The substantive aspect of any of the grievances may thus be relegated and dysfunctional aspects come to the fore thus making it more difficult to settle the issue. In a unionised concern, the first stage of the procedure usually involves three people: the aggrieved employee, his immediate boss and the union representative in the shop/department. It is possible to involve the union in laying down the framework of the grievance procedure and thereafter restrain union involvement in the actual process, at least in the first two stages.

The choice depends on the top management attitude and orientation towards the dynamics of union-management relations. Supervisory role needs to be strengthened, with appropriate training in problemsolving skills, grievance handling and counselling so that he can do much in reducing the number of grievances that get passed to higher stages in the machinery.

Unrealistic policies and expectations and lack of commitment for equity and fair play can cause problems in handling grievances at the lower leval. Inadequate delegation of authority may also inhabit a supervisor's effectiveness in handling grievances at this level.

Intermediate Stage: If the dispute is not redressed at the supervisor's level, it will usually be referred to the head of the concerned department. It is important that line management assume prime responsibility for the settlement of a grievance. Any direct involvement by personnel department may upset balance in line-staff relations. At the intermediate level, grievance can be settled with or without union involvement. Excessive reliance on supervisor at this stage can jeopardise the interests of the employee and affect the credibility of the procedure.

Organisation Level: If a grievance is not settled at the intermediate level also, it will be referred to the top management. Usually, a person of a level not less than General Manager designated for the purpose will directly handle the issue. By now, the grievance may acquire some political importance and the top leadership of the union may also step in formally, if the procedure provides for it and informally, if the procedure prohibits it. At this level it is very difficult to reconcile the divergent interests.

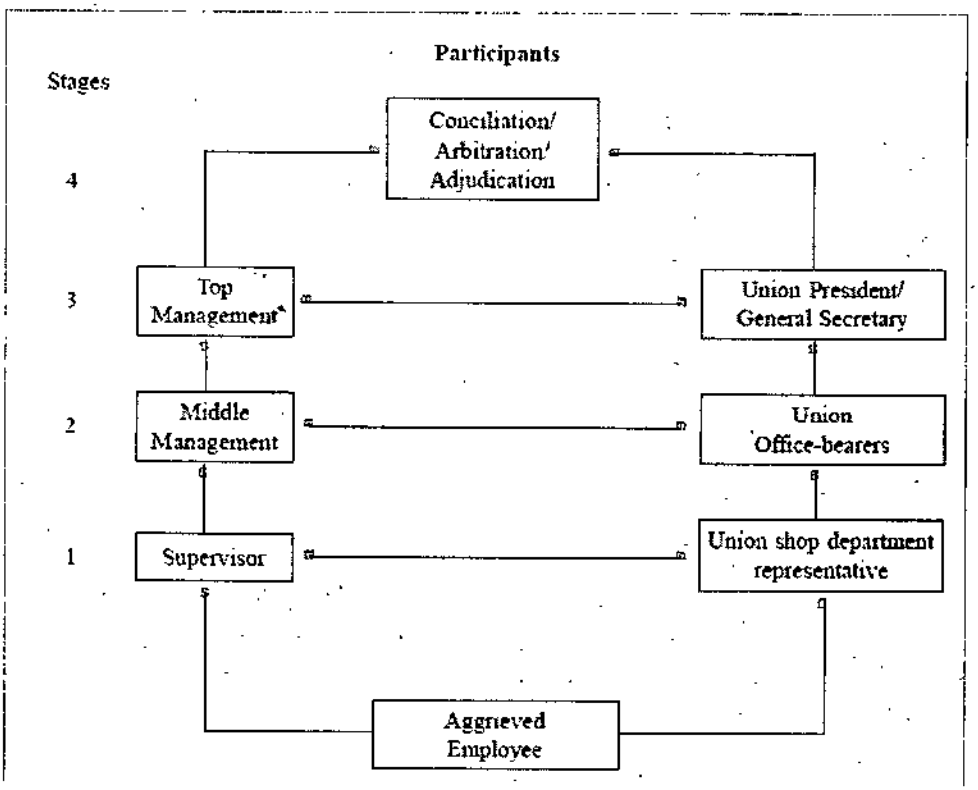

Fig. 2.1: Grievance Procedure

Third Party Mediation: If the grievance has not been settled bilateraly within the organisation, it goes to a third party for mediation. It could be conciliation, arbitration or adjudication or the matter may even be referred to a labour court. At this stage, the parties concerned lose control over the way the grievance is settled. In case of mediation (conciliation or arbitration) the mediator has no authority to decide, but in case of labour court or an adjudicator, the decision will be binding on the parties, subject to statutory provisions for appeal to higher courts.

Steps in Grievance Handling Procedure

At any stage of the grievance machinery, the dispute must be handled by some members of the management. In grievance redressal, responsibility lies largely with the management. And, as already discussed, grievances should be settled promptly at the first stage itself. The following steps will provide a measure of guidance to the manager dealing with grievances.

Acknowledge Dissatisfaction: Managerial/supervisory attitude to grievances is important. They should focus attention on grievances, not turn away from them. Ignorance is not bliss, it is the bane of industrial conflict. Condescending attitude on the part of supervisors and managers would aggravate the problem.

Define the Problem: Instead of trying to deal with a vague feeling of discontent, the problem should be defined properly. Sometime the wrong complaint is given. By effective listening, one can make sure that a true complaint is voiced.

Get the Facts: Facts should be separated from fiction. Though grievances result in hurt feelings, the effort should be to get the facts behind the feelings. There is need for a proper record of each grievance.

Analyse and Decide: Decisions on each of the grievances will have a precedent effect. While no time should be lost in dealing with them, it is no excuse to be slip-shod about it. Grievance settlements provide opportunities for managements to correct themselves, and thereby come closer to the employees. Horse-trading in grievance redressal due to union pressures may temporarily bring union leadership closer to the management, but it will surely alienate the workforce away from the management.

Follow up: Decisions taken must be followed up earnestly. They should be promptly communicated to the employee concerned. If a decision is favourable to the employee, his immediate boss should have the privilege of communicating the same. Some of the common pitfalls that managements commit in grievance handling relate to (a) stopping the search for facts too soon; (b) expressing a management opinion before gathering

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full facts; (c) failing to maintain proper records; (d) arbitrary exercise of executive discretion; and (e) settling wrong grievances.

Key Features of a Good Grievance Handling Procedure

Torrington and Hall refer to four key features of a grievance handling procedure, which are discussed below.

(a) ***Fairness:*** Fairness is needed not only to be just but also to keep the procedure viable, if employees develop the belief that the procedure is only a sham, then its value will be lost, and other means sought to deal with the grievances. This also involves following the principles of natural justice, as in the case of a disciplinary procedure.

(b) ***Facilities for representation:*** Representation, *e.g.*, by a shop steward, can be of help to the individual employee who lacks the confidence or experience to take on the management single-handedly. However, there is also the risk that the presence of the representative produces a defensive management attitude, affected by a number of other issues on which the manager and shop steward may be at loggerheads.

(c) ***Procedural steps:*** Steps should be limited to three. There is no value in having more just because there are more levels in the management hierarchy. This will only lengthen the time taken to deal with matter and will soon bring the procedure into disrepute.

(d) ***Promptness:*** Promptness is needed to avoid the bitterness and frustration that can come from delay. When an employee 'goes into procedure,' it is like pulling the communication cord in the train. The action is not taken lightly and it is in anticipation of a swift resolution. Furthermore, the manager whose decision is being questioned will have a difficult time until the matter is settled.

Essential pre-requisites of a Grievance Handling Procedure

Every organisation should have a systematic grievance procedure in order to redress the grievances effectively. As explained above, unattended grievances may culminate in the form of violent conflicts later on. The grievance procedure, to be sound and effective should possess certain pre-requisites:

(a) ***Conformity with statutory provisions:*** Due consideration must be given to the prevailing legislation while designing the grievance handling procedure.

(b) ***Unambiguity:*** Every aspect of the grievance handling procedure should be clear and unambiguous. All employees should know whom to approach first when they have a grievance, whether the complaint should be written or oral, the maximum time in which the redressal is assured, etc. The redressing official should also know the limits within which he can take the required action.

(c) ***Simplicity:*** The grievance handling procedure should be simple and short. If the procedure is complicated it may discourage employees and they may fail to make use of it in a proper manner.

(d) ***Promptness:*** The grievance of the employee should be promptly handled and necessary action must be taken immediately. This is good for both the employee and management, because if the wrong doer is punished late, it may affect the morale of other employees as well.

(e) ***Training:*** The supervisors and the union representatives should be properly trained in all aspects of grievance handling before hand or else it will complicate the problem.

(f) ***Follow up:*** The Personnel Department should keep track of the effectiveness and the functioning of grievance handling procedure and make necessary changes to improve it from time to time.

Nair & Nair state that in the Indian context, certain guidelines were evolved in formulating grievance handling procedures in different types of organisations—small, big, unionised and non-unionised.

According to Nair & Nair, grievance handling procedures can be broadly classified as 3-step, 4-step or 5-step. The details are tabulaed in the following Table. One of the prominent features of the procedure suggested by Nair & Nair is the intervention of Grievance Committes in the 5-step procedure, which works in the Indian context. This committee consists of: in unionised context, two nominees each from the management and the union (1) union representative should be from the same department as the aggrieved employee); in a non-unionised set up, (2) representatives from the management, representative in the 'Works secretary/vice president of the 'Works Committee.'

Table 2.1: Comparison of Grievance Redressal Procedure

Steps	3-Steps Procedure	4-Steps Procedure	5-Steps Procedure
Step No.1	Worder with shop Rep of union vs. Shop Supervisor	Worker with shop Rep of union vs. Shop Supervisor	Worker with shop Rep. of union vs. Shop Supervisor

Step No.2	Union Re. of Plant Vs G.M. or Owner G.M. or Owner	Work Committee vs. Manager	Union Re. of Plant vs. Manager-R.R
Step No.3	Arbitration by independent Authority	Local Union Leaders vs. Chief Executive	Grievances Committee vs. Director (P&A)
Step No.5		Arbitration	Regional Re. Union vs. Chief Executive
Step No.6			Arbitration

2.31 CONCEPT AND MEANING OF DISCIPLINE

Discipline is the regulation and modulation of human activities to produce a controlled performance. The real purpose of discipline is quite simple. It is to encourage employees to confirm to established standards of job performance and to behave sensibly and safely at work. Discipline is essential to all organised group action.

Definition of Discipline

Webster's Dictionary gives three basic meanings to the word discipline, the first being that of training that corrects, moulds, strengthens, or perfects. The second meaning is control gained by enforcing obedience and the third is punishment. By combining the first and second definitions you can say that discipline involves the conditioning or moulding of behaviour by applying rewards or you can say that discipline involves the conditioning or moulding of behaviour by applying rewards or penalties. The third meaning is narrower in that it pertains only to the act of punishing wrongdoers.

Besides these broad definitions, there are others referring to organisational life in particular, for example:

"Discipline is a procedure that corrects or punishes a subordinate because a rule of procedure has been violated."

—Dessler,2001

"Discipline should be viewed as a condition within an organisation whereby Employees know what is expected of them in terms of the organisation's

rules, standards and policies and what the consequences are of infractions."

—Rue & Byars, 1996

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From the above definitions, you can find the following elements:

- The objective is orderly behaviour.
- Orderly behaviour is a group desire.
- Orderly behaviour assists the attainment of organisational goals
- When members behave appropriately as per rules, there is no need for disciplinary action. This is self-discipline.
- When some members violate the rules and regulations, punitive actions are needed to correct them.
- Punishment serves two purposes: first, to directly punish an individual for an offence and secondly, to set an example for others not to violate the rules and regulations.

Those employees who observe the rules and standards are rewarded by praise, by security and often by advancement. Those who cannot stay in line or measure up to performance standards are penalised in such a way that they can clearly learn what acceptable performance and behaviour are. Most employees recognise this system as a legitimate way to preserve order and safety and to keep everyone working towards the same organisational goals and standards. For most employees, self discipline is the best discipline. As often as not, the need to impose penalties is a fault of the management as well as of the individual worker. For that reason alone, a supervisor should resort to disciplinary action only after all else fails. Discipline should never be used as a show of authority or power on the supervisor's part. Let us now distinguish the major aspects of discipline.

Negative Discipline: Negative discipline involves force or an outward influence. It is the traditional aspect of discipline and is identified with ensuring that subordinates adhere strictly to rules, and punishment is meted out in the event of disobedience or indiscipline. As you can see, in this perspective strict penalties are levied for the violation of rules. It is, in fact, the fear of punishment that works as a deterrent in the mind of the subordinate. Approaching discipline from this kind of a perspective has been proving increasingly ineffective for various reasons.

Positive Discipline: In this type of discipline subordinates comply with the rules not from fear of punishment, but from the desire to cooperate in achieving the common goal of the organisation. In positive discipline willingness to comply is most important. The emphasis here is on cooperative efforts to secure compliance to organisational norms.

It promotes emotional satisfaction instead of emotional conflict, and the increased cooperation and coordination reduces the need for formal authority. This approach to discipline will help you to achieve both individual needs of the subordinates and organisational goals for you. It would therefore motivate your subordinates to work with zeal and fulfil their needs. Positive discipline, in other words, calls for internalisation by your subordinates of the objectives and expected norms of behaviour in your organisation. The positive concept of discipline assumes a certain degree of self-discipline.

Discipline as Self-control: Discipline at one level means training that corrects, moulds, strengthens, or perfects the behaviour. Discipline, in this sense, refers to the development of an individual, *i.e.,* one's efforts at self-control for the purpose of adjusting oneself to certain needs and demands. This is nothing but what you would call self-discipline. You will agree with us that it is extremely important to have this kind of self-discipline both in you and in your subordinates for effectively and efficiently achieving your organisational objectives. Here again the emphasis is on establishing and ensuring a minimum degree of orderliness. This orderliness is obtained in the modern work context by increasing the degree and extent of compliance by subordinates. Let us examine it little more closely.

2.32 INDISCIPLINE

Indiscipline refers to the absence of discipline. Indiscipline, therefore, means nonconformity to formal and informal rules and regulations. We cannot afford indiscipline as it will affect the morale, involvement and motivation of subordinates in the organisation. Indiscipline often leads to chaos, confusion, and reduces the efficiency of the organisation. It often leads to strikes, go-slows, absenteeism, resulting in loss of production, profits and wages.

Factors Leading to Indiscipline

Various socio-economic and cultural factors play a role in creating indiscipline in an organisation. We wonder if you realise the fact that often indiscipline may arise because of poor management on your part. Insensitive and thoughtless words and deeds from a manager are potent reasons for subordinates to resort to acts of indiscipline. Defective communication by the superiors and ineffective leadership devoid of tactful human relations approach can cause indiscipline among subordinates. Indiscipline by your subordinate may be an outcome of your nonresponse to his grievance.

Your subordinates may indulge in acts of indiscipline because of unfair practices on your part, like the wage differentials, unreasonable declaration

of payment of bonus or non-payment, wrong work assignments, defective grievance handling, etc. The payment of low wages is perhaps another reason for indiscipline. When the worker is paid low wages and in addition you demand more and more work from him, he becomes dissatisfied, dishonest and insubordinate. Poverty, frustration and indebtedness, generally overshadow his mind which makes him agitated and indisciplined. His mind and thought are more towards destruction than constructive discipline.

Low payment of wages also creates lack of motivation in your subordinates. After all, each individual needs response, security, recognition and new experience. A workman joins your organisation and agrees to give a certain amount of work and loyalty, while he expects at the same time, in return, an adequate economic reward, security, fair human treatment and other kinds of support from you. If he does not get what he expected, he starts getting dissatisfied. He gradually begins to express his grievance by way of absenting himself, coming late to the office, inefficiency and insubordination.

Defective communication between you and your subordinate also leads to conflict of various kinds. Very often your subordinates get no opportunity to express their feelings and sentiments. Unless you adopt a humane and understanding approach there is more likelihood that your subordiate may take recourse to indiscipline.

Forms of Indiscipline

Absenteeism, insubordination, violation of plant rules, gambling, incompetence, damage to machine and property, strikes, dishonesty and other forms of disloyalty lead to industrial indiscipline. These are all forms of misconduct against the management. If an act of an employee is prejudicial or likely to be prejudicial to the interests of the employer or to his reputation, it is a misconduct. The act of an employee can become a misconduct in the following cases:

(a) where the act of a workman is inconsistent with the peaceful discharge of his duty towards his employer;

(b) where the act of the employee makes it unsafe for the employer to retain him in service;

(c) where the act of the employee is so grossly immoral that all reasonable men would not trust that employee;

(d) where the conduct of the employee is such as to open before him ways for not discharging his duties properly;

(e) where the conduct of the employee is such that the employer cannot rely on his faithfulness;

(f) where the conduct of the employee is insulting and insubordinate to such a degree as to be uncomfortable with the continuance of a superior-subordinate relationship;

(g) where the workman is abusive or he disturbs the peace at the place of his employment; and

(h) where the employee is habitually negligent in respect of the duties for which he is engaged.

It is very difficult to lay down exhaustively as to what would constitute misconduct and indiscipline. It would depend upon the examination of facts. Some of the acts of misconduct are mentioned in the Model Standing Orders as a part of the rules made under the Industrial Employment (Standing Orders) Act of 1946. Non-performance of duty is a serious misconduct, because it is basically inconsistent with the obligations of employment. Under the act of negligence, an employee fails to give full care and attention on account of which the work becomes defective, and production suffers both in quantity and quality. It is a misconduct to cause disorder on the premises, intimidate, threaten or assault other employees and use abusive language. Preventing the entry and exist of willing employees and movement of goods to and from the factory, obstructing the work being carried on, damaging the property of the employer, indulging in mischief or other objectionable activities, occupying the employer's premises or property, go-slow, etc. are forms of misconduct. Insubordination, assault or threat to superior officers, defamation, making false complaint, are all acts of indiscipline. Non-performance of work during working office hours, tampering with official records, misappropriation of accounts are acts of indiscipline which are considered to be of serious gravity.

2.33 PURPOSE AND OBJECTIVES OF DISCIPLINARY ACTION

The purpose of discipline according to Dessler (2001) is to encourage employees to behave sensibly at work, where being sensible is defined as adhering to rule and regulations. In an organisation, rules and regulations serve about the same purpose that laws do in society; discipline is called for when one of these rules or regulations is violated (Bittel & Newstrom, 1990). Following are some of the purposes and objectives of disciplinary action:

- To enforce rules and regulations.
- To punish the offender.
- To serve as an example to others to strictly follow rules.

- To ensure the smooth running of the organisation.
- To increase working efficiency.
- To maintain industrial peace.
- To improve working relations and tolerance.
- To develop a working culture which improves performance.

Dessler (2001) opines that a fair and just discipline process is based on three foundations: rules and regulations, a system of progressive penalties and an appeals process.

Let us probe this a bit more. Dessler (2001) states that a set of clear rules and regulations is the first foundation. These rules address things like theft, destruction of company property, drinking on the job and insubordination. The purpose of these rules is to inform employees ahead of time as to what is and is not acceptable behaviour. This is usually done during the employee's orientation. A system of progressive penalties is the second foundation of effective disciplining. Penalties, according to Dessler, may range from oral warning to written warnings to suspension from the job to discharge. The severity of the penalty is usually a function of the type of offence and the number of times the offence has been committed. Finally, there should be an appeals process as part of the disciplinary process; this helps to ensure that discipline is meted out fairly and equitably.

Right to Take Disciplinary Action

Right to take disciplinary action emanates from employer-employee relationship and is regulated by contract of employment, standing order of the company (for workers) or conduct and discipline (appeal) rules (for supervisory staff) of the organization promptness in disciplinary cases is essential. It has to be ascertained which disciplinary rules are applicable to the deliquent employee for taking action.

2.34 WORKERS PARTICIPATION

The word 'participation' means sharing the decision-making power with the lower ranks of the organization in an appropriate manner. Participation has a unique motivational power and a great psychological value. It promotes harmony and peace between workers and management. When workers participate in organizational decisions, they are able to see the big picture clearly, *i.e.*, how their actions would contribute to overall growth of the company. They can offer feedback immediately based on their experiences and improve the quality of decisions significantly. Since they are involved in the decisions from the beginning, they tend

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to view the 'decisions' as 'their own' and try to translate the rhetoric into concrete action plans with zeal and enthusiasm. Participation makes them more responsible. They are willing to take initiative and contribute cost-saving suggestions and growth-oriented ideas.

The feeling of being treated as equals, forces them to repose their confidence in management and accept plans of rationalization, expansion, etc., without raising serious objections. Since they are treated with respect now they begin to view the job and the organization as their own and commit themselves to organizational activities wholeheartedly.

Output cannot be increased unless there is effective co-operation between labour and management at all levels. The way of ensuring this is to satisfy their social and psychological need besides economic ones. Workers' participation in management is one of the most significant modes of resolving industrial conflicts and encouraging among workers a sense of belongingness in establishment where they work.

Moreover, India which has launched a vast programme of industrialization, the need for workers' participation is all the more important. It is in reorganization of these need that under the Second, Third, Fifth and Seventh plans specific measures have been suggested for worker's participation.

The scheme of Joint Management Council, popularly known as Workers' participation in management, was introduced on voluntary basis only after over a decade. However, the scheme of Joint Management Council for various reasons could not succeed. In order to meet this unhappy state of affairs and to secure greater measure of co-operation between labour and management to increase efficiency in public service, the Government of India on October 30, 1975 introduced a scheme of workers' participation in management at shop floor and plant levels. In addition to these, there are voluntary schemes of making the workers' shareholders and Directors in the Board of Management. The inclusion of the concept of workers' participation in management in the Directive Principles of State Policy through the Constitution (Forty-second) Amendment Act, 1976, gave a momentum to the institution of worker's participation in management. After the constitutional Amendment the Central Government expressed its intention to amend the 1975-Scheme and to provide for effective participation of workers in production processes and accordingly amended the scheme in January 1977.

There are two distinct groups of people in an undertaking, *viz.*, 'managers' and 'workers' performing respectively two separate sets of functions which are known as 'managerial' and 'operative'. Managerial functions are primarily concerned with planning, organizing, motivating and controlling in contrast with operative work. A self-employed man may carry out both these functions if the area of his operations is very small. But in case of big organizations, these functions are to be performed by different

sets of people. Workers' participation in management seeks to bridge this gap authorizing workers to take part in managerial process. Actually, this is a very wide view of the term worker's participation in management and this is not practically possible.

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Participation may take two forms. It may be: (1) ascending participation, and (2) descending participation. In case of ascending participation, the workers may be given an opportunity to influence managerial decisions at higher levels through their elected representatives to joint councils or the board of directors of the company. But in descending participation, they may be given more powers to plan and to make decisions about their own work (*e.g.* delegation and job enlargement). This form of participation is quite popular in many organizations.

2.35 IMPLICATIONS OF WORKERS PARTICIPATION IN MANAGEMENT

The implications of workers' participation in management have been summarized by the International Labour Organization thus:

1. Workers have ideas which can be useful.
2. Upward communication facilitates sound decision-making. Workers may accept decisions better if they participate in them.
3. Workers may work more intelligently if they are informed about the reasons for and the intention of decisions that are taken in a participative atmosphere.
4. Workers may work harder if they share in decisions that affect them.
5. Workers participation may foster a more cooperative attitude amongst workers and management thus raising efficiency by improving team spirit and reducing the loss of efficiency arising from industrial disputes.
6. Workers participation may act as a spur to managerial efficiency.

2.36 DEFINITIONS OF WORKERS PARTICIPATION

The concept Worker's Participation in Management (WPM) is a broad and complex one. Depending on the socio-political environment and cultural conditions, the scope and contents of participation may change. In any case, a common thread running through all interpretations is the idea of associating employees in managerial decision-making. The view expressed by the International Institute for Labour Studies (Bulletin 5) is worth quoting here.

WPM has been defined as, *"the participation resulting from practices which increase the scope for employee's share of influence in decision-making at different tiers of organizational hierarchy with concomitant assumption of responsibility"*. The concept of worker's participation in management crystallizes the concept of Industrial Democracy, and indicates an attempt on the part of an employer to build his employees into a team which work towards the realization of a common objective. According to **Davis**, *"it is a mental and emotional involvement of a person in a group situation which encourages him to contribute to goals and share responsibilities in them"*. Worker's participation in management is a resounding phrase, bridging the past and the future. It echoes the millennial vision of nineteenth century thinkers while heralding the evolution of new forms of industrial organization under twentieth century pressures. The word 'workers' participation is plentifully supplied with ideas, institutions and opinions.

2.37 NEED OF WORKERS' PARTICIPATION

Worker's participation in management has assumed great importance these days because of the following advantages:

1. *Reduced industrial unrest:* Industrial conflict is a struggle between two organized groups which are motivated by the belief that their respective interests are endangered by the self-interested behaviour of the other. Participation cuts at this very root of industrial conflict. It tries to remove or at least minimize the diverse and conflicting interests between the parties, by substituting in their place, cooperation, homogeneity of objects and common interests. Both sides are integrated and decisions arrived at becomes "ours" rather than "theirs".
2. *Reduced misunderstanding:* Participation helps dispelling employee's misunderstanding about the outlook of management in industry.
3. *Increased organization balance:* If worker are invited to share in organizational problems, and to work towards common solutions, a greater degree of organizational balance occurs because of decreased misunderstanding of individual and group conflict. Participation leads to increased understanding throughout the organization. People learn that others have problems beside themselves.
4. *Higher productivity:* Increased productivity is possible only when there exists fullest co-operation between labour and management. It has been empirically tested that poor 'labour management relations' do not encourage the workers to contribute anything more than the minimum desirable to retain their jobs. Thus, participation of

workers in management is essential to increase industrial productivity.

5. *Increased Commitment:* An important prerequisite for forging greater commitment is the individual's involvement and opportunity to express himself. Participation allows individuals to express themselves at the work place rather than being absorbed into a complex system of rules, procedures and systems. If an individual knows that he can express his opinion and ideas, a personal sense of gratification and involvement takes place within him. This, in turn, fortifies his identification with the organization resulting in greater commitment.
6. *Industrial democracy:* Participation helps to usher in an era of democracy in industry. It is based on the principle of recognition of the human factor. It tends to reduce class conflict between capital and labour. It also serves as a support to political democracy.
7. *Development of Individuals:* Participation enhances individual creativity and response to job challenges. Individuals are given an opportunity to direct their initiative and creativity towards the objectives of the group. This facilitates individual growth.
8. *Less resistance to change:* when changes are arbitrarily introduced from above without explanation, subordinates tend to feel insecure and take counter measures aimed at sabotage of innovations. But when they have participated in the decision-making process, they have had an opportunity to be heard. They know what to expect and why. Their resistance to change is reduced.

2.38 OBJECTIVES OF WORKERS' PARTICIPATION IN MANAGEMENT

The main objectives of workers' participation in management include:

- To promote increased productivity for the advantage of the organization, workers and society at large;
- To provide a better understanding to employees about their role and place in the process of attainment of organizational goals;
- To satisfy the workers' social and esteem needs; and
- To strengthen labour management co-operation and thus maintaining industrial peace and harmony.

- To develop social education for effective solidarity among the working community and for tapping latent human resources.
- An ideological point of view to develop self-management in industry.
- An instrument for improving efficiency of the company and establishing harmonious industrial relations.
- To build the most dynamic human resource.
- To build the nation through entrepreneurship and economic development.
- To improve the quality of working life by allowing the workers greater influence and involvement in work and the satisfaction obtained from work.
- Development of human personality.
- Development of leader from within the industry.
- Development of working class.
- Creation of a just egalitarian society.
- Facilitate self-development of worker.

2.39 ESSENTIAL CONDITIONS FOR SUCCESSFUL WORKING OF WPM

The success of workers portion in management depends upon the following conditions:

1. The attitude and outlook of the parties should be enlightened and impartial so that a free and frank exchange of thoughts and opinions could be possible. Where a right kind of attitude exists and proper atmosphere prevails the process of participation is greatly stimulated.
2. Both parties should have a genuine faith in the system and in each other and be willing to work together. The management must give the participating institution its rightful place in the managerial organization of the undertaking and implementing the policies of the undertaking. The labour, on the other hand, must also wholeheartedly co-operate with the management through its trade unions. The foremen and supervisory cadre must also lend their full support so that the accepted policies could be implemented without any resentment on either side.
3. The experiment of labour participation in management must be given a wide publicity in order that the idea of participation is ingrained in the minds of those who are to implement the scheme.

Lectures, discussion, film shows, conferences, seminars and other methods of propaganda may be fruitfully employed to create enthusiasm about the scheme among the management as well as the workers.

NOTES

4. Participation should be real. The issues related to increase in production and productivity; evaluation of costs, development of personnel and expansion of markets should also be brought under the jurisdiction of the participating bodies. These bodies should meet frequently and their decisions should be timely implemented and strictly adhered to.
5. Objectives to be achieved should not be unrealistically high, vague or ambiguous but practicable of achievement and clear to all.
6. Form, coverage, extent and level of participation should grow in response to specific environment, capacity and interest of the parties concerned.
7. Participation must work as complementary body to help collective bargaining, which creates conditions of work and also creates legal relations.
8. Institutional participation should be discouraged but such participation should be encouraged through changes in leadership styles, communication process, and interpersonal and inter-group relations.
9. There should be a strong trade union, which has learnt the virtues of unit and self-reliance so that they may effectively take part in collective bargaining or participation.
10. Multiple unions in the enterprise should be restricted by legislative measures. Similarly, there should be no multiplicity and duplicacy of bipartite consultative machinery at the plant level.
11. A peaceful atmosphere should be there wherein there are no strikes and lock-outs, for their presence ruins the employees, harms the interest of the society, and puts the employees to financial losses.
12. Authority should be centralized through democratic management process. The participation should be at the two or at the most three levels.
13. Programmes for training and education should be developed comprehensively. Labour is to be educated to enable him to think clearly, rationally and logically; to enable him to feel deeply and emotionally; and to enable him to act in a responsible way.

The management at different levels also needs to be trained and oriented to give it a fresh thinking on the issues concerned.

14. Progressive personnel policies should ensure growth of individual workers within industry and proper policies should exist for selection, promotion, compensation, rewards and discipline.
15. Management should be prepared to give all information connected with the working of the industry and labour should handle that information with full confidence and responsibility.
16. The Follow-up action on the decisions of the participating forums should be ensured. The government may also set up machinery to act as a watch-dog for implementing the scheme.
17. Effective two-way communication is a must for the success of the programme. The shorter is the time for communication, the greater is the probability of correct interpretation.

SUMMARY

- The trade union is an association, either of employees or employers or of independent workers. It is a relatively permanent combination of workers and is not temporary or casual.
- Trade Union as an association of employees designed primarily to maintain or improve the condition of employment of its members.
- Trade unions are a major component of the modern industrial relation system. A trade union of workers is an organization formed by workers to protect their interests, *i.e.*, improve their working conditions etc.
- Trade Union came into being for a variety of purposes. Individual workers found it more advantageous to band together and seek to establish their terms and conditions of employments.
- In India, the structure of trade union consists of three levels: plant/shop or local, the state and the centre. It is generally from the central level that the ideology of the important central federations of labour in India percolates down to the state and local levels.
- The origin of the passing of Trade Union Act in India was the historic Buckingham Mills Case of 1920 in which the Madras High Court granted an interim injunction against the Strike Committee of Madras Labour Union forbidding them to induce certain workers to break their contract of employment by refusing to return to work.

- The object of passing the Act was to make necessary provisions in regard to the registration of Trade Unions and to define the law relating to registered Trade Unions.
- The definition of Trade Dispute in this Act is almost similar to the definition of Industrial Dispute given in the Industrial Disputes Act, 1947.
- The term trade union can be expressed both in an ordinary sense and in broad sense. In ordinary sense it is a combination of workmen and in a broader sense it includes combination of employers and federation of two or more such combinations.
- Under Sections 31 to 33 the Registrar of Trade Unions is empowered to impose penalty on the trade union for default in submitting returns or for supply of false information or statements.
- Trade union law and political parties and their strategy are relevant for the process of unionization in the Indian context.
- While the main clauses of the Trade Union Act of 1926, concern the formation of unions, certain other features are also worth noting. Registration, which means formal recognition of a representative body, also entails certain pre-conditions.
- Collective bargaining is a process of joint decision-making and basically represents a democratic way of life in industry. It establishes a culture of bipartism and joint consultation in industry and a flexible method of adjustment to economic and technical changes in an industry.
- Collective bargaining serves a number of important functions. It is a rule making or legislative process in the sense that it formulates terms and conditions under which labour and management may cooperate and work together over a certain stated period.
- It covers the entire range of organised relationship between union and management, including negotiation, administration, interpretation, application and enforcement of written agreements.
- Collective bargaining is a two-edged sword; what is won may also be lost. Today's collective bargaining process is based upon statutory law.
- Productivity bargaining is a complex process. It involves lengthy, detailed negotiations about the implementation of a variety of management techniques such as work-study and job evaluation.
- Industrial discipline means working by employees according to rules, regulation and code of conduct in the industry. Industrial discipline signifies orderliness.

- Grievance acts as rust which corrodes the very fabric of organisation. An aggrieved employee is a potent source of indiscipline and badworking.
- Discipline is the regulation and modulation of human activities to produce a controlled performance. The real purpose of discipline is quite simple.
- Indiscipline refers to the absence of discipline. Indiscipline, therefore, means nonconformity to formal and informal rules and regulations. We cannot afford indiscipline as it will affect the morale, involvement and motivation of subordinates in the organisation.
- Right to take disciplinary action emanates from employer-employee relationship and is regulated by contract of employment, standing order of the company (for workers) or conduct and discipline (appeal) rules (for supervisory staff) of the organization promptness in disciplinary cases is essential.
- The word 'participation' means sharing the decision-making power with the lower ranks of the organization in an appropriate manner. Participation has a unique motivational power and a great psychological value.
- The concept Worker's Participation in Management (WPM) is a broad and complex one. Depending on the socio-political environment and cultural conditions, the scope and contents of participation may change.

REVIEW QUESTIONS

1. Define Trade Unions. Why do workers organize into Unions?
2. Trace the Historical Evolution of Trade Union movement in India.
3. Explain the Structures and types of Trade Unions in India.
4. What are the functions of Trade Union in india?
5. Explain the Need and Scope of Trade Union.
6. Define Trade Union under Trade Union Act, 1926.
7. What is the Registration Procedure of Trade Union and Explain?
8. What is Rights and Responsibilities of Trade Union?
9. Explain Penalties and Procedures under Trade Union Act.
10. What is the meaning and concept of collective bargaining?
11. What are the features of collective bargaining process?

12. What are the main issues in collective bargaining?
13. What are the central issues in productivity bargaining?
14. What do you understand by discipline and misconduct?
15. Discuss discipline and misconduct in industry.
16. Discuss the causes and effects of grievances.
17. Briefly outline the features of a grievance procedure and the steps involved in it.
18. Explain the meaning and concept of discipline with examples.
19. Describe briefly the stages of disciplinary action procedure.
20. What do you understand by participation of workers in management?
21. What are implications of Workers Participation in Management?
22. What is the need of Workers' Participation?
23. What are the objectives of Workers' Participation in Management?

NOTES

FURTHER READINGS

1. **Compliances Under Labour Laws: A User's Guide to Adhere with the Provisions Under Various Employment Related Acts:** H.L. Kumar, Universal Law Pub, 2010.
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3. **Globalization and Labour Laws:** Murali Dhar Majhi, Manglam, 2010, viii, 286 p.
4. ***Industrial Disputes and Labour Laws:*** Edited by Sabina, Alfa Pub, 2008, viii, 280 p.
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6. **Labour Laws:** Taxmann, 2010.

UNIT III TECHNOLOGICAL CHANGE AND EMPLOYMENT RELATIONS IN INDIA

★ STRUCTURE ★

3.0 LEARNING OBJECTIVES

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

- define three transformation stages;
- discuss technological changes and employment;
- explain trade unionism and its formative stages;
- define the role of trade unions;

- explain growth of trade union movement and membership in India;
- describe human resource management and industrial relations approaches;
- discuss trends in human resource management;
- understand the canflict between industrial relations and human resource management;
- discuss international dimensions of industrial relations (IR);
- define IR in the global context;
- elaborate IR in Asian and the Pacific.

3.1 THREE TRANSFORMATION STAGES

The technological progress over the last century has undergone a slow but definite transformation. This can be categorized into three different stages viz. craftsmanship, mechanization and automation (Datta 1990). Each of the stages had an influence on the nature of work and the skill level required to perform a job. The early craftsmanship was characterized by the worker/craftsman having control over the entire production process, from procuring the raw materials to the finished goods. This required end-to-end knowledge, where the worker got involved in activities right from pitching to potential customers to delivering the final produce/ service. Each product/service could be characteristically unique as each reflected the skills of the employee. This model of operation can still be found in some of the present day service firms, what are termed as Service Complexes and Service Shops (Davis 1999). The second stage of mechanization was brought about by the application of principles of scientific management where tasks were broken down to simpler and specialized ones for large-scale production of standard goods, and methods of estimating a 'proper day's work' for the worker were developed. This required a complete reorganization of the methods of production. The role of the individual worker transitioned from a highly skilled one in the craftsmanship era to being considered one of the 'factors of production'. Mechanization also created a new portfolio of occupations such as engineers to design and produce the mass production machinery, the machine builders and tool makers and a wide range of skilled machine operators. The third stage of automation not only carried forward many of the features of mechanization but also qualitatively changed the way the worker undertook his/her job. The worker no longer directly got involved in the production process but monitored and maintained machines and helped in trouble shooting. This necessitated the worker understand the production process and the machinery rather than using his skill to turn out a product.

Technological change especially through automation has both advantages and disadvantages (Datta 1990, Datta 1996). Automated systems allow few skilled individuals to do the work, which previously required numerous unskilled and semi-skilled workers. They also allow tasks that are beyond human capabilities or those dangerous or monotonous jobs that would be considered inhuman for people to perform. Further the labour intensive ways of production are expensive and restrict the market for the product, which has a negative effect on the employment in the long run. Automated systems tolerate few or no errors and hence lack the inherent human flexibility in production.

Technology need not be restricted to just technical automation but can also involve a whole package of resources like capital, entrepreneurship and management (Virmani 1990). Further, technology as such is not quantified but what is quantified are those relating to its manifestations like a particular technique of production, productivity of a particular input, scale economics etc (Majumder 2001), *e.g.,* in Singh & Nandini (1999) technological change at the firm level is operationalized in terms of R&D expenditure, technical collaborations and quality certifications, while Dhanaraj (2001) has taken gross fixed assets and value of plant and machinery to assess the impact of technology on worker wages.

With the liberalization of Indian economy in 1991, a number of private players started carving a major role in the economic output and simultaneously governments both at the centre and state levels started assuming a smaller role in running businesses. Increased domestic and foreign competition resulting from the economic reforms induced domestic manufacturers to improve efficiency and bring into use advanced technologies on a larger scale (Goldar & Kumari 1999). This is supported by the fact that during the period 1991–98 there were about 3250 technical approvals in India with the top five technical collaborators (Kumar Ajay 1999:1001). The subsequent break down of trade barriers, globalization, advancements in Information and Communications Technology (ICT) and well accepted management ideas such as TQM on quality, JIT, Computer Integrated Manufacturing(CIM) & Lean Production(LP) have served to magnify the impact of technology on employment relationship globally and India in particular.

3.2 TECHNOLOGICAL CHANGES AND EMPLOYMENT

Labour employment is affected by many factors, two major directly relevant factors are per unit labour requirement for a product (man hours per unit) and the total demand for the product (Kumar Arun 1999:806). It

is likely that technological improvement leads to reduction in per unit labour requirement but at the same time because of the increased demand made possible by the lesser cost of the technologically advanced product, it can lead to rise in overall demand for labour. This expected rise in demand for labour has however not been equally true for all sectors/ industries. In a study of employment in organized manufacturing sector in India, it was found that even though real gross value added has grown at 7.4 percent per year during 1981–2002, employment of workers increased only by 4.3 and most of this growth happened in the early part of the 90s while the latter half of 90s and early part of the current decade have shown a reducing trend in organized manufacturing sector employment (Nagaraj 2004). At the same time, employment in Organized Services sector has been picking up in the latter half of last decade and early part of this decade. As could be seen in figures 3.1–3.3, organized manufacturing sector seems to have shown a sharp decline in employment post 1996 while services have gained during this period .Further even within the same industry, there seems to be a shift in the occupational and work profile of the employees.

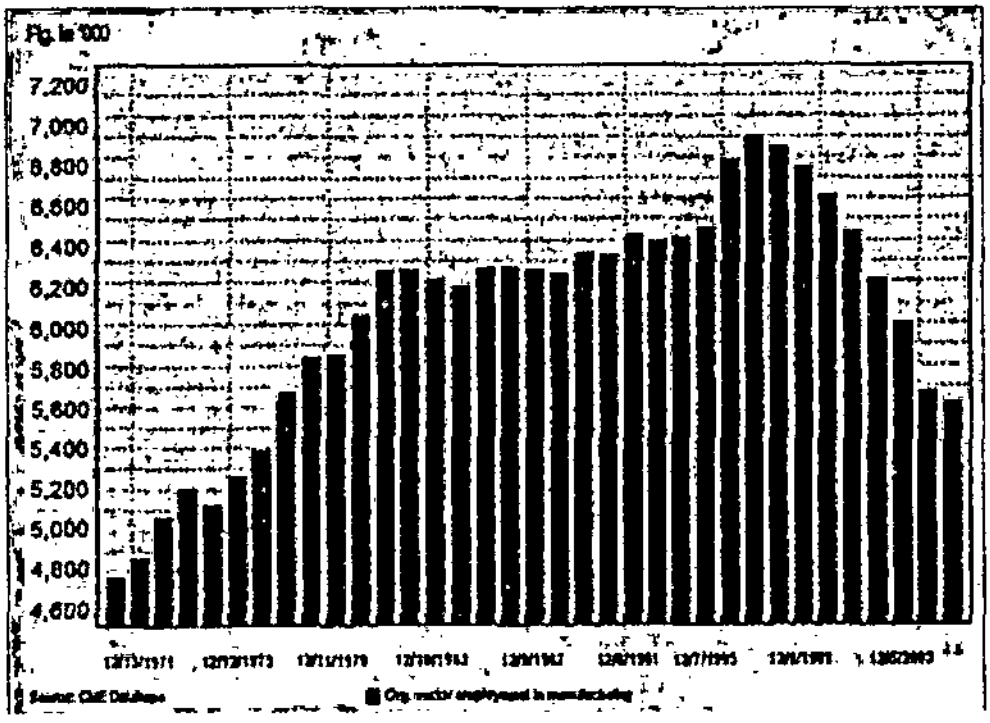

Fig. 3.1: Employment in the Organized Manufacturing Sector.

As a consequence of technological modernization of banks it was found that though there was an overall increase in employment, this growth has been made possible by an emerging volume of employment in hitherto new areas such as systems analysts, console operators etc (Datta 1990). In a case of technology transfer to an Indian engineering MNC from its foreign parent company during the period 1974–1984, even though

the fixed capital increased by about 400 percent, the number of workers actually decreased by 8 percent whereas the total employment increased by 35 percent, indicating a shifting of workforce from workers to supervisory and executive cadres and a corresponding shift in the skill requirements (Virmani 1990). In an aggregate study of the organized manufacturing sector for the period 1982–2002, it was found that the increase in gross value added is accompanied by greater employment of employees in the supervisory cadre as against the worker cadre (Nagaraj 2004). Further there has been a change in demand for the type of employees within the same occupational group, from operatives and labourers to professional and technical workers in many of the industries such as Banking (Datta 1990,1996), Software Services (Singh & Nandini 1999) and Textiles (Chakravarty 2002, 2006, Dhanaraj 2001).

Impact on Skill Profile

As the manufacturing and service technologies continuously develop like in the case of just-in-time inventory, manufacturing cells, robotics and service quality concepts etc, there is an increasing pressure on the organizations to implement team based work designs . Hence, the technological changes almost always are followed by a corresponding change in the essential work structure of the organization. Organizations have become increasingly flatter and work unit in most organizations is no longer an individual but is a team. Hence there is an increasingly felt need to foster the skills and attitudes to function as an effective team player .

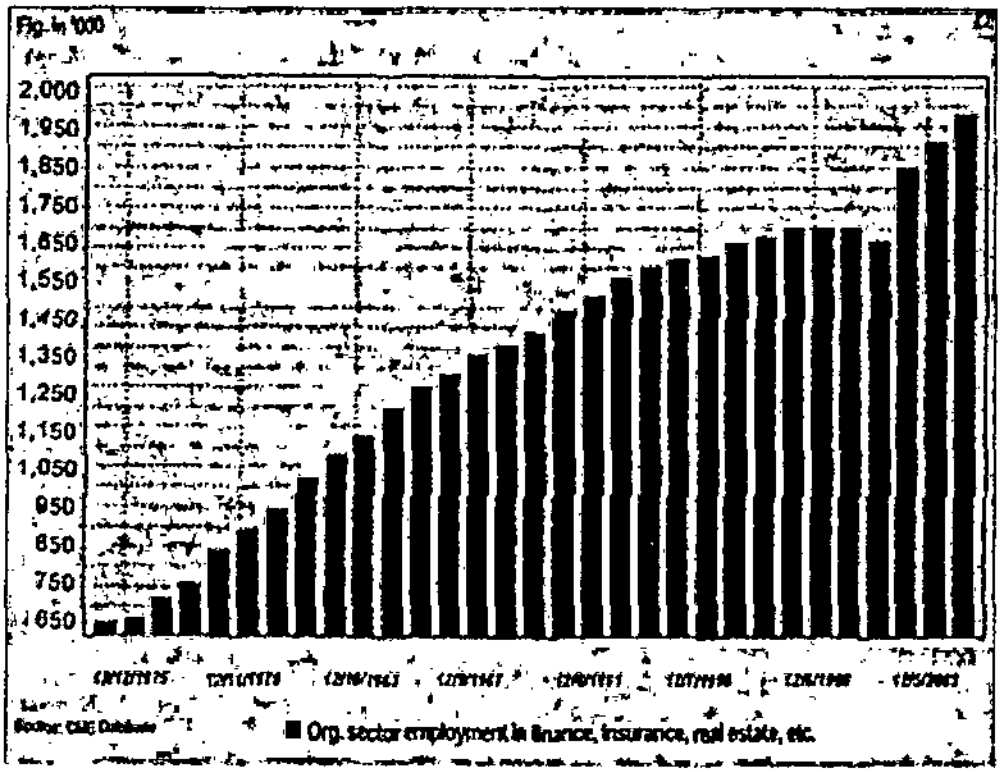

Fig. 3.2: Employment in the Organized Services Sector (Finance, Insurance, Real Estate etc).

The impact of new technology on skill requirement in the textile industry has been widely reported. Textile industry in India has a special place with 4 percent contribution to the GDP and 12 percent of the world's textile production (GOI 2009). The cotton mill workers account for 20 percent of the total employment in the manufacturing sector (Chowdhury 1996) and the textile industry is the largest contributor after agriculture to the employment providing jobs to about 21 million people.

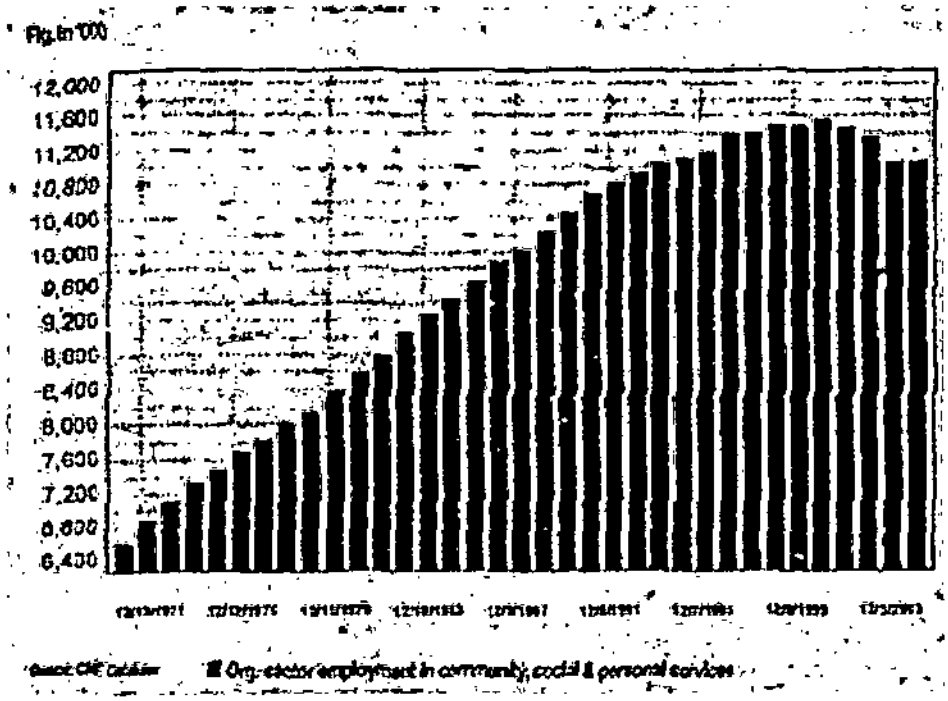

Fig. 3.3: Employment in the Organized Services Sector (Community, Social & Personal Services).

When new types of technologically advanced loom s were introduced in textile firmš, the skill requirements changed to those of monitoring and troubleshooting of the production process instead of directly getting involved in the production (Chakravarty 2002, 2006, Datta 1996). This is because with the introduction of new automated machinery, the technologies are no more separate from each other and detection of faults requires a thorough understanding of the production process and familiarity with different equipments used (Chakravarty 2006). Hence the skill required for the job, which previously emphasized manual dexterity, physical strength in manual and repetitive tasks has been taken over by the need for machine trouble shooting and process handling skills. The roles and responsibilities of the senior workers were more flexible in the modernized mills and they were expected to handle a higher number of departments compared to rigid and specific allocations along different categories of work within a department in the non-modernized mills. This change is just not restricted to introduction of new production processes but may be related to even initiation of new management ideas. For instance, at the beginning of the nineties, when

Motorola started measuring workers 'performance against quality & outputs instead of measuring against a time clock, it became necessary for its workers to know their equipment and production process, and be able to initiate any trouble shooting process themselves which were previously not in their ambit (Wiggenhorn 1990). This required the worker to unlearn deeply held attitudes and values when they were just responsible for working on individual machines to those of understanding the production process as a whole.

Impact on Wages

The impact of technological change on wages has been mixed. Budhwar (2003) in his study of 137 Indian firms in six manufacturing sectors in India found that collective bargaining and provisions of labour laws have a significant influence in determining the basic wages and bonuses of blue-collared employees, hence indicating that the wages are still determined by factors not directly related to individual/firm performance and technological change. However, this is also sector specific. In a study by Singh & Nandini (1999) in the software industry, it was found that technological change does have a significant effect on salaries paid to employees. Chakravarty (2002) in her study of spinning mill workers found that the modernized mills required 'unusual skills' from workers compared to the traditional ones and they also had higher wages due to the greater dependence of the organisation on these workers. However, the effect of increased investment in technology on wages has not always been positive. Virmani (1990) in his study of the Indian subsidiary of a MNC found that the wages as a proportion to value-added remained at about twelve percent and has not changed significantly with the introduction of new technology over the years. Further, Ajay Kumar (1999) in a study of sixty select MNCs, found that the aggregate rise in wages and salaries, was much lower than the aggregate increase in operational expenses, suggesting that the growth rate of wage bills has not kept pace with investment in operations. The impact on wages because of technology change is also influenced by the political process. Betcherman (1991) argues that there is a positive correlation between wage levels and introduction of advanced technology but how the pie is distributed will depend on the balance of power between the negotiating parties. In the Canadian context, he found that skilled blue-collared workers, both unionized and non-unionised, could bargain a higher pay compared to those doing manual work. Further, the union's bargaining power was lower for technology innovators than among non-innovators. In a similar vein, in the case of modernized textile mills in India there is an emergence of distinct and firm specific skills which require higher cost and time investments (Chakravarty 2002). Hence, companies are willing to pay higher wages in these mills as contrasted

to non-modernised mills. This necessitated decentralized bargaining in the case of modernized firms while the nonmodernised ones went in for industry wide bargaining. In the latter case since the skills are not specific to an organization but rather are generic to the industry they required support of the wider political base. Nagaraj (2004) in his study of employment in organized manufacturing sector notes that while real wages of workers have roughly stagnated during 1981–2002, the real emoluments of supervisors have gone up by 77 percent during the same period indicating that the increase in wages due to technology change has not been so favourable to the workers in general.

Worker Acceptance

The reasons for introducing new technology vary from one organisation to another. New production system in a plant is brought in by the management typically in response to the change in market conditions, which require more 'efficient' technologies to be adopted (Datta 1996). Studies have indicated that the technological improvements/changes lead to improved productivity, lower costs and better work environment (e.g. : Virmani 1990, Datta 1990). The improvement in productivity seems to hold for varied sectors from Heavy Electricals (Virmani 1990), Software (Singh & Nandini 1999), Textiles (Chakravarty 2002, 2006, Dhanaraj 2001) and Banking (Datta 1990, 1996). Studies indicate that after a time lag major technological changes have always induced significant changes in the organisation processes (Gurtoo & Tripathy 2000) and the success of new technology is dependent on the extent to which the workforce is willing to adapt to the technological and organisational changes (Dayal & Aggarwal 1995, Gurtoo & Tripathy 2000 :520). Davis, Bagozzi & Warshaw (1989) have proposed a theoretical model for a better prediction and explanation of end—user acceptance of technology and is called Technology Acceptance Mode l (TAM). This proposes that one can predict technology acceptance of employees by knowing their behavioural intentions, which in turn are influenced by attitudes, perceived usefulness of the technology and ease of use of the same.

In their longitudinal study of 107 users to predict computer acceptance, it was found that perceived usefulness was able to explain more than half of the variance of behavioural intentions after 14 weeks and perceived ease of use though small , was significant enough to explain the behavioural intentions.

The importance of employee acceptance of new technology and also the adaptability to change has been highlighted in the study by Datta (1990) on the introduction of computers in the Indian Banking Sector in the 1970s and 1980s. The study indicates that a key factor in the acceptability is by taking the unions and the employees into confidence before introduction of automation. This was done through a free flow

of information, education and training of employees in terms of what computerization means and what changes it can bring in. The transformation of Bank of Baroda from a large public sector bank with a legacy culture to a highly customer centric, technology driven bank through a variety of initiatives including implementation of Core Banking solutions is credited to clear and transparent communication with the employees (Khandelwal 2007). Studies in the Indian context have shown that attitudes in terms of job satisfaction and freedom and autonomy at the work place were found to be significantly positively related to technology acceptance (Gurtoo & Tripathy 2000, Venkatachalam & Velayudhan 1999). Venkatachalam & Velayudhan (1999) in their study of a steel plant found significant and positive correlation between meaningful, interesting job and technology, indicating that new technology introduction does have an influence on how the employees feel at work.

Unlike in the West Indian employees rarely differentiate the work and social roles and it would be possible to develop a feeling of "we-ness" if policies and practices instil among employees the feeling of 'acceptance and belonging' (Dayal 1999 :220). As Khandelwal (2007 : 210) observes "I always felt that employees were equally concerned as stakeholders about declining business at the bank . I also felt that they did not exactly endorse the attempts of trade unions to stymie technology or other customer-centric initiatives. It was with this belief that we reached out to 40,000 employees directly through a monthly letter and numerous employee meetings across the country sharing problems of bank business and seeking their engagement." However this belief and actions associated with it seems to be an exception rather than the norm Budhwar (2003) found that strategic and financial information are comparatively less shared with the blue-collared workers than with the white-collared workers, due to low faith of management in their subordinates, preference of managers for centralized decision-making and control, and lack of awareness by the employees. Further, it is found that 87% of the employees communicate through their immediate supervisors and also that most of the communication is done through staff bodies. Such results suggest that any successful technological change has to be accompanied by a continuous and consistent communication with the employees, sharing both developments and concerns on the business front and the need for new technology implementation and its implications for employees. Further engaging supervisors and staff unions in the communication process are likely to bolster efforts of management.

Union Response

In the British context Manwaring (1981) found that the union response to introduction of new technology varies as per the likely effects of the

new technology, the importance of the new skills introduced by the technology and the impact on bargaining power previously established. For the unions the new technology has implications for the number of jobs, their content and the earnings that it is going to affect. In the Indian context, in a study of 'unusual' collective agreements in the public and private sectors Ratnam (1991:17) found that unions no longer resist changes in work practices resulting from modernization or computerization except in the case of employment of contract workers and restrictions on subcontracting. In the case of Indian Aluminium Company Limited, Belur, "It is agreed that the right to plan, direct and control operations of the plant, to introduce new or improved production methods, to expand production facilities and to establish production schedules and quality standards are solely and exclusively the responsibilities of the management. The management's authority to perform these and other duties will be respected in ever y case" (Ratnam 1991:32). In the case of modernization of Indian Iron and Steel Company, Burnpur, thirty options were considered and discussed with all the unions through extensive sharing of information and the option adopted was to close down six plants and retrain and redeploy five thousand surplus workers instead of retrenching them. Even though there were no discussions on the specific technology to be used, the consequences of modernizations were discussed in detail with the unions. With respect to the introduction of computers in the banks, the initial agreement between the Indian Banks Association and the employee associations such as AIBEA and NCBE signed in 1983 defined the extent, the purpose, the branches and the allowance to employees because of computerization, while the second one signed in 1987 extended the first one in defining the type of technology that is to be used, guarantee of no redundancies and even unusual clauses such as pregnant women can refuse to work in new computer work stations. In the case of Minerals and Metals Trading Corporation Ltd it was agreed that if the unions resist implementation of the program of computerization, the benefits flowing under the settlement shall not be considered for these members.

The influence of trade unions on blue collared worker behaviour is also significant . For example, Datta (1996) in his study of the introduction of advanced looms in a textile factory in Bombay found that the union had a say on who would work on the new technology and even the number of machines that are to be handled by a worker. Although subjective norms were not included in TAM, in order to study technology acceptance by workers especially in the Indian context, subjective norm s need to be considered as a variable influencing the behavioural intentions of the workers with respect to acceptance of technology. Subjective

norm here refers to "the person's perception that most people who are important to him think he should or should not perform the behaviour in question" (Fishbein & Ajzen 1975:302 as in Davis et al 1989).

Since in the Indian context, trade unions do have an influence on the individual's behaviour manifested as peer influence and superior influence (Mathieson 1991), it would be necessary to consider subjective norms as well. Further, another important consideration in accepting new technology is the perceived behavioural control which is the belief that the employee has access to and control of resources for the running of the technology/ machinery. In the worker context, these are essentially external factors that get manifested in terms of colleague cooperation to get a job done, access to commonly shared resources etc. Depending on the importance that an employee attaches to the opinions of his colleagues as a consequence of his common group membership or otherwise, the views of the group/ union, he/ she is part of, would matter as well.

3.3 TRADE UNIONISM

Trade Unionism grew as one of the most powerful socio-economic political institutions of our time-to fill in the vaccum created by industrial revolution in industrial society. It came as a contervailling force to reconcile social and economic aberrations created by Industrial Revolution. Individual dispensibility and collective indespensibility was the basic principle for its formation. United we stand and divided we fall is the philosophy. The government policy of "Laissez-faire" left the working class at the mercy of mighty employers. The worker lacked bargaining power and seller of most perishable commodity (labour) he was no match for the mighty employer. The supply of labour was more and demand was less. Employers employed them at their terms, which were exploitative. The exploitation of labour was at its peak.

Combination of workers was considered as 'criminal conspiracy' and the terms of contract was regulated by workman Breach of Contract Act, 1860 and general law of the land. Discontent was brewing. Liberal democratic and revolutionary ideas (set in motion by American war of Independence, French Revolution and Thinkers like Rousseau & Marks etc.) of the time fanned the discontentment which was a smoldering since long and gave birth to an institution known as "trade union."

3.4 FORMATIVE STAGES OF TRADE UNION

Trade Union has to pass through a very difficult and hostile period in the initial years. The employers wanted to crush them with iron hands.

Then came the period of agitation and occasional acceptance. When the union gained strength they started confronting with the employer. This is period of struggle which continued for long. Employers were forced to accommodate, tolerate and hesitatingly accept them. Then came the period of understanding and industry in collective bargaining. This was followed by fraternal stage where union became matured and employers started consulting them. The desired state is the "Fusion Stage" in which joint efforts were required to be made for union management co-operation and partnership.

3.5 ROLE OF TRADE UNIONS

Adopting the model of Prof. Clark Kerr unions assume the following roles:

(a) ***Sectional Bargainer:*** Interests of the workers at plant, industry, national level multiplicity of unions, Crafts Unions, white Collar Union etc.

(b) ***Class Bargainer:*** *Unions representing the interest of the class* as whole as in France Agricultural Unions, Federations of unions, Civil Servants Union.

(c) ***Agents of State:*** As in U.S.S.R., ensuring targets of production at fixed price. In 1974 Railway strike, INTUC stood behind Government and its agent.

(d) ***Partners in Social Control:*** Co-determinator in Germany. Also, some examples are found in Holland, France, Italy and Sweden; some half-hearted attempts are being made in India also.

(e) Unions role which can be termed as ***enemies of economic systems***, driven by political ideologies than business compulsions. Leftist unions want to change the fundamental structure of economy and want to have control over it. Therefore, they encourage high wages, high bonus etc. without any consideration for the health of the economy.

(f) ***Business Oriented Role:*** Here unions consider the interests of the organization along with workers. They think that their members fate is inextricably linked with that of organisation and they swim or sink together.

(g) ***Unions as Change Agent:*** Lead the changes than to be led by *them and thus, performing the pioneering role.*

3.6 GROWTH OF TRADE UNION MOVEMENT AND MEMBERSHIP IN INDIA

Trade unions in India, as in most other countries, have been the natural outcome the modem factory system. The development of trade unionism in India has chequered history and a stormy career.

Early Period

Efforts towards organising the workers for their welfare were made, during the early period of industrial development by social workers, philanthropists and other religious leaders mostly on humanitarian grounds. The first Factories Act, 1881, was passed on the basis of the recommendations of the Bombay Factory Commission, 1875. Due to the limitations of the Act, the workers in Bombay Textile Industry under the leadership of N. M. Lokhande demanded reduced of hours of work, weekly rest days, mid-day recess and compensation for injuries. Bombay Mill owners' Association conceded the demand for weekly holiday. Consequently, Lokhande established the first Workers' Union in India in 1890 in the name of Bombay Mill hands Association. A labour journal called "Dinabandu" was also published.

Some of the important unions established during the period are: Amalgamated Society of Railway Servants of India and Burma (1897), Management the Printers Union, Calcutta (1905) and the Bombay Postal Union (1907), the Kamgar Hitavardhak Sabha (1910) and the Social Service League (1910). But these unions were treated as ad hoc bodies and could not serve the purpose of trade unions.

Modest Beginning

The beginning of the Labour movement in the modest sense started after the outbreak of World War I in the country. Economic, political and social conditions of the day influenced the growth of trade union movement in India. Establishment of International Labour Organisation in 1919 helped the formation of trade unions in the country. Madras Labour Union was formed on systematic lines in 1919. A number of trade unions were established between 1919 and 1923. Categorywise unions, like Spinners' Union and Weavers' Union, came into existence in Ahmedabad under the inspiration of Mahatma Gandhi. These unions were later federated into an industrial union known as Ahmedabad Textile Labour Association. This union has been formed on systematic lines and has been functioning on sound lines based on the Gandhian Philosophy of mutual trust, collaboration and non-violence.

All India Trade Union Congress

The most important year in the history of Indian Trade Union movement

is 1920 when the All India Trade Union Congress (AITUC) was formed consequent upon the necessity of electing delegates for the International Labour Organisation (ILO). This is the first all India trade union in the country. The first meeting of the AITUC was held in October, 1920 at Bombay (now Mumbai) under the presidentship of Lala Lajpat Rai. The formation of AITUC led to the establishment of All India Railwaymen's Federation (AIRF) in 1922. Many Company Railway Unions were affiliated to it. Signs of militant tendency and revolutionary ideas were apparent during this period.

(a) **Period of splits and mergers:** The splinter group of AITUC formed All India Trade Union Federation (AITUF) in 1929. Another split by the communists in 1931 led to the formation of All India Red Trade Union Congress. Thus, splits were more common during the period. However, efforts were made by the Railway Federation to bring unity within the AITUC unity. These efforts did bear fruit and All India Red Trade Union Congress was dissolved. Added to this, All India Trade Union Federation also merged with AITUC. The unified AITUC's convention was held in 1940 in Nagpur. But the unity did not last long. The World War II brought splits in the AITUC. There were two groups in the AITUC, one supporting the war while the other opposing it. The supporting group established its own central organisation called the Indian Federation of Labour. A further split took place in 1947, when the top leaders of the Indian National Congress formed another central organisation.

(b) **Indian National Trade Union Congress:** The efforts of Indian National Congress resulted in the establishment of Indian National Trade Union Congress (INTUC) by bringing the split in the AITUC, INTUC started gaining membership right from the beginning.

(c) **Other Central Unions:** Socialists separated from AITUC had formed Hind Mazdoor Sabha (HMS) in 1948. The Indian Federation of Labour merged with the HMS, Radicals formed another union under the name of United Trade Union Congress in 1949. Thus, the trade union movement in the country was split into four distinct central unions during the short span of 1946 to 1949. Some other central unions were also formed. They were Bharatiya Mazdoor Sangh (BMS) in 1955, the Hind Mazdoor Panchayat (HMP) in 1965 and the Centre of Indian Trade Unions (CITU) in 1970. Thus, splinter group of INTUC formed Union Trade Union Congress, the split in the Congress Party in 1969 resulted in the split in INTUC and let to the formation of National Labour Organisation (NLO).

Present Position

There are over 9,000 trade unions in the country, including unregistered unions and more than 70 federations and confederations registered under the Trade Unions Act, 1926. The degree of unionism is fairly high in organised industrial sector. It is negligible in the agricultural and unorganised sectors. Though the number of unions has greatly increased in the last four decades, the union membership per union has not kept pace. The National commission on labour has stated that only 131 unions had a membership of over 5,000. More than 70% of the unions had a membership of below 500. Over the years the average membership figures per union have fallen steadily from about 1387 in 1943 to 632 in 1992-93 (Pocket Book of Labour Statistics, 1997). Unions with a membership of over 2000 constitute roughly 4 per cent of the total unions in the country.

There is a high degree of unionisation (varying from 30% to over 70%) in coal, cotton, textiles, iron and steel, railways, cement, banking, insurance, ports and docks and tobacco sector. White-collar unions have also increased significantly covering officers, senior executives, managers, civil servants, self employed professions like doctors, lawyers, traders, etc. for safeguarding their interest. There are as many as 10 central trade union organisations in the country (as against one or two in UK, Japan, USA). The criteria for recognition as Central Trade Union has been that the combined strength should be 5 lacs numbers with a spread over to at least 4 states and 4 industries as on 31.12.89. Ten such Trade Unions are; (1) BMS (2) INTUC (3) HMS, (4) U.T.U.C - LS (5) AITUC (6) CITUC (7) NLO (8) UTUC (9) TUCC (10) NFITU. As per one survey (Economic Times, 24.9.97) the five leading Trade Unions' strength are as follows:

Trade Union		*Strength*
BMS	-	331 Lakhs
INTUC	-	271 Lakhs
AITUC	-	18 Lakhs
HMS	-	15 Lakhs
CITU	-	3.4 Lakhs

3.7 HUMAN RESOURCE MANAGEMENT AND INDUSTRIAL RELATIONS APPROACHES

The objectives of managements, the ways in which enterprises are managed to achieve these objectives and the human resource management (hereinafter referred to as "HRM") and industrial relations (hereinafter referred to as "IR") initiatives in this regard, are affected by pressures, many of which are exerted by globalization. Changes in IR practices (rather than

in institutions and systems) such as increased collective bargaining at enterprise level, flexibility in relation to forms of employment as well as in relation to working time and job functions have occurred as a result of such factors as heightened competition, rapid changes in products and processes and the increasing importance of skills, quality and productivity. These factors have also had an impact on HRM policies and practices. In managing change, the key elements include employee involvement in effecting change, greater customer orientation, and ensuring that the skills of employees are appropriate to the production of goods and the provision of services acceptable to the global market. As such, managing people in a way so as to motivate them to be productive is one important objective of HRM. The implications and consequences of globalization include the following:

1. Countries are more economically interdependent than before, particularly in view of foreign direct investment interlocking economies, as well as increased free trade. The inability of economies to be 'self-sufficient' or 'self-reliant' or 'self-contained' has been accompanied by a breakdown of investment and trade barriers.
2. Governments are increasingly less able to control the flow of capital, information and technology across borders.
3. There has been de-regulation of financial and other markets, and the integration of markets for goods, services and capital such as the European Community.
4. It has led to the de-nationalization of enterprises and the creation of global companies and global webs.
5. Production of goods and services acceptable to the global market, and the convergence, to a great extent, of customer tastes across borders determined by quality.
6. The need to achieve competitiveness and to remain competitive in respect of attracting investment, goods and services. This means, *inter alia,* the necessity for high quality skills at all levels to attract high value-added activities, as distinct from cheap labour low value-added ones, and improvements in productivity.

Enterprises driven by market pressures need to include in their goals improved quality and productivity, greater flexibility, continuous innovation, and the ability to change to respond rapidly to market needs and demands. Effective HRM is vital for the attainment of these goals.

Improved quality and productivity linked to motivation can be achieved through training, employee involvement and extrinsic and intrinsic rewards. The growing interest in pay systems geared to performance and skills reflects one aspect of the increasing significance of HRM in realizing management goals and a gradual shift from collectivism to

the individualisation of pay. In such pay systems a critical attraction is the possibility of achieving these goals without increasing labour costs but at the same time increasing earnings. Realizing management goals and managing change need employee involvement, commitment and training, employee participation, cooperation and team-work—all important HRM initiatives and activities. The dominant position towards which HRM is moving points to a "change in power relations and highlights the supremacy of management. The management prerogative is rediscovered but in place of command and control the emphasis is on commitment and control as quality, flexibility and competence replaces quantity, task and dumb obedience. To put it another way: the managerial agenda is increasingly focused on innovation, quality and cost reduction. Human resource management makes more demands on employees, work is intensified .... there is less room for managerial slack and for indulgency patterns."

From a purely HRM perspective, one writer has identified the following six factors as accounting for the increasing interest in and resort to HRM practices:

1. Improving the management of people or utilizing human resources better as a means of achieving competitive advantage.
2. The numerous examples of excellence in HRM have created an interest in such models.
3. The traditional role of personnel managers has failed to exploit the potential benefits of effective management of people; neither did personnel management form a central part of management activity.
4. In some countries the decline of trade union influence has opened the way for managements to focus on more individual issues rather than on collectivist ones.
5. The emergence of better educated workforces with higher individual expectations, changes in technology and the need for more flexible jobs have, in turn, created the need to incorporate HRM into central management policy.
6. Many important aspects of HRM such as commitment and motivation emanate from the area of organizational behaviour, and place emphasis on management strategy. This has provided an opportunity to link HRM with organizational behaviour and management strategy.

3.8 TRENDS IN HUMAN RESOURCE MANAGEMENT AND MANAGEMENT OBJECTIVES

When identifying some of the trends in HRM and when subsequently analysing how they could contribute to achieving management objectives,

it is necessary to voice a note of caution. The fact that one elaborates on an ideal model of HRM does not mean that such models have been widely adopted in the real corporate world. As Thomas A Kochan and Lee Dyer point out, "even today we find that the human resource function within many American corporations remains weak and relatively low in influence relative to other managerial functions such as finance, marketing, and manufacturing ... despite the outpouring of academic writing on 'strategic human resource management' little progress has been made in developing systematic theory or empirical evidence on the conditions under which human resources are elevated to a position where the firm sees and treats these issues as a source of competitive advantage." The 'best practice' models are really the exceptions, but their value is that they, in a sense, prove the rule, so to speak. Absence of widespread practice is no argument against such a model, but is rather a reason to advocate it, in the same way that the absence of a harmonious IR system in a given situation or country is no argument against advocating it. However, it is possible that the various pressures on enterprises in the 1990s will result in increased resort to effective HRM policies and practices. In the ultimate analysis, HRM and IR are about how people are treated, and their relevance increases where an enterprise takes a long-term view, rather than a short-term one, of what it wants to achieve. Two writers, after examining some of the successful companies such as IBM, GE, Hewlett Packard and Matsushita, observe that "there are a series of things concerned with corporate objectives and culture that seem to matter. Agreement on basic directions for the long-term development of the business, and on how to treat people within the firm, are perhaps the most essential common features of these companies."

The increasingly significant role of HRM in achieving management objectives is reflected in the transformation of the personnel management function. Over the last two decades this function was often marginalized in terms of its importance in management activities and hierarchy. It has evolved from a concentration on employee welfare to one of managing people in a way so as to obtain the best and highest productivity possible from the employee, through methods that provide the employee with both intrinsic and extrinsic rewards. Therefore today "far from being marginalised, the human resource management function becomes recognized as a central business concern; its performance and delivery are integrated into line management; the aims shift from merely securing compliance to the more ambitious one of winning commitment. The employee resource, therefore, becomes worth investing in, and training and development thus assume a higher profile. These initiatives are associated with, and maybe are even predicated upon, a tendency to

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shift from a collective orientation to the management of the workforce to an individualistic one. Accordingly management looks for 'flexibility' and seeks to reward differential performance in a differential way. Communication of managerial objectives and aspirations takes on a whole new importance."

What separates or distinguishes HRM from the traditional personnel function is the integration of HRM into strategic management and the pre-occupation of HRM with utilizing the human resource to achieve strategic management objectives. HRM "seeks to eliminate the mediation role and adopts a generally unitarist perspective. It emphasizes strategy and planning rather than problem-solving and mediation, so that employee cooperation is delivered by programmes of corporate culture, remuneration packaging, team building and management development for core employees, while peripheral employees are kept at arms length."

HRM strategies may be influenced by the decisions taken on strategy (the nature of the business currently and in the future) and by the structure of the enterprise (the manner in which the enterprise is structured or organized to meet its objectives). In an enterprise with effective HRM policies and practices, the decisions on HRM are also strategic decisions influenced by strategy and structure, and by external factors such as trade unions, the labour market situation and the legal system. In reality most firms do not have such a well thought-out sequential model. But what we are considering here is effective HRM, and thus a model where HRM decisions are as strategic as the decisions on the type of business and structure.

At a conceptual level the interpretations of HRM indicate different emphases which lead to concentration on different contents of the discipline. The various distinctions or interpretations indicate that HRM "can be used in a restricted sense so reserving it as a label only for that approach to labour management which treats labour as a valued asset rather than a variable cost and which accordingly counsels investment in the labour resource through training and development and through measures designed to attract and retain a committed workforce. Alternatively, it is sometimes used in an extended way so as to refer to a whole array of recent managerial initiatives including measures to increase the flexible utilization of the labour resource and other measures which are largely directed at the individual employee. But another distinction can also be drawn. This directs attention to the 'hard' and 'soft' versions of HRM. The 'hard' one emphasizes the quantitative, calculative and business-strategic aspects of managing the headcounts resource in as 'rational' a way as for any other economic factor. By contrast, the 'soft' version traces its roots to the human-relations school; it emphasizes communication, motivation, and leadership."

There are several ways in which HRM has changed earlier attitudes and assumptions of personnel management about managing people. The new model of HRM includes many elements vital to the basic management goal of achieving and maintaining competitiveness. First, HRM earlier reacted piece-meal to problems as they arose. Effective HRM now increasingly seeks to link HRM issues to the overall strategy of the organization. Organizations with the most effective HRM policies and practices seek to integrate such policies in corporate strategies and to reinforce or change an organization's culture. Integration is needed in two senses -integrating HRM issues into an organization's strategic plans and securing the acceptance and inclusion of a HRM view in the decisions of line managers. The HRM policies in respect of the various functions (e.g. recruitment, training, etc.) should be internally consistent. They must also be consistent with the business strategies and should reflect the organization's core values. The problem of integrating HRM with business strategy arises, for example, in a diversified enterprise with different products and markets. In such cases there is the difficulty of matching HRM policies with strategies which could vary among different business activities, each of which may call for different HRM policies. For instance, in particular cases "the 'hard' version of human resource management appears more relevant than the 'soft' version of human resource management. In other words, matching HRM policies to business strategy calls for minimizing labour costs, rather than treating employees as a resource whose value may be enhanced .... by increasing their commitment, functional flexibility, and quality." This contradiction is sometimes sought to be resolved through the claim that developing people is possible only where the business is successful. Therefore if reducing the labour force or dispensing with poor performers is dictated by business conditions, resorting to such measures and treating people as a resource are not antithetic. Another reconciliation of this contradiction is sought through management initiatives to change business strategy (e.g. in sectors where reducing costs is a common practice such as in mass production and supermarket retailing) through greater employee involvement, commitment and training.

Second, building strong cultures is a way of promoting particular organizational goals, in that "a 'strong culture' is aimed at uniting employees through a shared set of managerially sanctioned values ('quality', 'service', 'innovation', etc.) that assume an identification of employee and employer interests." However, there can be tension between a strong organizational culture and the need to adapt to changed circumstances and to be flexible, particularly in the highly competitive and rapidly changing environment in which employers have to operate today. Rapid change demanded by the market is sometimes difficult in an organization

with a strong culture. IBM has been cited as a case in point. Its firmly-held beliefs about products and services made it difficult to effect change in time, *i.e.* when the market required a radical change in product and service (from mainframe, customised systems, salesmen as management consultants to customer-as-end user, seeking quality of product and service) to personal computers (standardized product, cost competition, dealer as customer).

Nevertheless in the long term a strong organizational culture is preferable to a weak one: "Hence, it could be said that the relationship between 'strong' cultures, employee commitment, and adaptability contains a series of paradoxes. Strong cultures allow for a rapid response to familiar conditions, but inhibit immediate flexibility in response to the unfamiliar, because of the commitment generated to a (now) inappropriate ideology. 'Weak' cultures, in contrast, when equated with ambiguous ideologies, allow flexibility in response to the unfamiliar, but cannot generate commitment to action. Yet strong cultures, through disconfirmation and eventual ideological shift may prove ultimately more adaptive to change, assuming the emergence of a new strong yet appropriate culture. This may be at the cost of a transitional period when ability to generate commitment to any course of action -new or old - is minimal."

Third, the attitude that people are a variable cost is, in effective HRM, replaced by the view that people are a resource and that as social capital can be developed and can contribute to competitive advantage. Increasingly, it is accepted that competitive advantage is gained through well-educated and trained, motivated and committed employees at all levels. This recognition is now almost universal, and accounts for the plausible argument that training and development are, or will be, the central pillar of HRM. By the end of the 1980s leading companies in Germany, Japan and the USA were spending up to 3% of turnover on training and development, but in the UK such expenditure amounted to only about 0.15%.18 The economic performance of some of the East Asian countries (Japan, Korea, Hong Kong and Taiwan) and of some of the South East Asian countries (Singapore and Malaysia) are intimately connected with their high level of investment in education and training. Other countries are now placing human resource development at the centre of their national strategic plans—Indonesia being a recent example. Thus, "The existence of policies and practices designed to realize the latent potential of the workforce at all levels becomes the litmus test of an organization's orientation."

Fourth, the view that the interests of employees and management or shareholders are divergent and conflictual - though substantially true in the past - is giving way to the view that this need not necessarily be so. HRM seeks to identify and promote a commonality of interests.

Significant examples are training which enhances employment security and higher earning capacity for employees and which at the same time increases the employee's value to the enterprise's goals of better productivity and performance; pay systems which increase earnings without significant labour cost increases, and which at the same time promote higher performance levels; goal-setting through two-way communication which establishes unified goals and objectives and which provides intrinsic rewards to the employee through a participatory process.

Fifth, top-down communication coupled with controlled information flow to keep power within the control of management categories is gradually giving way to a sharing of information and knowledge. This change facilitates the creation of trust and commitment and makes knowledge more productive. Control from the top is being replaced by increasing employee participation and policies which foster commitment and flexibility which help organizations to change when necessary. The ways in which the larger Japanese enterprises have installed participatory schemes and introduced information-sharing and two-way communication systems are instructive in this regard.

In enterprises which tend to have corporate philosophies or missions, and where there are underlying values which shape their corporate culture, HRM becomes a part of the strategy to achieve their objectives. For example, in Matsushita Electric Company "finance, personnel and training are all fully centralised .... Personnel and training exist to create 'harmony'. In other words the central role of these functions is to help build and maintain the Matsushita culture ....people are seen as the critical resource." In some types of enterprises such as ones in which continuous technological change takes place, the goal of successfully managing change at short intervals often requires employee cooperation through emphasis on communication and involvement. As this type of unit grows,

"If there is strategic thinking in human resource management these units are likely to wish to develop employee-relations policies based on high individualism paying above market rates to recruit and retain the best labour, careful selection and recruitment systems to ensure high quality and skill potential, emphasis on internal training schemes to develop potential for further growth, payment system designed to reward individual performance and cooperation, performance and appraisal reviews, and strong emphasis on team work and communication. In short, technical and capital investment is matched by human resource investments, at times reaching near the ideals of human resource management."

If, as is often the case, enterprises are dominated by financial issues, HRM will not be a part of the central strategy of such enterprises.

HRM as a means of achieving management objectives—at least in enterprises which have recognized, or have been compelled to recognize, the utilization of the human resource in achieving competitive edge - becomes clear from an examination of four important goals of effective HRM. HRM is closely linked to motivation, leadership and work behaviour. An enterprise's policies and practices in these areas have an impact on whether HRM contributes to achieving management goals. The first goal of HRM is integration, which in itself has four aspects. Although "a comprehensive corporate strategy is essential to continuing business success ... in many cases, human resource planning is not an integral part of strategic planning, but rather flows from it", so that giving effect to strategic plans becomes more difficult. This is especially so in today's context when the success of the process of adapting to change requires an increasing degree of individual and group involvement, so that human resources need to be integrated into strategic plans. As has been aptly stated in regard to managing change:

"Corporate entrepreneurs—single-minded individuals that they are still get their projects done by crafting coalitions and building teams of devoted employees who feel a heightened sense of joint involvement and contribution to decisions. The integrative, participative vehicles surrounding innovators–open communication, interdependent responsibilities, frequent team efforts—keep them close to the power sources they need to operate, ensuring access to information, resources and the support needed for implementation. Involving grass roots employees on participative teams with control over their own outcomes helps the organization to get and use more ideas to improve performance and increase future skills. Whether called 'task forces', 'quality circles', 'problem-solving groups', or 'shared-responsibility teams', such vehicles for greater participation at all levels are an important part of an innovating company. Masters of change are also masters of the use of participation." Human resource policies should also be internally consistent in the sense that policies in each area of human resources (*e.g.* selection, motivation, rewards) should further common strategic objectives. Further, successful integration depends on line managers accepting and practicing the appropriate HRM policies. Moreover, employees should be integrated (as in the case of the best practice in Japanese companies) so that there is as little divergence of interests between those of the enterprise and the employee.

The second is the goal of commitment, which involves identification of the type of commitment sought *e.g.* attitudinal, behavioural. Commitment could be to the organization, to the job, to career advancement. Commitment could be seen as acceptance of enterprise values and goals, and could be reflected in behaviour which seeks to further these goals. Thus:

"The theoretical proposition is therefore that organizational commitment, combined with job related behavioural commitment will result in high employee satisfaction, high performance, longer tenure and willingness to accept change."

Among measures to achieve commitment are setting objectives through a two-way communication process which requires consultation and involvement; performance appraisal systems based on agreed goals and performance measures; intrinsic and extrinsic rewards. The third is the goal of flexibility and adaptability, which in essence means the ability to manage change and innovation and to respond rapidly to market demands and changes. This requires a HRM policy which is conducive to change at all levels of the organization, a structure which is not bureaucratic, rigid and hierarchical, with an absence of rigid job demarcations and with functional flexibility (flexible skills and willingness to move from one task to another). Promoting these is possible only "if employees at all levels display high organizational commitment, high trust and high levels of intrinsic motivation."

Measures to achieve flexibility would include training, work organization, multi-skilling and removal of narrow job classifications. The fourth goal of HRM is the goal of quality. This assumes the existence of policies and practices to recruit, develop and retain skilled and adaptable staff, and the formulation of agreed performance goals and performance measures. To these goals could be added two broader goals—building a unified organizational culture and achieving competitive advantage through the productive use of human resources.

3.9 THE THEORY OF THE CONFLICT BETWEEN INDUSTRIAL RELATIONS AND HUMAN RESOURCE MANAGEMENT

In considering the relationship between HRM and IR, two central concerns are: in what way does HRM pose a challenge to IR and how can conflicts between the two, if any, be reconciled so that they can complement each other? This section concerns itself with the first of these two issues. In considering the issue, it is necessary to identify the broad goals of each discipline. The goals of HRM have already been identified in the previous section. It remains to consider some of the basic objectives of IR, which could be said to include the following:

1. The efficient production of goods and services and, at the same time, determination of adequate terms and conditions of employment, in the interests of the employer, employees and society as a whole, through a consensus achieved through negotiation.

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2. The establishment of mechanisms for communication, consultation and cooperation in order to resolve workplace issues at enterprise and industry level, and to achieve through a tripartite process, consensus on labour policy at national level.

3. Avoidance and settlement of disputes and differences between employers, employees and their representatives, where possible through negotiation and dispute settlement mechanisms.

4. To provide social protection where needed *e.g.* in the areas of social security, safety and health, child labour, etc.

5. Establishment of stable and harmonious relations between employers and employees and their organizations, and between them and the State.

IR is essentially pluralistic in outlook, in that it covers not only the relations between employer and employee (the individual relations) but also the relations between employers and unions and between them and the State (collective relations). IR theory, practice and institutions traditionally focus more on the collective aspect of relations. This is evident from the central place occupied by labour law, freedom of association, collective bargaining, the right to strike, employee involvement practices which involve unions, trade unionism and so on. HRM deals with the management of human resources, rather than with the management of collective relations. There is of course a certain measure of overlap. Individual grievance handling falls within the ambit of both disciplines, but dispute settlement of collective issues more properly falls within the scope of IR. Policies and practices relating to recruitment, selection, appraisal, training and motivation form a part of HRM. Team-building, communication and cooperation, though primarily HRM initiatives, have a collectivist aspect. Thus, joint consultative mechanisms are as much IR initiatives, which may (as in Japan) supplement collective bargaining. But IR has not, in regard to team-building for instance, developed any techniques or theories about how to achieve it; in fact, it is not a focus of attention because it implies a potential loyalty to the enterprise through the team and is seen as conflicting with loyalty to the union. IR has a large component of rules which govern the employment relationship. These rules may be prescribed by the State through laws, by courts or tribunals, or through a bipartite process such as collective bargaining. HRM differs in this respect from industrial relations in the sense that it does not deal with such procedures and rules, but with the best way to use the human resource through, for example, proper selection and recruitment, induction, appraisal, training and development, motivation, leadership and intrinsic and extrinsic rewards. Thus, "at its most basic HRM represents a set of managerial initiatives." Four processes central to a HRM system - selection, appraisal, rewards

and development- leave only limited room for IR as a central element in the human resource system. "Based on theoretical work in the field of organizational behaviour it is proposed that HRM comprises a set of policies designed to maximise organizational integration, employee commitment, flexibility and quality of work. Within this model, collective industrial relations have, at best, only a minor role." A discernible trend in management is a greater individualisation of the employer-employee relationship, implying less emphasis on collective, and more emphasis on individual relations. This is reflected, for instance, in monetary and non-monetary reward systems. In IR the central monetary reward is wages and salaries, one of its central themes (given effect to by collective bargaining) being internal equity and distributive justice and, often, standardisation across industry. HRM increasingly places emphasis on monetary rewards linked to performance and skills through the development of performance and skills-based pay systems, some of which seek to individualise monetary rewards (*e.g.* individual bonuses, stock options, etc.). HRM strategies to secure individual commitment through communication, consultation and participatory schemes underline the individualisation thrust, or at least effect, of HRM strategies. On the other hand, it is also legitimate to argue that HRM does not focus exclusively on the individual and, as such, does not promote only individual employment relations. Though much of HRM is directed at the individual, "at the same time there is a parallel emphasis on team work, whether in the form of quality circles or functional flexibility, and above all, on the individual's commitment to the organization, represented not just as the sum of the individuals in it, but rather as an organic entity with an interest in survival. The potential conflict between emphasizing the importance of the individual on the one hand, and the desirability of cooperative team work and employee commitment to the organization, on the other, is glossed over through the general assumption of unitarist values. HRM stresses the development of a strong corporate culture—not only does it give direction to an organization, but it mediates the tension between individualism and collectivism, as individuals socialised into a strong culture are subject to unobtrusive collective controls on attitudes and behaviour."

Some of the tensions between IR and HRM arise from the unitarist outlook of HRM (which sees a commonality of interests between managements and employees) and the pluralist outlook of IR (which assumes the potential for conflict in the employment relationship flowing from different interests). "It is often said that HRM is the visual embodiment of the unitarist frame of reference both in the sense of the legitimation of managerial authority and in the imagery of the firm as a team with committed employees working with managers for the benefit of the

firm." How to balance these conflicting interests and to avoid or to minimize conflicts (*e.g.* through promotion of negotiation systems such as collective bargaining, joint consultation, dispute settlement mechanisms within the enterprise and at national level in the form of conciliation, arbitration and labour courts) in order to achieve a harmonious IR system is one central task of IR. The individualization of HRM, reflected in its techniques which focus on direct employer-employee links rather than with employee representatives, constitutes one important difference between IR and HRM. It has been observed that:

"The empirical evidence also indicates that the driving force behind the introduction of HRM appears to have little to do with industrial relations; rather it is the pursuit of competitive advantage in the market place through provision of high-quality goods and services, through competitive pricing linked to high productivity and through the capacity swiftly to innovate and manage change in response to changes in the market place or to breakthroughs in research and development. Its underlying values, reflected in HRM policies and practices, would appear to be essentially unitarist and individualistic in contrast to the more pluralist and collective values of traditional industrial relations."

How does HRM more specifically challenge IR and trade unions, though HRM is not per se anti-union and its central themes are not necessarily inconsistent with unionism ? First, HRM does not focus, as does IR, on collective bargaining, which is a central institution in IR. However, collective bargaining should not be understood only in the narrow sense of negotiation of terms and conditions of employment leading to a formal agreement. It should be viewed as a process, and as including all mechanisms introduced to arrive at a consensus on matters affecting the two social partners, even if they do not result in formalised agreements. If viewed in this way, it reduces the conflict between HRM and IR within this area. A second area in which HRM is said to pose a challenge to unions is on the issue of flexibility- critical in HRM but traditionally absent as a factor in IR where a degree of standardisation for purposes of internal equity has been an objective of unions and of IR. Here the scene is undergoing considerable change. There is today a major thrust towards achieving flexibility in the labour market on matters such as functions, working time, pay and types of contracts. Unions are being compelled to 'participate' in these changes as an alternative to being marginalized. The trend towards greater decentralization of collective bargaining has compelled viewing issues more from a workplace perspective. It has provided an opportunity for unions in countries with a high rate of unionization to be involved in issues other than wages and related ones, such as technology introduction, new work processes and organization, It involves, on the one hand, the willingness of employers to deal with unions on such

matters (which they have to be willing to do in high union-density enterprises), and on the other the willingness of unions to cooperate on legitimate measures to achieve competitiveness—especially where the employees themselves are willing to do so -and to adapt to the realities of the workplace.

A third - and perhaps the principal challenge—emanates from employee loyalty and commitment, which are central objectives of HRM. The issue here is whether dual allegiance is possible *i.e.*, commitment to the goals and values of the organization, and to contribute to its success on the one hand, and commitment to the trade union on the other. It is at this point that IR becomes a critical factor. In principle, there should be no antithesis, because trade unionism need not (and should not) be conflictual in approach and attitude. Much of the empirical evidence drawn from the USA indicates that in a workplace with a cooperative IR system dual loyalty is possible, but that it is not possible in one where a cooperative climate is absent or minimal. In some of the larger unionised corporations in Japan, this conflict of loyalty is less felt.

Traditional IR and trade unionism can be challenged in other ways - that is, other than through anti-union activity. Downsizing the labour force as a HRM initiative to achieve competitiveness and offering monetary incentives to employees to improve productivity could create IR tensions, especially if the union has not been involved in the process. A similar result may occur when an employer, without seeking to dismantle existing IR practices, establishes other mechanisms and practices such as direct communication and consultation systems, small group activities, employee share option schemes and so on without involving the union. The unitarist approach of HRM and the pluralist tradition of IR, though regarded by some as incompatible, are not regarded in the same light by others. There are three issues involved here. The first is whether the pursuit of HRM policies such as employee involvement and commitment, two-way communication and small group activities, and the integration of HRM policies in corporate objectives and strategies pose a challenge to central IR institutions such as collective bargaining and to unionism. The second is whether such HRM policies are pursued consciously as a union avoidance strategy. The third is whether HRM and IR are necessarily incompatible or whether there is scope for their co-existence.

David E. Guest points out that HRM, which is an American concept, *"finds its fullest expression in a number of well-known and successful American companies."* He points out that research indicates that the established model of HRM is often found in a non-union company.

Referring to the research done by one writer,

"He notes that in almost all the companies he looked at the HRM policies came first, often encouraged by the values of a powerful CEO, preceding any considered non-unionism. In many cases, remaining non-union has subsequently become a policy goal. On the basis of the companies he studied, this has a number of cost implications. Personnel policies must be sufficiently good and sufficiently integrated and reinforced by line management practice to avoid giving grounds for union organising. Foulkes found that most of the companies he studied paid above average rates. They also provided mechanisms for individual expression of grievances and were likely to monitor reactions to personnel policies through the communication system and the use of attitude surveys. All of these practices are to be found in a company like IBM which provides the best known model of HRM but which is also what Bassett refers to as the 'ultimate non-union company'."

This does not mean that HRM is anti-union or that unions have no role to play in HRM, but rather that effective HRM policies and practices are sometimes either used as a union avoidance strategy or else it can have that effect. Three very influential scholars have put forward the view that there is a role for union involvement in HRM, and point to companies (such as the General Motors Saturn plant) which have involved unions in the move towards HRM, and by so doing unions have facilitated this move. Such an involvement, if it is to take place, would require, in many countries, a substantial change of attitude on the part of both management and unions. David E. Guest remarks however:

"If a new set of practices can be introduced, it is not clear what role is left for the union. The most likely one is that of policing management practices and dealing with grievances which seem almost inevitable with repetitive production line work and persisting pressures to increase productivity. By implication, management is not practising effective HRM and the door is left open for the unions to play a role."

At the annual meeting of European employers' organizations, held in Bordeaux in 1993 the compatibility of new trends in HRM with the traditional IR systems was considered. The following summary is indicative of the growing attitude of employers in many industrialized market economies:

"The key to competitiveness is quality. And quality depends more on the commitment of individuals than on their acquired technical skills; more on the way these individuals behave and their team spirit than on the passive execution of orders received. Regulations - be they internal to the enterprise or imposed by the legislator - plague innovation and have a negative effect on motivation. Good human resource management lies in the behaviour of each employee within an enterprise. It applies to

individual men and women. The classic approach to industrial relations is entirely different, with its peculiarity being collective bargaining—which, by definition, does not consider the individual but the mass. The status of a worker is defined by a few general criteria, such as his professional category and possibly his seniority and his age. Remuneration, for example, is calculated on the basis of a few simple elements, which do not take into consideration personal behaviour and individual performance. Work provided is considered purely from the quantitative angle. The future of collective bargaining, therefore, depends on the extent to which it can take into account the demands for individualization which modern methods of human resources management imply. This should not of course lead to arbitrariness ..... Legislation and regulation imposed by the State should also leave a sufficient margin of flexibility to allow for adaptation."

3.10 RECONCILING THE CONFLICT AND TRADE UNION VIEWS

David E. Guest concludes his analysis on the following note:

"The foregoing analysis has presented human resource management as unitarist and individualistic in focus. It follows from this that the trade unions are unnecessary or at best marginal. Therefore neither the model presented here, nor the American frameworks (of several writers) see industrial relations, as conventionally conceived, as a central human resource activity a company practising human resource management will normally pay above the average rate and will have excellent communication and grievance systems. Implicit in such policies is a model of unions as providing a collective 'voice' for sources of grievance and discontent and promoting worker interests. There is no recognition of any broader concept of pluralism within society giving rise to solidaristic collective orientations. Walton identifies a number of American cases, notably in the automobile industry, where unions have been involved in moves to increase commitment. At the same time he acknowledges that the role of the union is likely to become somewhat marginal and ambiguous."

The issue considered here is whether the apparent incompatibility between IR and HRM can be reconciled. There are several writers who have expressed strong criticisms of HRM as being exploitative. But a reconciliation can be explored only on the assumption that ultimately both HRM and IR have as one of their objectives fairness and equity, that both parties are prepared to recognize the need for enterprise and employee growth, that these are necessarily interlinked, and that though their interests are to some extent divergent, there are increasingly

areas of common interest for mutual survival. For example, in many countries employers and employees are perceived as two interest groups with generally opposing interests and as belonging to different classes. In the past the relevance of employees to enterprise and national competitiveness was less significant, but the level of employees' education and skills has never been as crucial as it is today. Now we see and by the turn of the century it will be all the more apparent—a convergence of interests between employers and employees in the latter's level of education and skills.

Before exploring the possibility of reconciling the seeming conflict between HRM and IR, it is instructive to note some of the positions of trade unions. In his analysis of trade union views in the USA, Canada and Britain, P.B. Beaumont points out that unions have sometimes expressed views about particular elements of HRM such as quality circles, rather than of HRM as a whole. Further, the avowed policy positions of unions at national level do not necessarily reflect what actually happens at enterprise level. In Canada unions have expressed considerable opposition to HRM initiatives, so much so that in the early 1980s anti-quality of worklife resolutions were passed by some unions in two states. According to a conclusion based on interviews of 17 high level union officials in Canada:

"Union leaders are convinced that management attempts towards employee involvement, and demands for greater flexibility in work arrangements are nothing but a 'misguided desire for a union free environment'. They are of the view that management is more interested in speed up, more productivity than in the worker input. Labour leaders strongly believe in the adversarial system of labour relations citing the fundamentally different roles of union and management at the workplace. Participation in management decision-making initiatives, according to them, are largely cost driven, motivated by management's desire to abdicate its responsibility by transferring to the union the role of disciplining workers, setting one worker against the other."

In the USA union attitudes have been mixed and more flexible, and the difference between Canada and the USA in this respect has been explained on the basis of higher unionisation rates in Canada. In the USA the AFL CIO did not propound an official policy, and in some cases such as the United Auto Workers' Union, cooperation at local union level was encouraged.

In the case of communication workers, support for involvement was provided by the international president. On the other hand, the ideology motivating those who oppose initiatives such as team work and related pay structures is that participation arrangements would enlarge the nonunion sector.

In regard to Britain, it has been observed that the "view that HRM is in essence the development of a set of policies, practices and arrangements

designed essentially to 'individualise' industrial relations, and thus circumvent the unions and weaken individual membership commitment and loyalty to the union, is one that is probably widely accepted throughout the British union movement. However, where individual unions may well disagree is on whether they see all individual components of HRM as equally threatening in this way, and on how to appropriately respond to employer initiatives along these lines."

The British Trade Union Congress has shown conditional support for some components of HRM such as the generally contentious functional flexibility. It has supported ESOPS, but not linking a substantial part of income to organizational performance. The pronouncements of the TUC lead to the conclusion that "the TUC (1) view HRM developments in total as having the potential to 'individualise' industrial relations, but (2) recognizes the inevitability of certain environmental pressures on employers encouraging some moves along these lines and (3) feels that individual unions should basically judge their value and worth on a situation by situation basis, although (4) certain safeguards and *quid pro quos* should be ensured and obtained in situations where such moves actually take place."

Other unions have reflected attitudes ranging from support for HRM initiatives to opposition to them. If the apparent incompatibility between HRM and IR can be reconciled so that both could operate as parallel systems (as collective and individual focused systems), it would require the satisfaction of several conditions. The two can co-exist if unions and managements are prepared and able to carve out a role for HRM, and they are able to agree on narrowing the gap between HRM and IR. This requires changes in the thinking of unions and managements.

Some of the attitudes of unions noted earlier which are opposed to HRM initiatives, as distinct from those which are prepared to treat particular components on their merits, could push employers further towards non-involvement of unions in HRM initiatives. The result of unions keeping HRM at arms' length is reflected in the statement of a Manager at Austin Rover (UK):

"The unions were invited to the party but they didn't seem to want to come. So, the party went ahead without them."

Unions would need to consider the possible scenario that in the years to come the likelihood is that managements will look increasingly to HRM to enhance enterprise competitiveness. This is particularly so as enterprises come to depend on people—on their skills and productivity—as one critical factor in this regard. HRM is being increasingly taught as a part of management education, and this would perhaps increase resort to HRM by future managers. Besides, declarations of policy at

national or central level may not necessarily affect what employees and unions may in fact be prepared to do at local level. Unions could opt to be involved in consultation mechanisms at workplace level at which new HRM initiatives are discussed. This implies that unions need to concentrate more on enterprise level problems and issues. It also implies massive training programmes for unions in HRM issues, if they are to be in a position to respond to and participate in HRM initiatives. The attitude of unions on productivity issues is likely to condition the willingness of employers to involve them in HRM initiatives. Perhaps most of all, unions which are able to take a long-term perspective on issues are most likely to be involved in or participate in change. For example, the German unions and works councils "have a structure of incentives, including employment security, effective representation, and participation, continuing retraining in broad skills, which gives them a long-term perspective in plant bargaining."

Obtaining union cooperation would partly depend on management attitudes. If managements believe—as some appear to do—that effective HRM can be popularised by regarding individual enterprise action in isolation from the external labour market, then effective HRM may in the foreseeable future remain isolated islands of excellence, rather than common practice throughout the economy. Perhaps it is this somewhat isolationist attitude which accounts for effective HRM in many countries still remaining the preserve of high technology enterprises, despite its growing popularity. If management strategy is union avoidance, then IR and HRM will be incompatible. The possibility of HRM and IR having a parallel existence is more likely in large enterprises where direct communication with individuals is more difficult. In this connection, it may be instructive for managements to consider whether a union-free environment is necessary for effective HRM. Contrary to popular belief, in some countries such as the UK, HRM has been found to be seriously practised in unionised workplaces, rather than in non-unionised ones. Some lessons can perhaps also be drawn from the USA, which has a low unionisation rate and where much of the practice of HRM and research has taken place. It has been found that in the 1970s in the USA several companies "began to adopt some of the practices of the non-union companies. Managements, much as they have done in the UK, targeted individuals and the trade unions were kept at arms' length. They soon found, however, that they were not getting the maximum: the 'cold war' relations with trade unions were undermining their efforts. In the 1980s therefore there has, at least in the USA, been a considerable about-turn. Attempts have been made to integrate individual and collective policies. In particular there has been a trend towards the greater involvement of trade unions in the process of change."

Further, Japanese practices in their large enterprises have reflected a successful blend of collectivist IR and HRM, made possible to some extent by their enterprise union system which has facilitated union involvement in HRM initiatives through mechanisms such as their joint consultation system. As significant is the case of Britain, with its long tradition of IR and trade unionism. The evidence indicates that in some instances established IR and new HRM approaches have run parallel, indicating the practical feasibility of a dual arrangement. It tended to neglect union relations. The overall situation in Britain appears to be that "unions and industrial relations have to be demonstrated as relatively secondary and incidental to meeting market priorities, and secondary also to the newly discovered alternative ways of managing the labour (human) resource."

Second, there would have to be a loosening of the demarcation between HRM and IR, and changes in IR thinking to narrow the gap between the two. Two-way communication, training and motivation would be examples of HRM functions. But a major problem is in the areas of flexibility (functional, working time, types of contracts, workforce size), job design and pay systems, where traditional IR and HRM are most likely to conflict. If, for example, reward systems geared to performance and skills proliferate, as they are likely to, it will have an impact on pay determination through collective bargaining. Unions may have to recognize that collective bargaining may need to be redesigned to cover a lesser quantum of pay increases than in the past, and that they should seek to be involved in the flexible and skill-based elements of pay. This would involve a greater emphasis on enterprise level negotiation. IR will be the chief means of maintaining industrial peace, and would concentrate on the means to avoid and settle conflicts and disputes. Some countries may, for instance, opt for legal machinery such as labour court, arbitration and conciliation processes which are external to the enterprise and in which there is a role for all the tripartite constituents. But the relevance of unions would also have to be in the area of conflict avoidance, and not only in the area of conflict resolution. IR would have to adapt to changed circumstances, and accept that hitherto sacrosanct mechanisms like collective bargaining would have to similarly adapt. "Either unions and collective bargaining adapt to the changed environments, where markets take precedence over hierarchies and managerial power is enhanced as regulation and protectionism recede, or their future is increasingly questioned." In essence IR may have to accept that in the future its relevance will be more at macro level *e.g.* in formulating overall IR policy through tripartite processes, delimiting the boundaries of action for the two other parties and providing a measure of social protection where needed through labour law and

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judicial or semi-judicial bodies, and providing the necessary framework for the two other parties to function *e.g.* freedom of association. When IR practitioners and even unions engage in initiatives to improve workplace IR, ironically they are engaging in an essentially HRM function. If IR moves towards a much greater concentration at enterprise level and promotes harmonious relations at that level, it is likely to reduce the gap between IR and HRM and lessen the tension between the two. In that eventuality, unions would have to seek an adaptive role.

Third, IR will have to open its doors to other disciplines. HRM has been responsible for compelling IR to recognize the contributions made by other fields of study—industrial sociology, organizational behaviour and psychology and not only by economics and law, which "were the two major social science disciplines in the development of IR and (which) has led to a traditional emphasis on national level analysis of the role of union, employers and government, as well as giving special attention to collective bargaining as a system of adjusting influence and power." Since HRM deals in large measure with how people are managed within an enterprise and involves an analysis of its effects on employees, HRM has to be accommodated within the ambit of IR study and analysis.

The future of IR may well depend on the capacity to develop more collaborative relations and to move away from adversarial ones. To some extent such a development could be influenced by HRM itself which, if effectively practised, should reduce hierarchical and authoritarian management and result in the setting up of consultative procedures. Implicit in the workplace IR surveys in Britain is the recognition that "the subject matter of industrial relations has to move beyond the exclusive preoccupation with the collective aspects of the employment relationship that has dominated policy as well as teaching and research for the past thirty years. The individual aspects of the employment relationship can no longer be treated simply as part of the context. The obvious justification for giving these individual aspects greater prominence is that the union-free sector is becoming numerically more and more important. But this is not the only consideration. In the union sector, it is the interplay between 'collectivism' and 'individualism' that emerges as increasingly important. Some might say that it was ever thus, and that it was only the myopia of industrial relations specialists that stopped us from recognizing the obvious. Be that as it may, there is no longer any justification for not accepting that industrial relations is about the employment relationship as a whole."

Further, IR has often been seen (like personnel management) as a non-strategic operational function. The notion that it represents collective relations between an employer and employees and the union, conducted mainly through collective bargaining, reduces the collaborative processes of communication, discussion and participation, and emphasizes bargaining.

The implication of IR is that it involves unions rather than employees. The signs are that – in industrialized countries at least—IR is assuming more strategic proportions. This is reflected in trends such as the move towards increased enterprise and plant level bargaining. This is a strategic change which enables IR bargaining to focus more on workplace needs and issues, and to also promote more direct participation of employees in bargaining. The trend towards flexibility in place of standardisation is also a strategic move in the sense that it is designed to increase competitiveness and the ability to respond rapidly to change.

Specific conditions in countries outside the West could affect the possibility of reconciling IR and HRM in those countries. For instance, in countries with union multiplicity and rivalry employees would need to organize themselves in such a way as to reduce the number of competing unions in a workplace. The desire often expressed by employers in such countries for one union in one workplace is an outcome of the problems flowing from multiplicity, which include the difficulty of reaching durable and implementable agreements. In such situations employers are unlikely to consult or involve unions in HRM strategies. In many Asian countries unionisation is so low that there is no pressure for union involvement in HRM. Especially in those Asian cultures which are conflict-avoidance oriented and where relationships are determined by authority and status, IR is likely to be seen as conflict generating, and HRM as more likely to achieve integration. In this connection foreign investors have also sought union-free environments. With increasing foreign direct investment, it is not impossible that HRM, rather than IR, will sometimes be the preferred option of some managements.

In the final analysis, it would be unrealistic for unions or anyone else to expect managements to abandon or reduce their resort to effective HRM when the latter is one means of achieving management objectives geared to better enterprise management. The pre-occupation with HRM on the part of employers is not confined to industrialized countries. The Asian emphasis is reflected in the fact that programmes on HRM are far more likely to attract management participation than IR, in the same way that IR programmes would attract trade unions. Though perhaps the main challenge to unions comes from management initiatives to secure employee commitment, the question which needs to be asked is: what is intrinsically wrong or immoral in an employer seeking to secure such loyalty, so long as the employees themselves stand to gain from it? Here again the Japanese example demonstrates the possibility of dual commitment. As noted earlier, effective HRM is not widespread. If more managements succeed in practising effective HRM, on present trends it is not impossible that IR will come to be relegated to a secondary role. This possibility is enhanced by the fact that traditionally

IR has never been a part of strategic planning, nor has it been seen as a means of achieving management objectives. On the other hand, HRM is increasingly seen as having a strategic role and as a means of achieving management objectives. The convergence of other factors such as declining union rates (if this trend continues) could also combine to push IR and unions to the fringes.

3.11 INTERNATIONAL DIMENSIONS OF IR

Here we examine Industrial Relations (IR) trends and developments in Asia and the Pacific, particularly in terms of the challenges employers and their organizations are facing and will face during the next decade. The paper does this against the background of an explanation of the changing nature of IR, how IR are developing in the global context, as influenced by the forces of globalization and liberalization, and the particular historical and current factors which are influencing those relations in the region. The paper then identifies a range of issues which employers and their organizations will need to consider in developing appropriate strategies to respond effectively to the challenges they now confront.

3.12 IR IN THE GLOBAL CONTEXT

(a) IR – a Definition

"IR" may be defined as the means by which the various interests involved in the labour market are accommodated, primarily for the purpose of regulating employment relationships. IR is essentially collectivist and pluralist in outlook. It is concerned with the relationships which arise at and out of the workplace (*i.e.*, relationships between individual workers, the relationships between them and their employer, the relationships employers and workers have with the organizations formed to promote and defend their respective interests, and the relations between those organizations, at all levels). Industrial relations also includes the processes through which these relationships are expressed (such as, collective bargaining; worker involvement in decision-making; and grievance and dispute settlement), and the management of conflict between employers, workers and trade unions, when it arises.

These relationships and processes are influenced by the government and its agencies through policies, laws, institutions and programmes, and by the broader political, social, economic, technological and cultural characteristics of each country. The IR policy, legal and institutional framework in a particular country is developed through bipartite consultative

processes (*i.e.,* between employer and worker representatives, and by them, individually, with government) and tripartite consultation and cooperation (involving government and the social partners).

IR outcomes are a series of rules which apply to work, setting down minimum (and other) wages and terms and conditions of employment for workers. These employment conditions can cover hours of work, leave, training, termination of employment and the like, as well as issues related to occupational safety and health, social security (sometimes), and conditions applying to special categories of workers. These rules also define the roles and responsibilities of the parties, individually and collectively (*e.g.,* through legislation; collective labour agreements; decisions by arbitrators and courts; and enterprise work rules).

IR processes or arrangements have traditionally been expressed through the individual employment relationship and collective bargaining, and have a mediative function. They are directed to achieving a compromise between "market forces" (which seek to set the price and quantity of labour) and intervention in the market place by employers, workers and their representatives (and by government and its agencies, for political and social reasons) which establishes the various types of rules (noted above) which govern the employment relationship. The essential rationale for intervention is three-fold—*firstly,* the right of those involved and affected by decisions in the marketplace to participate in resolving employment relationship issues; *secondly,* the function of freedom of association and collective bargaining in redressing the balance of power between "capital" and "labour"; and, *thirdly,* to prevent labour exploitation (*e.g.,* sweated and child labour). The relative "balance" between the role of market forces and intervening IR arrangements in regulating employment relationships will vary between countries.

(b) IR and HRM

IR can be distinguished from HRM, which is essentially a bipartite process, not involving the State. The traditional emphasis of IR has been to achieve collective outcomes at national and/or sector/industry levels which are then applied to each enterprise. HRM is focused directly at the level of the enterprise and seeks to align the interests of managers, individual workers and groups of workers around certain mutually agreed corporate objectives, in order to achieve competitive advantage in the market place. The values underlying HRM policies and practices are essentially individualistic and are concerned with maximising organizational integration, worker commitment, workplace flexibility, efficiency, innovation and quality. Considerable emphasis is therefore placed on staff selection and induction, leadership and motivation,

ongoing training and development and intrinsic and extrinsic rewards to improve individual and group performance.

HRM presents a challenge to IR, because it can operate to undermine the role of trade unions at enterprise level by emphasing the primacy of the relationship between managers and individual workers. In reality, however, it is possible to harmonize IR and HRM policies and practices in ways which can strengthen outcomes for both.

(c) Liberalization, Globalization and IR

The above situation reflects the "normal" pattern of labour market activities governing employment relationships in industrialized and industrializing countries until recently. But a number of destabilizing influences have now emerged, and have coalesced around the forces of liberalization and globalization.

(i) Overview

The move towards market orientation (liberalization) in many countries has been reflected in deregulatory policies by governments, including the reduction of tariff barriers, facilitating the flows of capital and investment, and privatization of State owned enterprises. Liberalization has preceded or been forced by globalization (involving greater integration in world markets, and increased international economic interdependence). Both phenomena have been facilitated by the significant growth in world trade and foreign direct investment in recent years, and by information technology which has facilitated rapid financial transactions and changes in production and service locations around the world.

Recent data (1991–93) indicates that about two thirds of the inflow of foreign direct investment (FDI) is to advanced industrialised countries, which are also the source of some 95% of the outflows of such investment (UNCTAD 1994:12) . The most significant sources of FDI are Multinational Corporations (MNCs) based in the US, Japan, UK, Germany and France. During the period 1981–92, FDI valued at $US203 million flowed to the ten largest developing and newly industrialising countries (This represented 72% of the total FDI to such countries). The ten countries or territories concerned were (from highest to lowest): China, Singapore, Mexico, Malaysia, Brazil, Hong Kong, Argentina, Thailand, Egypt and Taiwan [China] (UNCTAD 1994:14).

The proportion of East Asian countries in this group is notable, as is the growing significance of Singapore, Taiwan [China] and Korean MNCs as investors in China and other Asian developing countries. In this regard, between 1986–92, about 70% of FDI flows into China, Indonesia, the Philippines and Thailand, originated in other Asian countries, with about

18% coming from Japan and 50% from Hong Kong, Singapore, Taiwan [China] and Korea (ILO/JIL 1996: page 3, note 2). The flow of FDI within the region can be expected to increase with the further development of the trading areas constituted by the Association of South East Asian Nations (ASEAN) and Asia-Pacific Economic Cooperation (APEC).

(ii) The relevance of globalization to IR—a summary

Increasing international economic interdependence has disturbed traditional IR arrangements in several broad ways. Firstly, such arrangements have normally been confined to the circumstances created by national markets; but globalization has fundamentally changed, and considerably expanded, the boundaries of the market place. In this respect, the extent of information flows made possible by new technology is building inter-enterprise networks around the world, is calling into question the traditional boundaries of the enterprise and is eroding current IR arrangements.

MNCs are the primary driving force for change. They are organizations that engage in FDI and own or control productive assets in more than one country (Frenkel and Royal 1996a:7). They are creating very complex international production networks which distinguish globalization from the simpler forms of international business integration in earlier periods. As producers of global goods and services (notably, in the area of mass communications), centres of networks and large employers, MNCs have an impact extending far beyond urban centres in the countries in which they are located.

In addition to the activities of MNCs, many locally-based enterprises, of varying sizes, in many countries are using information technology to focus on the demands of international (and domestic) "niche" markets in a way which is contributing to a growing individualization and decollectivism of work.

Secondly, globalization has disturbed the *status quo* between "capital" and "labour" in each country, in the sense that capital is significantly more mobile in an open international environment, while labour remains relatively immobile (here it should be noted that, under globalization, international labour migration is continuing, but, proportionately to the rate in the 1970's, has not increased – see World Bank 1995:53). This can place "labour" at a relative disadvantage, in that "capital" can now employ "labour" in different countries, at lower cost and on a basis which can prejudice the continuing employment of workers in the originating country.

Thirdly, globalization is having a contradictory impact on IR. It is accelerating economic interdependence between countries on an intra- and inter-regional basis and encouraging similarities in approach by

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individual enterprises in competitive markets. This may lead to some convergence in industrial relations arrangements around the world. At the same time, there is clear evidence of resistance towards convergence, based on particular national and regional circumstances (e.g., in Europe and Asia). This aspect will be considered later in the paper, in relation to Asia and the Pacific.

(iii) The role of MNCs

The principal focus of the changes taking place in response to globalization is at the level of the individual (predominantly, private sector) enterprise. MNCs have had and will continue to have a key role in these changes, although this role should not be overestimated (Kuruvilla 1997:5-6). UNCTAD estimates that, globally, there are about 37,000 MNCs having over 206,000 affiliates. Over 90% of MNCs are based in advanced countries, with nearly half of all affiliates in newly industrializing and developing countries (UNCTAD 1994: 3-5). MNCs are a major employer of labour. Globally, approximately 73 million persons are employed by these enterprises. This constitutes nearly 10% of paid employees engaged in non-agricultural activities worldwide, and about 20% in developed countries alone (UNCTAD 1994: xxii–xxiii). Compared with the position in parent enterprises, there has been a substantial increase in employment in MNC foreign affiliates, particularly in developing countries, during the 1990's. The World Bank estimates that MNCs employ in the order of 12 million workers in developing countries, but affect the livelihood of probably twice that number (World Bank 1995: 62).

What is the impact of MNCs in local markets, particularly where they are competing for workers? And what is their relationship with trade unions? Available evidence suggests that larger MNCs generally pay more than local firms and at least match or exceed working conditions and other employment benefits in the local labour market (UNCTAD 1994:198-201). While there are still disturbing incidences of "fly by night" MNCs, an increasing number of MNCs are emphasising their social responsibility, which reflects itself in a basic commitment to workers' welfare and "guiding" the employment practices of subcontractors and joint venture partners (UNCTAD 1994:325-27). This role is being reinforced through promotion of the ILO's Tripartite Declaration and the OECD Guidelines concerning Multinational Enterprises, and, more recently, through industry codes of conduct on labour practices in various countries. MNC relationships with trade unions are influenced both by labour-management relations in their country of origin and circumstances in their host country. In general, it seems that MNCs prefer not to recognise trade unions or to bargain with them; but normally do so where it is required (eg, by legislation). Where MNCs appear to be predisposed towards trade unions, it is usually towards unions based in the enterprise.

Overall, MNCs vary considerably in their IR/HRM strategies, and this an important area for future research in Asia and the Pacific.

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(iv) Information technology and IR

The impact of changes in information technology on the organization of production and work at enterprise level–the IR heartland provides a specific example of the forces encouraging and supporting globalization. The discussion which follows reflects the situation— currently or developing in many western industrialized countries, and in the more advanced Asian countries. It is a trend which is likely to spread more generally across the Asia and Pacific region with increasing industrialization and the impact of globalization. Increased competition in global (and in many domestic) markets has created demand for more specialised, better quality items. This has lead to higher volatility in product markets and shorter product life cycles. These circumstances require enterprises to respond flexibly and quickly to changes in market demand.

In terms of the organization of production, new technologies are increasing the scope for greater flexibilty in production processes, and are resolving information/coordination difficulties which previously limited the capacity for production by enterprises at different locations around the world.

Where enterprises are servicing more specialised markets, smaller and more limited production processes are now involved. New technology has also made it possible to produce the same level of output with fewer workers. In both situations, there is increased emphasis on workers having higher value capacities and skills to perform a variety of jobs. This has blurred the distinctions (both functional and hierarchical) between different kinds of jobs and between labour and management generally. In addition, efforts to improve products (through innovation, quality, availability and pricing) have led enterprises to establish cross-functional development teams, transcending traditional boundaries between engineering, manufacturing and marketing. These developments have been accompanied by the erosion of the standardized, segmented, stable production process (of the "Ford" type) which had facilitated collective IR. In many industries and enterprises there are also fewer workers available to be organized in trade unions. Another area of enterprise activity to be affected by globalization concerns the organization of work. To achieve the flexibility and productive efficiency required to respond quickly and effectively to market changes, narrow worker job descriptions are having to be re-written. This is resulting in work tasks based on broader groupings of activities, emphasising the undertaking of "whole" tasks. In the interests of greater efficiency, work is also being re-organized, giving greater emphasis to teambased activities, and re-integrated with a view to improving linkages across units and departments within an enterprise.

Related changes have seen a "flattening" of management hierarchies and devolution, of greater operational responsibility and authority to lower level managers, supervisors and work teams. In this process of adaptation, many enterprises have been increasingly relying on internal and external "benchmarking" to establish and maintain "best practice", and to emphasise "organisational learning" (*i.e.*, applying lessons related to superior performance to the work of individual managers and workers). All of these changes are directed to achieving stronger commitment by workers to the enterprise and its objectives and closer relations between managers and workers, based on consultation and cooperation.

Finally, enterprises have been seeking to "rationalise" their operations to strengthen further their competitiveness, by reducing costs (including both wage and non-wage labour costs). Responses have included identifying core functions (*i.e.*, those which define its essential rationale and competitive edge and must be maintained), and subcontracting (or reconfiguring existing such arrangements) for the performance of peripheral functions outside the enterprise; substituting technology for labour; and "downsizing". Strategic alliances and company mergers have also increased markedly during the past decade. This has made the employment environment for workers in the formal sector in many industrialized, and increasingly in industrializing, countries much more unstable.

(v) *The impact of other trends*

To these developments must be added other changes which have been taking place to the IR environment in many countries, and as a result of broader societal changes. The impact and the pace of these changes has varied from country to country, and will have varying impact in the Asia and Pacific region. They include the continuing shift in employment from manufacturing to service-oriented industries, accompanied by a shift from traditional manual occupations to various forms of "white-collar" employment. Also, public sector employment (in both line Ministries and state-owned enterprises) continues to decline in most countries. Broad social developments in many countries have also witnessed the increasing incidence of women in the labour force. This has been combined with growing demand for atypical forms of employment (e.g., part-time, temporary and casual-employment; and home work, in the form of certain kinds of process work and, increasingly, telework).

All of these changes have affected IR, and are likely to continue, to a greater or lesser extent, in individual countries. The manufacturing and public sectors in many countries have been the traditional base of support for trade unions. They are now experiencing considerable difficulties in maintaining and increasing membership, as the source of growth in many economies is increasingly coming from a services sector whose workers (many of whom are women) have demonstrated a reluctance to join unions.

(d) The Changing Nature of IR—a Re-definition

As noted previously, IR is not a self-contained area of activity. It can only be understood clearly by reference to the persons, groups, institutions and broader structures with which it interrelates (including, for example, changing product markets, the processes of labour market regulation, and the education and training system) within a particular country, as well as to influences arising from beyond its borders.

The development of global enterprises, the changes occurring in the course of industrialization and the impact of new management systems (particularly, HRM) require a broader perspective to be taken on employment relationships.

The scope of IR must now be viewed as extending to all aspects of work-related activities which are the subject of interaction between managers, workers and their representatives, including those which concern enterprise performance. But issues which are critical to the manner in which an enterprise operates—such as job design, work organization, skills development, employment flexibility and job security, the range of issues emerging around HRM, and cross-cultural management issues—have not until recently been considered as part of labour-management relations; and, in many cases, they have not previously been made the subject of collective bargaining or labour-management consultation.

But this situation is changing, and has been particularly noticeable in Western industrialized countries. A broader approach to IR would seek to harmonize IR and HRM, by expanding the boundaries of both fields. In particular, IR will need to address, much more than it does currently, workplace relations—and people-centred—issues, and recognise that it can no longer focus only on collective relations. Given the range of issues which should now be the subject of labour-management exchange at enterprise level, it may be that a different, more all embracing expression (for example, "employment relations") might be used to describe these relations.

3.13 IR IN ASIA AND THE PACIFIC

(a) The Historical Context

(i) General

To understand the present IR environment (*i.e.*, issues, priorities and strategies) in Asia and the Pacific which will be dealt with in the next section—it is necessary to appreciate the great diversity of circumstances

in the region. IR are shaped by the political, economic and cultural context in each country, and are reflected in the particular policy, legal and institutional framework and relationships between government and the social partners. In most countries in the region, however, relations between managers, workers and their representatives are still viewed from the more limited perspectives of traditional IR.

It is a fact that labour legislation and institutions in many countries in the region have been influenced, to a greater or lesser extent, by those of a number of Western countries. The growing outward-orientation of Asian and Pacific economies means that this process is likely to continue. But the IR systems which have developed and continue to evolve in the region have not been based on the same circumstances and values as those which shaped these systems in the West.

This section will not attempt to provide a detailed overview of the IR arrangements in individual countries in the region. Nor will it compare and contrast the features of Asian and Western IR systems. It will, however, attempt to record (although in a general manner) the main characteristics of IR systems and enterprise-related policies and practices in the region. These characteristics are described in the following paragraphs, but can briefly be summarized as: a high degree of economic planning and coordination by governments to encourage and facilitate industrialization; an emphasis on labour relations as a means of preventing or minimizing industrial conflict; reasonably comprehensive (but narrowly focused) labour protection and relations legislation, accompanied by relatively weak IR institutions and processes; the lack of strong and independent trade union organizations; and the need for stronger employers' organizations. More recently, increasing economic development in the region has facilitated democratization in a number of countries and greater attention is now being given around the region to the development of labour market institutions and laws. In particular, the demands of an increasingly more competitive business environment has required greater emphasis to be given to investment in training and skills development. Trade unions have also been gaining a higher degree of autonomy and influence in some countries, though overall within the region their position, for various reasons, continues to weaken.

(ii) Economic development and industrialization

With some exceptions where industrialization was led by private enterprise (*e.g.*, Australia and New Zealand), the State has always had a strong role in the economic sphere in the region (this has been evident since colonial times, and delayed the emergence of private entrepreneurs who might have promoted industrialization). However, the role played by government has varied from one country to another. For example, in Japan and Korea,

the State influenced decisions on the location and type of investments in industry. In Southeast Asia, the State's role has been more facilitative, establishing the conditions necessary to attract development-related investment. In South Asia, particularly India and Pakistan, the State has traditionally led economic development through large state-owned enterprises.

The existence of clear strategies promoting industrialization has been the second significant feature of economic development in the region. From the outset, containing labour costs and encouraging domestic and/or foreign investment were key factors in government policies. This strategy emphasised the role of the State in labour relations as being to prevent or minimize conflict, through third party intervention external to the enterprise (*i.e.*, via conciliation, arbitration and labour courts).

It also influenced official attitudes (particularly, in Southeast Asia) towards trade unions, including, in some countries, applying a policy of non-involvement of unions in government development strategies. However, the position in South Asia was different, where union multiplicity and politicization was actively encouraged by political parties. There was also a difference between subregions in terms of the attention given to workers' protection. From the outset, efficiency considerations in industrialisation in Southeast Asia were often given higher priority than the need for adequate workers' protection. By contrast, in South Asia, labour legislation was very protective of workers, to the extent that employers were subject to considerable restrictions in their capacity to transfer or dismiss workers. It should also be noted that many developing countries in the region had (and, in some cases, continue to have) a dual-economic structure. This has been based on rural agriculture, accompanied by a large and growing urban informal sector. These characteristics meant that there was no large urban working class in many countries. This restricted the potential membership of trade unions and, in a number of countries, continues to prevent them from having relatively equal bargaining power with employers. This situation has been compounded by government actions directed to "influencing" the official trade union movement and its activities. In this respect, a number of countries have restricted the formation of unions and the scope of bargaining, and retain the right to intervene in the bargaining process and in industrial disputes, in a wide variety of circumstances. This situation is now beginning to change.

(iii) Industrialization and IR policies

There has been a close link between industrialization strategies, IR policies and enterprise level IR/HR practices in the region (see, for

example, Kuruvilla and Venkataratnam 1996). In East and Southeast Asia, most economies have followed an export-oriented industrialization strategy. By contrast, in China and South Asia the industrialization strategy has, until recently, focused inwards on import-substitution. Within each strategy there has been variable practice between countries. There has also been a progression from import-substitution to export-oriented industrial activities in those countries involved. IR policies and practices have changed as countries have progressed from import-substitution to export-oriented strategies, and as countries have moved to more sophisticated levels of export activity.

In fact, the following pattern has been discernable. In the import-substitution stage, the governments concerned have tended to be protectionist in approach, but have not restricted IR to any significant extent. However, this approach has tended to produce inefficiencies and relatively high labour costs. In the early export-orientation stage, experience has shown that the emphasis shifts to achieving competitiveness in export markets through measures to ensure a compliant labour movement and favourable labour costs for foreign investors. However, later export strategies have seen a change of focus away from containment of labour costs and some easing of restrictions on trade unions, followed by a reduced role for the State through decentralization of IR/HRM responsibilities to enterprise level; increased emphasis on education and training policies to raise the skill levels of the workforce; and a rush to develop flexible, productive, high performance workplaces.

Apart from its effect on macro-level IR/HRM policy, industrialization strategies have been shown to affect the nature of IR/HR practices in enterprises (see, for example, Kuruvilla and Arudsothy, 1995). In this regard, there is evidence of differences in IR/HR practices between the import-substitution and export-oriented sectors. The import-substitution sector, which is protected from external competition, does not face the same imperatives as the export-oriented sector to develop competitive practices in these areas. In addition, the export-oriented sector tends to be heavily dominated by foreign investment, which has led to rapid diffusion of competitive IR/HR practices in investment receiving countries, particularly, through the influence of MNCs. Over time, this may in turn influence IR/HR practices in the import-substitution sector.

(iv) IR arrangements—regional divergence

While there has been considerable commonality over the years in the macro level IR policy objectives followed by many countries in the region, the legislation, institutions and processes used to pursue these objectives have been quite divergent. This can be illustrated by reference to legislation governing labour standards and protection and the detailed contents

and application of IR policies (*e.g.*, the arrangements for and scope of collective bargaining, union organization and structures, and restrictions on industrial action).

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Labour standards and protection

Most Asian and Pacific economies have very similar and, generally, quite advanced – legislation establishing minimum terms and conditions of employment for workers in the formal sector. Often this reflects an inheritance from former colonial administrations. But much of this legislation has traditionally been relatively narrowly focused and restrictive. This does not reflect a view that IR is not important to national economic development; it is more a lack of understanding that IR can make a creative contribution to realise this development, through appropriate policy and legislative frameworks and attitudes. There is also a very wide variation in the extent to which compliance with labour standards and protection laws has been achieved around the region. This is because the labour inspection, education and enforcement functions, along with other functions, in many Ministries of Labour have remained weak and underdeveloped. Therefore, for many workers in the region, the protections provided in legislation have not been guaranteed in practice.

Industrial Relation

In this area, the differences in policies, laws, institutions and practices are quite marked across the region, as the following issues illustrate:

• Bargaining

In the past, both centralised and decentralised approaches have been followed, but the situation is now changing. Australia, New Zealand and Singapore (and Korea and Taiwan/China, until the democratization period) have traditionally had centralised collective bargaining arrangements, applying wage increases on an economy-wide basis (although the actual mechanisms to achieve this varied from one country to another). In most other countries, more decentralized bargaining arrangements have applied at the industry and/or enterprise levels. During the past decade, the trend has firmed substantially in favour of a more decentralized approach. Each of Australia, New Zealand and Singapore have abandoned centralized wage fixation, in favour of more flexible bargaining arrangements recognising the different competitive circumstances faced by individual industries and enterprises. In a number of countries in transition (*e.g.*, China and Mongolia) legislation is still being developed or has to be developed (*e.g.*, Lao PDR) to provide a framework for collective bargaining. Also, employers and workers in these and other countries in transition lack knowledge of the concept and practice of collective bargaining.

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and practical skills in negotiation. Moreover, their representative organizations are still too underdeveloped to provide the level of advice, information and training required to ensure effective bargaining (and, indeed, support in relation to other areas of IR).

• Union structures

Trade union federations—national, sectoral/industrial and/or regional have developed as the most common feature of union structures in the region (*e.g.,* Japan, India, Malaysia, Philippines and Thailand). A number of countries have only one trade union federation (*e.g.,* China and Singapore); most countries have at least two or three, while in Pakistan, the Philippines and Thailand there are considerably more. In India, there is a multiplicity of unions at the national, state and industry level. There is also an increasing incidence of independent unions at the enterprise level in that country, not linked to any national federation. In addition, in some countries (*e.g.,* countries in transition), there may be national federations, but either no or only limited industry level trade union structures. These federations, with the exception, for example, of India, Sri Lanka and Singapore, do not appear to have had a significant influence on national policy-making and implementation. The scenario in terms of union representation in the workplace has again varied. In most countries in the region only one union is legally recognised for bargaining purposes; some countries encourage enterprise unions (eg, Japan and Malaysia), and others allow multiple unions (*e.g.,* Australia and New Zealand).

• The scope of bargaining

There have been considerable differences between countries in the subject areas of collective bargaining. India, for example, enables the parties to bargain over any issue of mutual concern. At the other extreme are countries like Singapore and Malaysia, which do not allow bargaining in relation to matters falling within the area of so-called management prerogative (*e.g.,* transfers, promotions, redundancies, etc). A number of countries also require certification of collective agreements, which may be subject to certain preconditions (*e.g.,* Australia, Malaysia and Singapore). In recent years, some countries (*e.g.,* Australia and New Zealand) have been providing greater freedom to the industrial parties to determine their own bargaining agenda.

• Restrictions on industrial action

The number of strikes has been steadily declining across Asia and the Pacific during the past the past 10–15 years (with the exception of Korea and Taiwan/China in the aftermath of democratization). This does not,

however, mean that the incidence of industrial disputes has shown a similar reduction. In fact, in some countries the level of such disputes has increased (*e.g.*, Malaysia and the Philippines), although not to a significant extent. There is also evidence of an increasing incidence of industrial disputes in some foreign-owned or managed enterprises in some countries (*e.g.*, China and Vietnam). It might also be noted that the decline in the incidence of strikes in India was accompanied by a steep rise in the incidence of lock outs. Most countries in the region still impose various restrictions on strikes and other forms of industrial action, for the purpose of facilitating unimpeded economic development. The most common forms of restrictions include prohibitions in relation to industrial action involving essential services and the public sector.

• Other considerations

The culture and value systems of individual countries in Asia and the Pacific have also influenced the approach taken by managers, workers and trade unions to their industrial relationships and practices. Hierarchial organization and respect for authority and experience are key features of most Asian and Pacific societies. They have been translated into the enterprise in the form of rigid superior-subordinate relationships and recognition of the importance of loyalty to those one works with. In this context, trade union membership is still viewed in many countries in the region as creating a conflict of loyalty.

(b) The Current Environment

(i) Overview

In Asia and the Pacific, as in other regions, the past decade has witnessed major political changes (focused, particularly, on the transition from centrally planned regimes in a number of countries to a modern market economy), rising nationalist sentiments, and the impact of liberalization and globalization.

Economically, this period has seen contrasting fortunes in the region. Poverty and increasing debt remain grave problems in a number of developing countries in South Asia, although in the largest such country (India) there are now more positive signs for the future. Sustained high economic growth has proved elusive in some advanced regional economies (Australia and New Zealand), including (latterly) in Japan. But, overall, continuing economic and social progress has been evident in other advanced industrialised countries (Hong Kong, Singapore, Taiwan and Korea) and among the newly industrialising countries (*e.g.*, Indonesia, Malaysia, the Philippines and Thailand). Considerable momentum is now also underway in some East and South East Asian economies in

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transition (particularly, China and Vietnam). The situation in the island states of the South Pacific, however, remains problematic, because of their dependence on overseas markets.

(ii) Current responses to liberalization and globalization

How are countries in the region currently responding to the new economic environment? The advanced economies are more and more concerned with increasing (or maintaining near full) employment, preferably in high wage, high skill jobs. Increasing attention is being given to ensuring that business and employment relations policies and practices are in place which are conducive to innovation and flexibility, integrate technology and work organisation, and provide for continuous productivity improvement, customer responsiveness and the delivery of high quality products and services. Improving equity and worker participation in decision-making at enterprise level are increasingly being seen as necessary parts of such strategies.

The situation confronting the high growth, newly industrialising economies is different. In some countries, there have been substantial improvements in employment and working conditions to the extent that they are now experiencing labour shortages and are increasingly relying on foreign workers as they endeavour to maintain rapid growth. In the newly industrialising countries, there is also a preoccupation with establishing the most appropriate policy settings for maintaining economic growth. A range of considerations is involved. For example, what strategies (*i.e.*, industry, labour market and employment relations) should governments embark on to encourage effective use of technology, labour market flexibility and high productivity growth? What conditions should be set for foreign investment—should it be allowed in certain economic sectors when basic labour standards might be undermined? What role can employers' and workers' organizations pursue with their constituents to encourage and support increasingly more export-focused growth strategies? Moreover, what changes are required in the workplace to job design, skill formation and work organization to realise the benefits of new technology, while maintaining employment growth; and, with the spread of education and increased emphasis on skills development being accompanied by demands for greater worker participation, what strategies should be adopted by management to ensure more equitable treatment in the workplace?

The economies in transition (Cambodia, China, Laos, Mongolia and Vietnam) and the (largely) agriculture-oriented economies of South Asia (Bangladesh, India, Nepal, Pakistan and Sri Lanka) present further challenges. They are at varying stages of industrialization and are being affected by liberalization and globalization to an increasing degree. Various economic and social problems occasioned by a long, drawn out process of structural

adiustment and economic reform is a characteristic of many countries in South Asia. Attempting to balance economic reform policies with social safety net programmes is becoming an important policy objective for these countries. By contrast, economies in transition are seeking a more rapid transition from a planned to a market economy, with all that entails in terms of policy, legislative, institutional and programme development and implementation, and possible accompanying dislocation in the labour market.

There are also particular employment relations issues which have a different prominence in relation to both categories of countries than elsewhere in the region. An example is the role of governments in employment relations, particularly through the legal and institutional framework, and their relationship with trade unions and employers. In this regard, in South Asia there has been a traditional recourse to detailed protective legislation and the legal process. Many governments have also had strong links with trade unions to the perceived relative disadvantage of employers. In addition, the relative proliferation of trade unions creates demarcation issues and difficulties in the coordination of common union policies and strategies. Increased pressures in recent years for South Asian countries to open their markets and to eliminate protectionist barriers has resulted in demands by employers for more efficient and flexible industrial relations practices.

By contrast, the economies in transition have the advantage of being able to "create" new legislation and institutions to suit the times and their needs. They also have the capacity to draw on the experience of some of the industrialized countries in the region for models of development and industrial relations (*e.g.,* the influence of Singapore and Malaysia on the Indochina countries). But because of the strong identification of trade unions with the interests of the "State", and there being no employers in the former centrally planned socialist countries, the changing role(s) of trade unions, the emergence of entrepreneurial and employer interests and the entirely new concept of employers' organizations are important associated issues. The relative weakness of Ministries of Labour, in terms of understanding of their role in a market economy and limited resources, presents further difficulties in establishing effective IR arrangements.

The situation of the island states of the South Pacific (*e.g.,* Fiji, Papua New Guinea and the Solomon Islands) is quite different from other countries in Asia. Being small countries, they have always been dependent on external markets for sale of their mainly primary product exports; but, in many cases, they do not derive substantial income from that source. In addition, they do not have the necessary State resources nor have sufficient levels of domestic demand or skilled workers to

establish large domestic industries to provide a "springboard" to transform themselves into market-driven export economies. As a result their strategic industries (*e.g.*, sugar) stand exposed to the vagaries of international markets. In recent years, IR has become a sensitive area in these economies because of the negative effects of liberalization policies (*e.g.*, job losses) and the desire by governments and employers to reduce labour costs and improve flexibility as a basis for improving external competitiveness.

(iii) Important Regional Trends

There has been a number of emerging trends in key areas of IR in Asia and the Pacific during the past few years. Some of these reflect a continuation or exacerbation of traditional IR issues in individual countries or subregions; others are linked directly or indirectly to the impact of liberalization and globalization. Some of the most important of these issues are outlined below:

• *IR as integral to macro-level development policies and planning*

A notable feature of the fast growing Asian and Western Pacific economies in recent years has been the increasing link drawn between IR and economic development at the level of macro-policy making and implementation. There is increasing integration between IR and: education, human resource and training policies (to produce skilled workers); active labour market and immigration policies (to overcome shortages of particular types of labour); and tax and broader financial policies (to continue to provide incentives to foreign investment).

There are some indications that similar policy approaches are emerging in South Asia (*e.g.*, India), but most countries in that subregion still exhibit traditional IR policy approaches.

• *Tripartite cooperation*

While the principle of tripartite cooperation appears to be accepted in most parts of Asia and the Pacific, it cannot yet be said that most governments view the process as an essential part of their relations with the social partners.

A number of countries have longstanding and effective arrangements in this area, others are struggling with giving effect to the principle, while, for countries in transition, understanding the concept and applying it in practice are still at an early stage of development. There is considerable variation in the forms of tripartite cooperation applied from one country to another—most countries have some form of national consultative body providing advice to government on a broad range of social and labour issues. Such consultation has, over the years, been influential in the

preparation of labour policies, laws and IR codes of practice. A number of countries have also integrated tripartite consultation at lower (*e.g.*, sector/industry and regional) levels, and in relation to addressing particular issues (*e.g.*, occupational health and safety; workers' compensation; vocational training; social security; international labour affairs; and, latterly, productivity). In addition, some countries have tripartite wage determination and dispute settlement bodies. There is a number of important factors still limiting the effectiveness of tripartite cooperation in the region. These include, on the part of government, not integrating tripartite consultation across all issues related to national planning and development; a lack of "political will" to make the process work (eg, failure to consult; lack of follow-up on agreed matters); policy and legislative restrictions on the role of workers' and employers' organizations; and technical impediments to and inadequate resourcing for the effective operation of consultative or other tripartite bodies. For their part, workers' and employers' organizations are still handicapped in tripartite processes by such issues as their relative weakness vis-a-vis government (in terms of their personnel, technical and organizational capacity); lack of representativeness; lack of coordination of views with other trade union federations or employers' organizations; politicization of trade unions (particularly, in South Asia); and a lack of organized and continuous bilateral relations.

- ***Declining unionism***

Union density has never been a strong feature of industrial relations in the region, and Asian trade unions fall considerably behind their European counterparts in this regard. In summary, in recent years, the rate of union density in the region has either increased (*i.e.*, China and Malaysia), been stable (*e.g.*, India and Singapore) or has fallen (either slightly *e.g.*, Fiji and Korea, or, more substantially, *e.g.*, Australian, Japan, New Zealand and Sri Lanka).

However, union density is not an entirely accurate indicator of trade union power and influence in the region. In Singapore, the trade union movement exercises considerable strategic influence at the national level. In India, trade unions have had well developed institutional links with the main political parties and have considerable influence (despite often considerable policy differences between themselves and government, *e.g.*, in relation to liberalization). In other countries (*e.g.*, Australia and New Zealand) there have been strong traditional trade union ties with the Labour Party. As noted previously, however, changes in industrialization strategy in Southeast Asia; restrictions on union formation in certain sectors or in Export Processing Zones (see later); restrictions on collective bargaining; and workers benefiting from growing economies and rising real wages, have generally combined to dampen

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interest in union activism and membership. This situation is compounded by the reluctance of many domestic employers and MNCs to meet fully their employment obligations, and the fact that, faced with this situation, trade unions cannot rely on governments to enforce labour legislation. It is disturbing to note that the fastest growing sectors in many Asian economies (*e.g.*, textiles, clothing and footwear, and electronics, particularly those firms in EPZs - see below) either have only a limited trade union presence or are union free.

• *Bipartite relations and worker involvement in decision-making*

In many countries, little emphasis has traditionally been given to building strong bilateral relations between managers and workers/trade unions. While attempts have been made to institutionalize worker-involvement in decision-making in several countries (*e.g.*, through legislation requiring the setting up of labour-management committees), these institutions have not worked satisfactorily. There has been too much emphasis on form, not substance. The competitive pressures exerted by globalization are resulting in greater emphasis being given to improved workplace relations (through increased bipartite consultation and cooperation) and higher level contributions to enterprise performance from workers. There is therefore room for greater optimism about progress being made in this area. A critical issue will be the extent to which trade unions can increase their profile and influence through this process.

• *Decentralization of bargaining*

As noted previously, this is part of a trend in many countries towards the need for increased workplace flexibility as a result of globalization. It is being demonstrated in the region, particularly in the export-exposed sectors of national economies, through higher wage flexibility, increased emphasis on enterprise level bargaining and the growth of enterprise unionism. The increasing shift from import substitution to export promotion in India provides a current example of a resurgence in collective bargaining to produce required changes in work organization, better use of technology, general efficiency and productivity. Whether collective bargaining should be introduced in the government sector has been a matter for debate in Southeast Asia and some South Asian countries for some time, but little real progress in this direction has been made. In the Western Pacific (Australia and New Zealand), however, public sector collective bargaining now takes place, and there is increasing use of contract employment for senior government officials. There has also been an increasing incidence in some countries (*e.g.*, Australia and New Zealand) of direct bargaining between managers and individual workers. In the trend towards decentralization of bargaining and workplace flexibility in the region,

there appears to be a close relationship between the levels of economic development and of international integration exhibited by a particular country.

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• *Increased attention to linking performance, skills development and pay, and questioning the continued relevance of minimum wage arrangements*

Meeting demands for higher technology exports and the associated requirement for better skilled and more participative workers has led to experimentation with new performance-related pay systems in the region. Flexible pay systems (*i.e., based on productivity and/or profitability*) are increasingly being considered, for their capacity to reward performance based on higher order skills (without increasing labour costs) and to respond to variations in the business cycle. To be effective, such arrangements have to be negotiated and agreed at enterprise level, a trend which is reinforcing the relevance of decentralised collective bargaining on these and related enterprise-performance issues. In some countries, the initial impetus for changed pay arrangements has come from government (*e.g.,* Singapore and Malaysia), or is a response to industry circumstances (*e.g.,* Australia [through a decision of the national industrial relations tribunal, reinforced by legislation] and New Zealand [*through legislation*]). A number of governments are also considering (*e.g.,* Fiji) or have already introduced (*e.g.,* Australia and New Zealand) various forms of performance-related pay in the government service.

To sustain export-oriented technology strategies, close attention is now being given by many governments, enterprises and the social partners to improve national, regional and industry training systems and institutions to upgrade workforce skills. Many countries are also extensively reforming their education systems and some have established Skills Development Funds (*eg, Malaysia and Singapore*) or are contemplating such action (eg, India and Sri Lanka).

On a related matter, there is increasing debate within the region about the continued relevance of minimum wages, where they exist. Minimum wages have traditionally been a policy instrument to provide "safety net" protection for those on lower incomes and/or to address poverty alleviation.The current debate reflects concerns about both the scope of the minimum wage (*e.g.,* it does not protect a major poverty group, *self-employed farmers*) and inadequacies in minimum wage setting, adjustment and administration (*e.g.,* too much political influence, lack of credible criteria for setting and adjusting wages, inadequacies in data collection and analysis, and deficiencies in enforcement). Considerable controversy concerns the criteria to be applied; importantly, from the perspective of increasing international competititveness and employment,

whether a particular increase in a national minimum wage is or will be too high to maintain or increase investment, or whether increases in labour costs should be offset by productivity gains. A number of countries are still establishing (*e.g.*, the Indo-China countries) or currently seeking to reform (but retain) their minimum wages systems to address some of these concerns (*e.g.*, India, Indonesia, the Philippines and Thailand). Finally, a number of employers and their organizations within the region are questioning the need to retain a minimum wage regime. To date, these arguments have not received wide support from governments.

- ***Increased focus on job security***

In recent years, many Southeast Asian workers (particularly, in Singapore and Malaysia) have been enjoying better job security because of increasing labour shortages in the countries involved. Some countries (*e.g.*, Korea, Malaysia, Singapore and Taiwan) have introduced foreign worker schemes, providing employment for skilled and unskilled workers mainly from India, Indonesia, Pakistan and the Philippines. Other prospective sending countries (*e.g.*, Cambodia and Laos) are currently examining possibilities. By contrast, and despite compensation packages, economic adjustment programmes in South Asia (involving closure and/or privatization of State-owned enterprises) have not only led to loss of jobs for civil servants, but limited access to redeployment and re-training, and a reduction in social protection (*e.g.*, loss of health care benefits and assistance with housing, education and family welfare). In addition, in spite of the pace of development in South Asia, the majority of the subregion's labour force is in the informal sector, which also accounts for most of the new jobs created each year. This sector remains beyond the reach (and hence the protection) of the labour legislation in most countries in the region.

- ***The growth of EPZs***

Many countries have made changes to IR arrangements to support other measures to attract FDI. Such changes have included the setting up of EPZs, which provide cheap, compliant and abundant labour, good infrastructure, generous incentives and access to domestic and international markets. It is estimated that such zones employ some 4 million people globally, including 2 million in China (UNCTAD 1994: 189). EPZs have created employment opportunities (mainly for women) in a number of countries. But, and although circumstances vary between countries, trade unions are often discouraged or banned in such zones; in many cases, wages are lower than non-EPZ enterprises; other protections (such as workplace health and safety) either do not apply or are not enforced; and the quality and stability of employment and skills development are generally poor (ILO/JIL 1996; Kalegama). A priority objective of all governments concerned must be to ensure that EPZ's provide basic workers' rights, in

conformity with international labour standards, while remaining attractive to "better types" of foreign investors. In this regard, it should be noted that, in future, EPZs and individual firms located in those zones will have to be far more responsive to global competitive demands and will need to produce more sophisticated and higher quality products and services. This means that the countries and zones that will be most attractive to investors in the future will be those which have increasingly more skilled and flexible workers, which will necessitate better employment conditions and more labour-management consultation.

- ***Cross-cultural managing and working***

One overarching consequence of increasing globalization is that managers from investing countries in and outside the region are having to adapt their own national management practices to the circumstances prevailing in different Asian countries. This requires recognition that, because Asia is characterised by diversity, there is a need for knowledge and sensitivity about legal, IR and HR (and other management) practices in different cultural environments. Workplace rules, practices and behaviour which apply in one country may not apply or be inappropriate in another. Trade unions and workers also need to understand and adapt to changing enterprise (including cultural) practices which may be foreign to them.

Governments have to become familiar with the customs, practices and expectations of investing countries so as to be able to provide appropriate supporting policies and programmes. In each of these situations, the persons involved need access to information, experience and strategies to enable them to adjust effectively to new work environments. Transplanting ways of managing people from one country to another, and developing new (culturally sensitive) ways for managers and workers to work together, can be much more difficult than transplanting management systems and structures dealing with issues such as marketing and finance. The growing incidence of industrial disputation in some local operations of foreign-owned enterprises and joint ventures in a number of Asian countries suggests that this process of transition is not yet being successfully managed.

Within the Asian and Pacific region there is an increasing congruence between IR policies and those supporting industrialization for economic development. The impact of globalization is requiring IR systems in Asia and the Pacific to adapt to ensure improved economic competitiveness, flexibility and overall efficiency to respond to changing international market circumstances.

Individual enterprises, whether domestically or internationally-based and organized, are in "the frontline" of these changes. Employers and their organizations therefore have the most important role in generating the responses needed to take advantage of these new and emerging

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circumstances. But while globalization is a significant factor, it is not the only factor, driving IR changes in the region. Factors internal to each country - some of traditional IR concern, others instigated or exacerbated by liberalization are prompting similar changes.

In addition to helping to achieve the improved efficiency and productivity which is driving enterprises in responding to a more competitive business and trading environment, the changes required to IR arrangements must provide stability in relations between managers and workers and ensure equitable participation by workers in the benefits of increased enterprise development and growth. That is, the essential challenge for each country is how to achieve a stable and flexible IR system which balances "efficiency" with "equity. In this endeavour, attention must be given to traditional and emerging areas of IR concern (which together should constitute a broader focus for action than previously, based on the concept of "employment relations"). This will require action in the areas of policy, legislation, institutions, workplace practices and associated capacity building. A re-examination of the roles of government and the social partners and of the relevance and scope of IR laws and other rules and institutions will be necessary to acknowledge the realities of a more decentralised IR environment, and the need for the norms of the system to move away from a regulatory, to an increasingly facilitative, role, while still providing appropriate protections for workers. A renewed commitment to tripartite action and a greater emphasis on bilateral relations will be critical in realising these changes.

In all of these areas, employers—as the generators of economic development and growth—and, through them, their organizations, have to have a clear set of priorities and strategies to address the factors, both internal and external to the enterprise, which will affect their capacity to harness employment relations as a key element in improving enterprise competitiveness and performance.

The diverse IR situations across the region make it unrealistic to predict, with any degree of certainty, the future course of IR in the region. While globalization emphasises convergence between economic and related systems, and this is occurring to some extent in Asia and the Pacific, IR are ultimately determined by a complex range of factors within individual countries, reflecting particular national, cultural and institutional circumstances.

SUMMARY

- The technological progress over the last century has undergone a slow but definite transformation. This can be categorized into three different stages viz. craftsmanship, mechanization and automation.

- Labour employment is affected by many factors, two major directly relevant factors are per unit labour requirement for a product (man hours per unit) and the total demand for the product.
- Trade Unionism grew as one of the most powerful socio-economic political institutions of our time-to fill in the vaccum created by industrial revolution in industrial society.
- There are over 9,000 trade unions in the country, including unregistered unions and more than 70 federations and confederations registered under the Trade Unions Act, 1926.
- "IR" may be defined as the means by which the various interests involved in the labour market are accommodated, primarily for the purpose of regulating employment relationships.

REVIEW QUESTIONS

1. Discuss Technological Change and Employment Relations in India.
2. What are the effects of Technological Change and Employment Relations in India?
3. Narrate the growth of trade unions in India.
4. What are the different factors influencing trends changing the relation of HRM and IR?
5. Discuss the conflict between industrial relations and human resource management.
6. Discuss the international aspects of IT.

FURTHER READING

1. **Compliances Under Labour Laws: A User's Guide to Adhere with the Provisions Under Various Employment Related Acts:** H.L. Kumar, Universal Law Pub, 2010.
2. **Constructive Industrial Relations and Labour Laws:** S.K. Bhatia, Deep and Deep, xxvi, 322 p.
3. **Globalization and Labour Laws:** Murali Dhar Majhi, Manglam, 2010, viii, 286 p.
4. **Industrial Disputes and Labour Laws:** Edited by Sabina, Alfa Pub, 2008, viii, 280 p.
5. **Industrial Relations and Labour Laws:** B.D. Singh, Excel Books, 558 p.
6. **Labour Laws:** Taxmann, 2010.

UNIT IV LABOUR LEGISLATIONS

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★ STRUCTURE ★

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4.0 LEARNING OBJECTIVES

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

- define Labour legislation;
- discuss origin of Labour Legislations;
- understand the objectives of the labour legislations;
- elaborate classification of labour Legislations;
- define the industrial dispute Act;
- describe the objectives of Industrial disputes Act;
- discuss the measures for prevention of conflicts and disputes in industrial Act;
- discuss the factories Act, 1948;
- define the approval, licensing and registration of factories;
- explain the welfare of worker's;
- discuss the payment of wages Act;
- understand the responsibility for payment of wages;
- discuss procedure and dircetions for payment of wages;
- understand the workmen's Compensation Act;
- discuss the employee's state Insurance Act, 1948;
- explain the registration of a factory with the employee's state insurance corporation;
- define the payment of gratuity of an employee;
- state the employee's provident fund scheme, 1952.

LABOUR LEGISLATIONS

4.1 THE CONCEPT OF LABOUR LEGISLATIONS

Law comes into existence to cater to the growing needs of society, which may be caused by technological, economic, political, social changes. Law is a dynamic concept. Law is like a citadel which requires regular repairs, revamping and replacement. "Life and Laws have moved together in history and it must do in future". It is in this perspective that the Labour Legislations have to be studied.

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4.1.1 Industrial Revolution and the need for Labour Legislations

Society evolves institutions to abhor vacuum created by changes. Industrial Revolution is a epoch-making event, which completely changes the lifestyles of society from agricultural and pastoral to industrial and materialistic one. The industrial society brought about, in its wake, excessive exploitation of the working classes by the employer who took advantage of the individual dispensability of the worker and wanted maximum profit on his investment. The golden rule of capitalism that "Risk and Right" go together provided them with prerogatives to "hire and fire". The other legal concepts which were then available were those of Master and Servant and carrot and stick etc. The principle of common law was in operation. The law of contract used to govern the relation between worker and the employer in which individual contact was struck, the terns of contract were usually verbal and mostly used in cases of breaches, leading to prosecution and imprisonment of workers. Labour and Migration Act was another legislation which gave rise to the "Indentured labour system". Anti-Combination legislations were in vague treating 'combination' of workers as act of criminal conspiracy. Longer hours of work, abysmally low wages, no safety and welfare provisions, and no insurance-the exploitation at large. State was adopting the policy of *Laissez-faire* (let not interfere) and employers abused workers, taking advantage of the situation.

Every society on its onwards march revises, reviews, refurbishes and reinvents its legal concept and civilised ways of living. The changes brought about by the industrial revolution created some gaps and it became the responsibility of the society to fill-up those gaps. Society went for certain social devices to take care of the gaps, which are known as labour legislation.

4.2 ORIGIN OF LABOUR LEGISLATIONS

4.2.1 Introduction

The origin of labour legislation is the history of continuous and relentless struggle for emancipation of working class from cloches of aggressive capitalism. The struggle was between two unequals. The contract between capital and labour could never be struck on equitable terms. The social scientists interpreted this struggle in different ways. The point, however, was to change it. The change contemplated was one of transforming a slave into partner and thereby bridle the power of capital to impose its own terms on the workmen.

Various factors helped this process to take place. The struggle was not easy. Numerous forces, directly and indirectly, hastened the pace facilitating the passing of labour friendly legislation.

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4.2.2 Factors Influencing Labour Legislations

Early Exploitative Industrial Society

The origin of labour legislation lies in the excesses of the early industrialism that followed Industrial Revolution. The early phase of industrialisation in the capitalist countries of the world was an era of unbridled individualism, freedom of contract and the *laissez-faire,* and was characterised by excessive hours of work, employment of young children under very unhygienic and unhealthy conditions, payment of low-wages and other excesses. Naturally, such excesses could not have continued for long without protest and without demand for reforms. The early Factories Acts flowed from these excesses and manifested the desire of the community in general to protect its weaker section against exploitation. The workers had very little legal protection available. Therefore, it can be safely said that the labour legislations are the natural children of industrial revolution.

Impact of Contemporary Events

Along with Industrial Revolution, Revolutionary thinking of Rousseau, J.S.Mill, the French Revolution, Hegel, Marx & Engels and Russian Revolution greatly influenced the thought processes and hastened the pace of labour jurisprudence.

The world wars made it possible for the labourers to realise their importance that unless they produce, it will be difficult for warring nations to win. Therefore, they must stake their claims for better quality of work life.

The revolution in science, technology, the communication and telecommunication also helped in bringing the world closer. It became easier for the working classes of the underdeveloped world to know the better conditions of service of their counterparts in the developed world.

The Growth of Trade Unionism

The Trade Union movement, which itself springs from industrial revolution has been another factor which has quickened the growth of labour legislations. On the one hand, their demands for protection of the interests of the working class led to legislations in the field of wages, hours of work, women's compensation, social security and other areas; on the other hand, their growth necessitated legislations for the regulation of industrial disputes, their prevention and settlement and trade union rights and privileges. Trade unions have been as much conditioned by labour legislations as they have conditioned them.

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Growth of Political Freedom and Extension of Franchise

Gradual extension and adoption of universal adult suffrage placed in the hands of the working class, a powerful instrument to influence the cause of state policy. Their representatives started espousing the cause of labour and getting progressive legislations passed. The workers used their political powers for betterment and amelioration of their lots.

Rise of socialist and other revolutionary ideas

In his analysis of capitalism, Marx showed that the exploitation of labour was inherent in the capitalist economic system. Therefore, he advocated the overthrow of capitalist system. The echo of the slogan, "the workers of the world unite, you have nothing to lose but your chains", reverberating throughout the capitalist world, sent a shudder among the conservative and capitalist circles to which amoliorative and protective labour legislations came as safe alternatives. They readily grasped labour legislations as antidote to the spread' of revolutionary ideas. The Fabian Society of England, the establishment of socialist and communist parties in many countries and first and second internationals strengthened the trend for progressive labour legislations.

The Growth of Humanitarian Ideas and the Concept of Social Welfare and Social Justice

The humanitarian ideas and role of humanitarians, the philanthropic and social reformers influenced the shape of labour legislation. Early Factories Acts were made possible because of the efforts of the humanitarians like Hume, Place, Shaftesbury and others.

Researches in Social Sciences like Sociology, Psychology and Anthropology exploded the myth of the natural elite and gave a powerful push to the movement of social reforms, social change, social justice and labour legislations.

Establishment of I.L.O.

The establishment of the I.L.O in 1919 has been a very potent factor in conditioning the course of labour legislation all over the world. The acceptance of the principle that "labour is not a commodity" and the slogan that "Poverty anywhere constitutes a danger to prosperity everywhere", have influenced the course of labour legislations in all the countries. The ILO, through persistent investigation of workers' living conditions has continuously established the need for ameliorative labour legislation. It has initiated proposals for labour legislations, subjected them to elaborate discussions and reviews and has adopted Conventions and Recommendations. The ILO by trying to establish uniform labour standards in so far as the diverse conditions and uneven

economic developments of the world permit, has done a singular service in the field of labour legislation.

ILO, through Conventions and Recommendations, have undertaken the task of creating—international minimum standards of labour which constitute the International Labour Code. They cover a wide range of subjects including wages, hours of work, annual holidays with pay, minimum age of employment, medical examination, maternity protection, industrial health, safety and welfare, social security, freedom of association, right to organise and bargain collectively, employment conditions of seamen and unemployment.

The ILO standards have influenced Indian Labour Legislations to a great extent. ILO standards have formed the sheet-anchor of Indian Labour Legislations, especially after 1946 when Indian National Government assured office. The Directive Principles of State Policy in Articles 39, 41, 42,43 and 43A of the constitution, lay down policy objectives in the field of labour having close resemblance and influence to the ILO Constitution and the Philadelphia Charter of 1944. Thus, the ILO both directly and indirectly has had a great influence on the Indian Labour Scene and Labour Legislation.

Factors Specific to India

The factors discussed above are the general factors influencing the shape of labour legislation. There are specific factors, peculiar to India which have influenced labour legislations.

The struggle for national emancipation and adoption of Indian Constitution

The Industrial Workers got support from the freedom struggle and nationalist leaders who made tireless efforts to get protective labour legislations enacted. The Indian Trade Unions Act, the appointment of Royal Commission on Labour etc. were because of pressure from freedom struggle.

The leaders of the national movement had promised the establishment of a better and just social order after independence; which was ultimately embodied in the Preamble, Fundamental Rights and Directive Principles of State Policy of the Indian Constitution. We have plethora of labour legislations immediately after independence—

- The Factories Act, 1948
- The E.S.I. Act, 1948
- The Minimum Wages Act, 1948
- Mines Act, 1952
- Employees P.F.& Miscellaneous Provisions Act, 1952
- Plantation Labour Act, 1951
- Payment of Bonus Act, 1965

4.3 OBJECTIVES OF THE LABOUR LEGISLATIONS

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Labour legislation in India has sought to achieve the following objectives:

1. Establishment of justice—Social, Political and Economic
2. Provision of opportunities to all workers, irrespective of caste, creed, religion, beliefs, for the development of their personality.
3. Protection of weaker section in the community.
4. Maintenance of Industrial Peace.
5. Creation of conditons for economic growth.
6. Protection and improvement of labour standards.
7. Protect workers from exploitation:
8. Guarantee right of workmen to combine and form association or unions.
9. Ensure right of workmen to bargain collectively for the betterment of their service conditions.
10. Make state interfere as protector of social well-being than to remain an onlooker.
11. Ensure human rights and human dignity.

4.4 THE CLASSIFICATION OF LABOUR LEGISLATIONS

On the basis of specific objectives which it has sought to achieve, the labour legislations can be classified into following categories:

(1) Regulative

(2) Protective

(3) Wage-Related

(4) Social Security

(5) Welfare both inside and outside the workplace.

4.4.1 The Regulative Labour Legislations

The main objective of the regulative legislations is to regulate the relations between employees and employers and to provide for methods and manners of settling industrial disputes. Such laws also regulate the relationship between the workers and their trade unions, the rights and obligations of the organisations of employers and workers as well as their mutual relationships.

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- The Trade Unions Act, 1926
- The Industrial Disputes Act,1947
- Industrial Relations Legislations enacted by states of Maharashtra, MP, Gujarat, UP etc.
- Industrial Employment (Standing Orders) Act, 1946.

4.4.2 The Protective Labour Legislations

Under this category come those legislations whose primary purpose is to protect labour standards and improve the working conditions. Laws laying down the minimum labour standards in the areas of hours of work, supply, employment of children and women etc. in the factories, mines, plantations, transport, shops and other establishments are included in this category. Some of these are the following:

- Factories Act,1948
- The Mines Act,1952
- The Plantations Labour Act,1951
- The Motor Transport Workers Act,1961
- The Shops and Establishments Acts
- Beedi and Cigar Workers Act, 1966

4.4.3 Wage-Related Labour Legislations

Legislations laying down the methods and manner of wage payment as well as the minimum wages come under this category:

- The Payment of Wages Act,1936
- The Minimum Wages Act, 1948
- The Payment of Bonus Act, 1965
- The Equal Remuneration Act, 1976

4.4.4 Social Security Labour Legislations

They cover those legislations which intend to provide to the workmen social security benefits under certain contingencies of life and work.

- The Workmen's Compensation Act, 1923
- The Employees' State Insurance Act, 1948
- The Coal Mines PF Act, 1948
- The Employees PF and Miscellaneous Provisions Act, 1952
- The Maternity Benefit Act, 1961
- Payment of Gratuity Act, 1972

Chapter VA of the Industrial Disputes Act 1947 is also, in a manner of speaking, of the character of social security in so far as its provides for payment or lay-off, retrenchment and closure compensation.

4.4.5 Welfare Labour Legislations

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Legislations coming under this category aim at promoting the general welfare of the workers and improve their living conditions. Though, in a sense all labor-laws can be said to be promoting the welfare of the workers and improving their living conditions and though many of the protective labour laws also contain chapters on labour welfare, the laws coming under this category have the specific aim of providing for the improvements in living conditions of workers. They also carry the term "Welfare" in their titles.

- Limestone and Dolomite Mines Labour Welfare Fund Act, 1972.
- The Mica Mines Welfare Fund Act, 1946
- The Iron Ore Mines, Manganese Ore Mines and Chrome Ore Mines Labour Welfare Fund Act, 1976
- The Cine Workers Welfare Fund Act, 1981.

In addition, some state governments have also enacted legislations for welfare funds.

- Beedi Workers Welfare Fund Act, 1976

THE INDUSTRIAL DISPUTES ACT

4.5 INTRODUCTION

Based on the experiences of Trade Disputes Act, 1929 and usefulness of rule 81 (a) of the Defence of India Rules, the bill pertaining to Industrial Disputes Act, 1947 embodied the essential principles of rule 81 (a) which was acceptable to both employers and workers retaining most parts of the provisions of Trade Disputes Act, 1929.

This legislation is designed to ensure industrial peace by recourse to a given form of procedure and machinery for investigation and settlement of industrial disputes. Its main objective is to provide for a just and equitable settlement of disputes by negotiations, conciliation, dedication, voluntary arbitration and adjudication instead of by trial of strength through strikes and lock-outs.

As State Governments are free to have their own labour laws, States like UP.,MP., Gujarat and Maharashtra have their own legislation for settlement of disputes in their respective states. U.P. legislation is

known as [illegible] Disputes Act, while others have Industrial Relations Act more or less on the lines of Bombay Industrial Relations Act, 1946.

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4.6 OBJECTIVES OF THE ACT

- Promotion of measures for securing amity and good relations between employer and workmen
- Investigation and settlement of industrial disputes
- Prevention of illegal strike and lock-outs
- Relief to workmen in the matter of lay-off, retrenchment and closure of an undertaking
- Promotion of Collective Bargaining.

4.7 SCOPE AND COVERAGE

The Industrial Disputes Act, 1947, extends to the whole of India, and is applicable to all industrial establishments employing one or more workmen. It covers all employees both technical and non-technical, and also supervisors drawing salaries and wages upto ₹ 1600 per month. It excludes persons employed in managerial and administrative capacities and workmen subject to Army Act, Navy Act, Air Force Act and those engaged in police, prison and civil services of the Government. As regards disputes, it covers only collective disputes or disputes supported by trade unions or by substantial number of workers and also individual disputes relating to termination of service. For purposes of this act the term "dispute" is defined as dispute or difference between employers and employees, which is connected with the employment and non-employment or the terms of employment or with the condition of labour of any person.—section 2(k)

Section 2 (a) defining appropriate Government states, inter alia: (a) In relation to any industrial disputes concerning any industry carried on by or under the authority of Central Government or by a Railway or concerning any such controlled industry such as may be specified or linking or insurance company or oil field or major part the Central Government, and (b) In relation to other industrial disputes the State Government: In HEC Majdoor Union vs. State of Bihar S.C. (1969), it was held that in respect of Central Public Sector Undertakings the State where the factory was situated was the appropriate Government. This decision was changed in Air India case S.C. 1997 where it was held that in resepct of Central Public Undertakings the appropriate Government is the Central Government. This definition of appropriate Government is applicable to contract labour (R&A) Act, 1970 and Payment of Bonus Act, 1965.

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The term "Industry" includes not only manufacturing and commercial establishments but also professionals like that of the lawyers, medical practitioners, accountants, architects, etc., clubs, educational institutions like universities, cooperatives, research institutes, charitable projects and other kindred adventures, if they are being carried on as systematic activity organised by cooperation between employers and employees for the production and/or distribution of goods and services calculated to satisfy human wants and wishes. It also includes welfare activities or economic adventures or projects undertaken by the government or statutory bodies, and Government departments discharging sovereign functions if there are units which are industries and which are substantially severable units. (Judgement dated 21.2.78 in the civil appeals No. 753–754 in the matter of Bangalore Water Supply & Sewerage Board etc. vs. Rajappa & Sons, etc.).

Sec. 2 (s) defines "workman" as any person (including an apprentice) employed in any industry to do any skilled, unskilled manual, supervisory, operational, technical or clerical work for hire or reward. Whether the terms of employment be expressed or employed and for the purposes of any proceedings under this act in relation to an industrial dispute, includes any such person who has been dismissed, discharged, retrenched in connection with or as a consequence of that dispute or whose dismissal, discharge or retrenchment has led to that dispute but does not include any such person (*i*) who is subject to Air Force Act, Army Act or Navy Act or (*ii*) who is employed in police service or prison service, (*iii*) who is employed mainly in a managerial and advisory capacity or (*iv*) who being employed in supervisory capacity draws wages exceeding ₹ 1600/ and exercises by the nature of the duties attached to the office or by means of powers vested in him, functions mainly of a managerial nature. May and Baker India case S.C. (1976) which led to passing of Sales Promotion Employees Act, 1976, had been stipulated that sales/medical representatives are not workmen under Sec. 2(s) of ID Act.

The provisions of ID Act, 1947 will be applicable to certain class of working journalists as per section 3 of Working Journalists Act, 1955.

4.8 MEASURES FOR PREVENTION OF CONFLICTS AND DISPUTES

The Act not only provides machinery for investigation and settlement of disputes, but also some measures for the containment and prevention of conflicts and disputes. Important preventive measures provided under the Act are:

1. Setting up of Works Committees in establishments employing

100 or more persons, with equal number of representatives of workers and management for endeavouring to compose any differences of opinion in matters of common interest, and thereby promote measure for securing and preserving amity and cordial relations between the employer and workmen. The representatives of workmen will not be less than the representatives of employers and such representatives of workmen will be from among the workmen engaged in the establishment and in consultation with registered trade unions. The decision of the works committee carries weight but is not conclusive and binding; its duties is to smooth away friction then to alter conditions of services, etc. (Section 3).

2. Prohibition of changes in the conditions of service in respect of matters laid down in the Fourth Schedule of the Act (Appendix 1) (*a*) without giving notice to the workmen affected by such changes; and (*b*) within 21 days of giving such notice. No such prior notice is required in case of (*a*) Changes affected as a result of any award or settlement; (*b*) Employees governed by Government. rules and regulations (see 9A).

3. Prohibition of strikes and lock outs in a public utility service (*a*) without giving notice to other party within six weeks before striking or locking out, (*b*) within 14 days of giving such notice, (*c*) before the expiry of the date of strike or lock-out specified in the notice and during the pendency of any conciliation proceedings before a conciliation office and seven days after the conclusion of such proceedings. In non-public utility services strikes and lock out are prohibited during the pendency of conciliation proceedings before the Board of Conciliation and seven days after the 'conclusion of such proceedings, during the pendency of proceedings before an arbitrator, labour court, and Industrial Tribunal and National Tribunal, during the operation of an award and settlement in respect of matters covered by the settlement or award. (Sections 22 and 23).

4. Prohibition of Unfair Labour Practices: Sec. 25 T and 25 U prohibit employers, employees and unions from committing unfair labour practices mentioned in the Schedule V of the Act (Appendix-In. Commission of such an offence is punishable with imprisonment upto six months and fine upto ₹ 1000, or both. (Ch. V-C)

4.9 CONCILIATION

Conciliation in industrial disputes is a process by which representatives of management and employees and their unions are brought together before a third person or a body of persons with a view to induce or

persuade them to arrive at some agreement to their satisfaction and in the larger interest of industry and community as a whole. This may be regarded as one of-the phases of collective bargaining and extension of process of mutual negotiation under the guidance of a third party, *i.e.*, Conciliation Officer, or a Board of Conciliation appointed by the Government.

Both the Central and State Governments are empowered under the Industrial Disputes Act, 1947 to appoint such number of conciliation officers as may be considered necessary for specified areas or for specified industries in specified areas either permanently or for limited periods.

The main duty of a Conciliation Officer is to investigate and promote settlement of disputes. He has wide discretion and may do all such sthings, as he may deem fit to bring about settlement of disputes. His role is only advisory and mediatory. He has no authority to make a final decision or to pass formal order directing the parties to act in a particular manner.

4.10 VOLUNTARY ARBITRATION

When Conciliation Officer or Board of Conciliation fail to resolve conflict/ dispute, parties can be advised to agree to voluntary arbitration for settling their dispute. For settlement of differences or conflicts between two parties, arbitration is an age old practice in India. The Panchayat system is based on this concept. In the industrial sphere, voluntary arbitration originated at Ahmedabad in the textile industry under the influence of Mahatma Gandhi. Provision for it was made under the Bombay Industrial Relations Act by the Bombay Government along with the provision for adjudication, since this was fairly popular in the Bombay region in the 40s and 50s. The Government of India has also been emphasising the importance of voluntary arbitration' for *settlement of disputes in the labour policy* chapter in the first three plan documents, and has also been advocating this step as an essential feature of collective bargaining. This was also incorporated in the Code of Discipline in Industry adopted at the 15th Indian Labour Conference in 1958. Parties were enjoined to adopt voluntary arbitration without any reservation. The position was reviewed in 1962 at the session of the Indian Labour Conference where it was agreed that this 'step would be the normal method after conciliation effort fails, except when the employer feels that for some reason he would prefer adjudication. In the Industrial Trade Resolution also which was adopted at the time of Chinese aggression, voluntary arbitration was accepted as a must in all matters of disputes. The Government had thereafter set up a National Arbitration Board for making the measure popular in all the states,

and all efforts are being made to sell this idea to management and employees and their unions.

In 1956, the Government decided to place voluntary arbitration as one of the measures for settlement of a dispute through third party intervention under the law. Sec. 10A was added to the Industrial Disputes Act, and it was enforced from 10th March, 1957.

4.11 ADJUDICATION

Unlike conciliation and arbitration, adjudication is compulsory method of resolving conflict. The Industrial Disputes Act provides the machinery for adjudication, namely, Labour Courts, Industrial Tribunals and National Tribunals. The procedures and powers of these three bodies are similar as well as provisions regarding commencement of award and period of operation of awards. Under the provisions of the Act, Labour Courts and Industrial Tribunals can be constituted by both Central and State Governments, but the National Tribunals can be constituted by the Central Government only, for adjudicating disputes which, in its opinion, involve a question of national importance or of such a nature that industrial establishments situated in more than one State are likely to be affected by such disputes.

Labour Court

It consists of one person only, who is also called the Presiding Officer, and who is or has been a judge of a High Court, or he has been a district judge or an additional district judge for a period not less than three years, or has held any judicial office in India for not less than seven years. Industrial disputes relating to any matter specified in the Second Schedule of the Act (Appendix-III) may be referred for adjudication to the Labour Court. (Section 7).

Industrial Tribunal

This is also one-man body (Presiding Officer). The Third Schedule of the Act mentions matters of industrial disputes which can be referred to it for adjudication (Appendix-IV). This Schedule shows that Industrial Tribunal has wider jurisdiction than the Labour Court. The Government concerned may appoint two assessors to advise the Presiding Officer in the proceedings. (Section 7A).

National Tribunal

This is the third adjudicatory body to be appointed by the Central Government under the Act for the reasons already mentioned above. It can deal with any dispute mentioned in Schedule II and III of the Act or any matter

which is not specified therein. This also consists of one person to be appointed by the Central Government, and he must have been a Judge of a High Court. He may also be assisted by two assessors appointed by the Government to advise him in adjudicating disputes.

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The presiding officers of the above three adjudicatory bodies must be independent persons and should not have attained the age of 65 years. Again, these three bodies are not hierarchical. It is the prerogative of the Government to refer a dispute to these bodies. They are under the control of the labour department of the respective State Government and the Central Government. The contending parties cannot refer any dispute for adjudication themselves, and the award of these bodies are binding on them. (Section 7B).

THE FACTORIES ACT, 1948

4.12 OBJECT OF THE ACT

The object of the Factories Act, 1948 is to protect human beings from being subject to unduly long hours of bodily strain or manual labour. It also seeks to provide that employees should work in healthy and sanitary conditions so far as the manufacturing process will allow and that precautions should be taken for their safety and for the prevention of accidents.

4.13 DEFINITIONS OF FACTORIES ACT

(i) Factory

Section 2(no of the factories Act, 1948 defines "factory" to mean: any premises including the precincts thereof-

- whereon ten or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on with the aid of power, or is ordinarily so carried on.
- whereon twenty or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on without the aid of power, or is ordinarily so carried on.

A mine subject to the operation of the Mines Act, 1952, or a mobile unit belonging to the armed forces of the Union, a railway running shed or a hotel, restaurant or eating place.

Meaning of the words Premises and Precinct

The word 'premises' means open land or land with building or building alone. Therefore, salt works where process of converting seawater into salt is carried on in the open comes within 'premises' as defined in the Act. [(ARDESHIR H. BHIWANDIWALA v. State of Bombay, A.I.R. 1962 SC 29.)] Precincts means a space enclosed by wall. [(in re K.V.V. Sharma v. Manager, Gemini Studio, Madras, A.I.R 1953 Mad. 29.)] Any 'premises' to be categorised as factory two conditions must be fulfilled.

- Ten or more persons are employed in the premises using power or be employed not using power.
- Twenty or more workers must be employed not using power.

(ii) Manufacturing Process

The expression "manufacturing process" has been defined in Section 2(k) to mean any process.

- making, altering, repairing, ornamenting, finishing, packing, oiling, washing, cleaning, breaking up, demolishing, or otherwise treating or adapting any article or substance with a view to its use, sale, transport, delivery or disposal; or
- pumping oil, water, sewage, or any other substance; or
- generating, transforming or transmitting power; or
- composing types for printing, printing by letter press, lithography, photogravure or other similar process or book binding; or
- constructing, reconstructing, refitting, finishing or breaking up ships or vessels; or
- preserving or storing any article in cold storage.

It was held in *State of Bombay* v. *Ali Saheb Kashim Tamboli, -[(1995) 2* LLJ 182.)] that bidi making is a manufacturing process. In Ardeshir v. Bombay State [(Air 1962 SC 29.)] the process carried out in the salt works comes within the definition of 'manufacturing process' in Section 2 (k) in as much as salt can be said to have been manufactured from sea water by the process of treatment and adaptation of sea water into salt.

In re *K. V V Sharma [((1950) 1* MLJ 29.)] conversion of raw films into a finished product was held to be a manufacturing process. Similarly in *New Taj Mahal Cafe Ltd.,* Managalore v. *Inspector of Factories, Managalore,* 1956 1 LLJ 273 the preparation of foodstuffs and other eatable in the kitchen of a restaurant and use of a refrigerator for treating or adapting any article with a view to its sale were also held to be manufacturing process.

(iii) Worker

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Section 2 (1) of the Factories Act, 1948 defines a "worker" to mean:

A person employed, directly or through any agency (including a contractor) with or without knowledge of principal employer, whether for remuneration or not, in any manufacturing process, or in cleaning any part of the machinery or premises used for a manufacturing process or in any other kind of work incidental to, or connected with, the manufacturing process, or the subject of the manufacturing process but does not include any member of the armed forces of the Union.

Broadly speaking, therefore, worker is a person The Factories Act, 1948

- who is employed;
- who is employed either directly or through any agency;
- who is employed in any manufacturing process, or in clearing any part of the machinery or premises used for a manufacturing process or in any other kind of work incidental to, or connected with the manufacturing process or the subject of the manufacturing process.

If the aforesaid conditions are satisfied, then it is immaterial whether a person was employed for remuneration or not. *In Chintaman Rao v. State of Madhya Pradesh, [(AIR 1958* All 44.)] the factory entered into contracts with independent contractors known as sattedars. The sattedars were supplied tobacco by the factories and, in some cases, bidi leaves also. The sattedars were neither bound to work in the factory nor were they bound to prepare the bidis themselves but could get them prepared by others. In fact they engaged coolies for rolling bidis and made payments to them. They used to collect bidis from these coolies and take them to the factory where the bidis were sorted and checked by the workers of the factory. The factory made payments to the sattedars for work of rolling bidis. The Supreme Court gave the restricted meaning to words "directly or through any agency" in Section 2(1) and held that (*i*) worker was a person employed by the management and (*ii*) there must be a contract of service and a relationship of master and servant between them. On the facts of the case the Supreme Court held that the sattedars were independent contractors and they and the coolies engaged by them for rolling bidis were not workers.

In *Dharangadhara Chemical Works v. State of Saurashtra,* [(AIR 1957 SC 264)] the Supreme Court held that the test of the relationship of master and servant is the master's right of superintendence and control of the method of doing the work.

In *State of Kerala v. V.M.Patel,* [1961(1) LLJ 549 (SC)] the Supreme

Court held that the work of garbling pepper by winnowing, cleaning, washing and drying in lime and laid out to dry in a warehouse are manufacturing processes and therefore the persons employed in these processes were workers within the meaning of Section 2(I) of the Act.

In *Shankar Balaji Waje* v. *State of Maharashtra,* [(AIR 1957 SC 517)] Pandurang was engaged for rolling bidis. Although the hours of work were fixed but there was no obligation to attend during those hours. There was freedom to come and go. There was no fixed salary nor actual supervision on the work. Payment was made on the quantum of work. The Supreme Court held that such person were not workers because there was no control and the supervision over pandurang.

In *Birdh Chand Sharma* v. *First Civil Judge, Nagpur,* [(AIR 1961 SC 644)] where the respondents prepared bidis at the factory and they were not at liberty to work at their homes. They worked within certain hours which were the factory hours. They were, however, not bound to work for the entire period and could go whenever they like. Their attendance was noted in the factory. They could come and go away at any time they liked. However no worker was allowed to work after midday even though the factory was closed at 7 p.m. and no worker was allowed to continue work after 7 p.m. There were standing orders in the factory and, according to these orders a worker who remained absent for eight days presumably without leave could be removed. The payment was made on piece rates according to the quantum of work done, but the management had the right to reject such bidis as did not come upto the proper standard. On these facts the Supreme Court held that respondents were workers under section 2 (1) of the Act.

(iv) Occupier

Section 2 (n) of the Act defines "occupier" of a factory to mean the person who has ultimate control over the affairs of the factory: Provided that—

- in the case of a farm or other association of individulas, any one of the individual partners or members thereof shall be deemed to. be the occupier;
- in the case of a company, any one of the directors shall be deemed to the occupier;
- in the case of a factory owned or controlled by the Central Government or any State Government, or any local authority, the person or persons appointed to manage the affairs of the factory by the Central Government, the State Government or the local authority, as the case may, be shall deemed to be the occupier;

Provided further that in the case of a ship which is being repaired, or on which maintenance work is being carried out, in a dry dock which is available for hire,

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1. the owner of the dock shall be deemed to be the occupier for the purposes of any matter provided for by or under -
   - Section 6, Section 7, Section 7-A, Section 7-B, Section 11 or Section 12;
   - Section 17, in so far as it relates to the providing and maintenance of sufficient suitable lighting in or around the dock;
   - Section 18, Section 19. Section 42, Section 46, Section 47 or Section 49, in relation to the workers employed on such repair or maintenance;
2. the owner of the ship or his agent or master or other officer-in-charge of the ship or any person who contracts with such owner, agent or master or other officer-in-charge to carry out the repair or maintenance work shall be deemed to be the occupier for the purpose of any matter provided for by or under Section 13, Section 14, Section 16 or Section 17 (save as otherwise provided in this provided) or Chapter IV (except Section 2'7) or Section 43, Section 44 or Section 45, Chapter VI, Chapter VII, Chapter VIII or Chapter IX or Section 108, Section 109 or Section 110, in relation to
   - the workers employed directly by him, or by or through any agency; and
   - the machinery, plant or premises in use for the purpose of carrying out such repair or maintenance work by such owner, agent, master or other Officer-incharge or person;

(v) Other Definitions

- Adult means a person who has completed his 18th year of age. [Section 2 (a)]
- Adolescent means a person who has completed his 15th year of age but has not completed his 18th year. [Section 2 (b).]
- Calendar year means the period of twelve months beginning with the first day of January in any year. [Section 2 (bb).]
- Child means a person, who has not completed his 15th year of age. [Section (c).]
- Young person means a person, who is either a child or an adolescent. [Section 2 (d)]
- Day means period of twenty-four hours beginning at mid-night [Section 2 (e).]
- Week means a period of seven days beginning at mid-night on

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Saturday night or such other night as may be approved in writing for a particular area by the Chief Inspector of Factories. [Section 2 (f)]

- Power means electrical energy, or any other form of energy, which is mechanically transmitted and is not generated by human or animal agency. [Section 2 (g)]
- Prime Mover means any engine, motor or other appliance, which generates or otherwise provides power. [Section 2 (h).]
- Transmission Machinery means any shaft, drum, pulley, system of pulleys, coupling clutch, driving belt or other appliance or device by which the motion of a prime mover is transmitted to or received by any machinery or appliance, [Section 2 (i):]
- Machinery includes prime movers, transmission machinery and all other appliances, whereby power is generated, transformed, transmitted or applied. [Section 2 (j).]
- Managing Agent has the meaning assigned to it in the Indian Companies Act, 1913 (VII of 1913). [Section 2 (o)].
- Prescribed means prescribed by rules made by the State Government under this Act. [Section 2 (p).]
- Relay and Shift means where work of the same kind is carried out by two or more sets of workers working during different periods of the day, each of such sets is called a 'relay' and each of such period is called 'shift'. [Section 2 (r)].

4.14 APPROVAL, LICENCING AND REGISTRATION OF FACTORIES

(i) General

The responsibility for getting the premises approved, when the factory is to be established, lies on the occupier. Under Section 6, the State Government have been vested with the powers to frame rules which are to be complied with. Section 4 empowers the State Government to declare different departments' or branches of a factory as separate factories, in case a request is made in writing in this regard by the occupier. But there is no provision to enable two or more factories of the same occupier being declared as a single factory. The State Governments are also empowered to exempt any factory or any class of factories from all or any of the provisions of the Act (except section 67) for a specified period on the conditions notified in case of public emergency, which means grave emergency

whereby the security of India or any part thereof is threatened, whether by war or external aggression or internal disturbance. Such a notification can be made for 3 months at a time.

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(ii) Procedure for Approval, Licensing and Registration of Factories

The factory is to be got approved and registered after obtaining a licence by the occupier in accordance with the rules framed by the State Government in this behalf. The State Governments are empowered to frame rules requiring the occupier of a factory for the purposes of this Act for the submission of plans of any class or description of factories to the Chief Inspector or State Government and to obtain previous permission of the Chief Inspector of Factories with regard to site where factory is proposed to be constructed, or extension, in case the factory already exists. A factory shall not be deemed to be extended by reason only of the replacement of any plant or machinery if such replacement or addition does not reduce the minimum clear space required for safe working around the plant or machinery or adversely affects the environmental conditions from the evolution or emission of steam, heat or dust or fames injurious to health. The occupier is required to submit full building plans along with necessary particulars of specifications according to which the building is to be got approved in accordance with the rules. The registration, obtaining of licence or renewal of licence, as the case may be, is to be done by the occupier in accordance with the rule by paying the prescribed fees. The permission relating to site on which the factory is proposed to be constructed or extension to be executed in the existing factory in accordance with the plan is to be given within 3 months by the authority to whom, the request is made. If no reply is received within the aforesaid period, the permission is presumed. In case permission is refused then, in that case, the applicant may appeal to the State Government if permission is refused by the Chief Inspector or to the Central Government if the permission is refused by the State Government, within 30 days. No license or renewal of license shall be granted unless the occupier gives at least 15 days notice in writing to the Chief Inspector of factories before he proposes to occupy or use any premises as factory. The notice shall state the full particulars of the factory, namely:

- the name and situation of the factory;
- the name and address of the occupier;
- the name and address of the owner of the premises or building;
- the nature of manufacturing process;

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- the total rated horse power installed or to be installed in the factory, which shall not include the rated horse power of any separate standby plant;
- The name of manager of the factory for the purpose of this Act;
- The number of workers likely to be employed in the factory ;
- the average number of workers per day employed during the last twelve months, in case of a factory, is in existence on the date of the commencement of this Act;
- such other particulars as may be prescribed under the rules. [Section 7 (1)]

The occupier is required to give notice to the Chief Inspector of Factories containing the above particulars with regard to those factories which were already functioning before this Act, within 30 days from the commencement of the Act. [Section 7 (2)]. Before a factory engaged in a manufacturing process which is ordinarily carried on for less than 180 working days in a year resumes working, the occupier is required to send full particulars of the factory to the Chief Inspector within 30 days of such resumption of work [Section 7 (3)]. Any change in the appointment of a manager or the factory is to be intimated within 7 days by the occupier to the Chief Inspector, [Section 7 (4)]. During the time no manager functions in the factory, the occupier is deemed as manager for the purpose of the Act. Non-compliance with the provisions of Section 6 and 7 is an offence for which the occupier can be punished.

4.15 HEALTH

(i) Cleanliness

Section 11 of the Factories Act, 1948 provides for general cleanliness of the factory. It lays down that dust, fumes and refuse should be removed daily; floors, stair-cases and passages should be cleaned regularly by sweeping and other effective means while washing of interior walls and roofs should take place at least once in 14 months and where these are painted with washable water paint, be repainted after every three years and where oil paint is used at least once in five years. Further, all doors and window frames and other wooden or metallic framework and shutters should be kept painted or varnished and the painting or varnishing shall be carried out at least once in five years.

(ii) Disposal of Wastes and Effluents

Section 12 of the Factories Act makes it obligatory on the owner of every

factory to make effective arrangements for the treatment of wastes and effluents due to the manufacturing process carried on therein, so as to render them innocuous and for their disposal.

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(iii) Ventilation and Temperature

The occupier is required to make effective and suitable provisions for securing and maintaining in every workroom adequate ventilation for the circulation of fresh air and to maintain such temperature as will secure to workers reasonable conditions of comfort and prevent injury to health.

(iv) Dust and Fume

Section 14 (1) deals with the measures, which should be adopted to keep the workrooms free from dust and fume. Every factory in which by reason of the manufacturing process carried on, there is given off any dust or fume or other impurity of such a nature and to such an extent as is likely to be injurious or offensive to the workers employed therein, or any dust in substantial quantities, effective measures shall be taken to prevent its inhalation and accumulation in any work-room. If any exhaust appliance is necessary for the above purposes, it shall be applied as near as possible to the point of origin of the dust, fume or other impurity and such point shall be enclosed as far as possible.

(v) Artificial Humidification

Section 15 (1) lays down that in respect off all factories in which the humidity of the air is artificially increased the State Government may make rules:

- prescribing standard of humidification;
- regulating the methods used for artificially increasing the humidity of the air;
- directing prescribed tests for determining the humidity of the air to be correctly carried out and recorded;
- prescribing methods to be adopted for securing adequate ventilation and cooling of the air in the workroom.

(vi) Overcrowding

To eliminate overcrowding, the Factories Act, 1948 prescribes that no room of any factory shall be overcrowded to the extent, it is injurious to the health of the workers. The Act further prescribes that in every work-room, each worker should be provided with a minimum space of 9.9 cubic meters which was there on the commencement of this Act, 1948 or 4.2 cubic meters after such commencement (Section 16). No

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account shall however be taken of any space which is more than 4.2 meters above the level of the floor of the room for the aforesaid purpose.

(vii) Lighting

Section 17 (1) provides that in every part of the factory, where workers are working or passing, there shall be provided and maintained sufficient and suitable lighting, natural, artificial or both.

(viii) Drinking Water

Section 18 deals with the provisions relating to arrangements for drinking water in factories. Sub-section (1) provides that in every factory effective arrangements shall be made to provide and maintain at suitable points conveniently situated for all workers employed therein, a sufficient supply of wholesome drinking water.

4.16 SAFETY

(i) Fencing of Machinery

Section 21 (1) requires that in every factory, the following must be securely fenced by safeguards of substantial construction while the machinery are in motion or use:

1. every moving part of a prime mover and fly wheel connected to prime mover, whether the prime mover or fly-wheel is in the engine house or not;
2. the headrace and tailrace of every water-wheel and water turbine;
3. any part of stock-bar which projects beyond the head stock of a lathe; and
4. unless they are in such position or of such construction as to be safe to every person employed in the factory as they would be if they were securely fenced, the following, namely,
   - every part of electric generator, a motor or rotary converter;
   - every part of transmission machinery; and
   - every dangerous part of any other machinery;

shall be securely fenced by safeguards of substantial construction which shall be cosistently maintained and kept in position while the parts of machinery they are fencing are in motion or in use.

(ii) Work on or Near Machinery in Motion

Section 22 (1) requires that, where in the factory it is essential to examine

any part of the machinery (referred to in Section 21) while it is in motion or as a result of such examination, it is necessary to carry out:

- lubrication or other adjusting operation; or
- any mounting or shipping of belts or lubrication or other adjusting operation.

Such examination or operation shall be made or carried out only by a specially trained Adult male worker wearing tight-fitting clothing (which shall be supplied by the occupier) which name has been recorded in the register prescribed in this behalf and who has been furnished with a certificate of his appointment, and while he is so engaged:

(a) such worker shall not handle a belt at a moving pulley unless:

- the belt is not more than fifteen centimeters in width;
- the pulley is normally for the purpose of drive and not merely a flywheel or balance wheel (in which case a belt is not permissible);
- the belt joint is either laced or flush with the belt;
- the belt, including the joint and the pulley rim, are in good repair;
- then: is reasonable clearance between the pulley and any fixed plant or structure;
- secure foothold and, where necessary, secure handhold, are provided for the operator; and
- any ladder in use for carrying out any examination to operation aforesaid is securely fixed or lashed or is firmly held by a second person.
- without prejudice to any other provision of this Act relating to the fencing of machinery, every set screw, bolt and key on any revolving shaft, spindle, wheel, or pinion, and all spur, worm and other toothed or friction gearing in motion with which such worker would otherwise be liable to come into contact, shall be securely fenced to prevent such contact.

(iii) Employment of Young Person on Dangerous Machine

Section 23 prohibits the employment of a young person on dangerous machine unless he has been fully instructed as to the dangers arising from machine and the precautions to be observed and (*i*) has received sufficient training in work at the machine, or (*ii*) is under adequate

supervision by a person who has a thorough knowledge and experience of the machine.

(iv) Striking Gear and Devices for Cutting off Power

In order to move the driving belt to and from fast and loose pulleys in transmission machine and prevent the belt from creeping back onto the fast pulley, suitable striking gear or other efficient mechanical appliance shall be provided, maintained and used. No driving belt when mused shall be allowed to rut or ride upon shafting in motion. Suitable devices are also maintained in every workroom for cutting off power emergencies.

(v) Self-acting Machines

Section 25 of the Factories Act provides further safeguards to the workers injured by self-acting machines. It provides: No traversing part of a self-acting machine in any factory and no material carried thereon shall, if the space over which it runs is a space over which any person is liable to pass, officer in the course of his employment or otherwise, be allowed to run on its outward or inward traverse within a distance of forty-five centimeters from any fixed structure which is not part of the machine.

(vi) Casing of New Machinery

Section 26 (1) provides that in all machinery driven by power, after the commencement of the Factories Act, 1948, every set screw; bolt or key on any revolving shaft, spindle, wheel or pinion shall be sunk, encased or effectively guarded as to prevent danger. [Section 26 (2)]. Further, all spur, worm and other toothed or friction gearing not requiring frequent adjustment while in motion shall be completely encased, unless they are safely situated. Furthermore, Section 26 (2) provides that, whoever sells or lets on hire or; as agent of the seller or hirer, cares or procures to be sold or let on hire, for use in a factory any machinery driven by power which does not comply with the provisions of sub-section (1), or any rules made under sub-section (3), shall be punishable with imprisonment for a term which may-extend to three months or with fine which may extend to ₹ 500 or with both. Under the Act, the State Government is empowerd to make rules for the safeguards to be provided from dangerous part of the machinery.

(vii) Prohibition of Employment of Women and Children near Cotton Openers

The Factories Act, 1948 prohibits the employment of women and children in any part of the factory for pressing cotton where the cotton opener is at work. But if the feed-end of the cotton-opener is in a room separated

from the delivery and by a partition extending to the roof or to such height as the inspector may in any particular case specify in writing, women and children may be employed on the side of the partition where feed-end is situated. (Section 27).

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(viii) Roust and Lifts

Section 28 (I) requires that hoists and lifts must be of good mechanical construction, sound material and adequate strength. They should not only be properly maintain but also thoroughly examined at least twice a year by competent persons.

(ix) Revolving Machinery

Section 30 (1) provides that a notice indicating the maximum safe working peripheral speed of the grindstone or abrasive wheel the speed of the shaft, or spindle, must be permanently affixed on all rooms in a factory where grinding is carried on the speeds in dicated in notices under sub-section (1) shall not be exceeded. [Sub-section (2) of Section 30]. Similarly, care shall be taken not to exceed the safe working peripheral speed of every revolving machine like revolving vessel, cage, basket, fly-wheel, pulley, disc or similar appliances run by power. [Sub-section (3) of Section 30].

(x) Pressure Plant

Section 31 (1) provides that effective measures should be taken to ensure safe working pressure of any part of the plant or machinery used in the manufacturing process operating at a pressure above the atmospheric pressure.

(xi) Pits, Sump and Opening in Floors

Section 33 (1) of the Factories Act, 1948 requires that every fixed vessel, sump, tank, pit or opening in the ground or in the floor in every factory should be covered or securely fenced, if be reason of its depth, situation, construction or contents, they are or can be a source of danger.

Section 33 (2) empowers the State Government to grant exemption from compliance of the provision of this section (*i*) in respect of any item mentioned in the section, (*ii*) to any factory or class of factories, and (*iii*) on such condition as may be provided in the rules.

(xii) Precautions Against Dangerous Fumes, and Gases

In order to prevent the factory workers. against dangerous fumes, special measures have been taken under the Factories Act. The Act

prohibits entry in any chamber, tank, vat, pit, pipe, flue, or other confined space in any factory in which any gas, fume, vapour or dust is likely to be present, to such an extent as to involve risk to persons being overcome thereby, except in cases where there is a provision of a manhole of adequate size or other effective means of egress. [Section 36 (1)]. No person shall be required or allowed to enter any confined space such as is referred to in sub-section (1) until all practicable measures have been taken to actually remove the gas, fumes or dust, which may be present so as to bring its level within the permissible limits and to prevent any ingress of such gas, fume, vapour or dust unless [Section 36 (2)].

(xiii) Precaution Against using Portable Electric Light

The Act prohibits any factory to use protable electric light or any other electric appliance of voltage exceeding 24 volts in any chamber, tank, vat, pipe, flue or other confined space unless adequate safety devices are provided [Section 36-A (a)]. The Act further prohibits the factory to use any lamp or light (other than that of flame-proof construction if any inflammable gas, fume or dust is likely to be present in such chamber, tank, vat, pet, pipe, flue or other confined space. [Section 36-A (b)].

(xiv) Explosive or Inflammable Materials

These measures include : (*i*) effective enclosures of the plant or machinery used in the process; (*ii*) removal or prevention of the accumulation of such dust, gas or vapour; (*iii*) exclusion or effective enclosure of all possible sources of ignition. [Section 37 (i)].

(xv) Precaution in case of Fire

In every factory all practical measures shall be taken to prevent outbreak of fire and its spread, both internally and externally, and to provide and maintain (*i*) safe means of escape for all persons in the event of fire, and (*ii*) the necessary equipment and facilities for extinguishing fire. Further effective measures should be taken to ensure that in every factory all the workers are familiar with the means of escape in case of fire and have been trained in the routine to be followed in such cases. (Section 38).

(xvi) Safety of Building and Machinery

If it appears to the Inspector that any building or part of building or any part of the ways, machinery or plant in a factory is in such a condition that it is dangerous to human life or safety, he may serve on the occupier or manager or both the factory an order in writing specifying the measures which in his opinion should be adopted, and requiring them to be carried out before a specified date. [Section 40 (1)].

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(xvii) Maintenance of Buildings

In order to ensure safety, the inspector is empowered to serve on the occupier or Manager (or both) of the factory an order specifying the measures to be taken and requiring the same to be carried out if it appears to him that any building or part of a building in a factory is in such a state of disrepair as is likely to lead to conditions detrimental to the health and welfare of the workers. (Section 40-A).

(xviii) Safety Officers

In order to prevent accidents, the Act provides for the appointment of Safety Officers in factories employing 1,000 or more workers or where any manufacturing process or operation is carried on, which process or operation involves any risk of bodily injury, poisoning or disease, or any other hazard to health, to the persons employed in the factory. (Section 40-B).

4.17 WELFARE OF WORKERS

(i) Washing and Sitting Facilities

In every factory adequate and suitable separate facilities for washing conveniently situated should be provided and maintained for the use of both male and female workers. The above facilities provided for the use of female workers, should be adequately screened in order to provide privacy to female workers. The State Government is also empowered to prescribe in respect of any factory 'the standards and suitable facilities for washing by framing rules. (Section 42).

(ii) The Facilities of First Aid Appliances and Ambulance Room

The occupier of factory is required to provide the facility of first aid boxes to be made use of by the workers in an emergency. The first aid boxes or cupboards should be readily accessible and equipped with prescribed contents. The number of boxes and cupboards should not be less than one for every 150 workers ordinarily employed at any time in a factory. Each first aid box or cupboard should be kept in the charge of a separate responsible person who holds a certificate in first aid treatment recognised by the State Government and readily available to workers during the working hours of the factory.

In every factory where more than 500 workers are ordinarily employed there should be provided and maintained an ambulance room of the prescribed size, containing the prescribed equipment and in the charge

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of qualified medical and nursing staff as prescribed and the above facilities should be made available during the working hours of the factories.

(iii) Canteen, Rest Room and Lunch Rooms Facilities

Where 250 workers or more are ordinarily employed, canteen facilities are required to be provided by the occupier.

In every factory where more than 150 workers are employed adequate and suitable shifters or rest rooms or lunch rooms with provision for drinking water where walkers can eat meals should be provided and maintained for the use of workers. These rooms should be well venerated, sufficiently lighted and maintained in cool and clean condition. These rooms are to be constructed and furnished in accordance with the rules framed by the State Government.

(iv) Creches Facility

In every factory where more than thirty women workers are employed rooms of employed adequate size, well lighted and ventilated, maintained in clean and sanitary condition are to be provided for the use of children of women workers below 6 years of age.

(v) The Appointment of Welfare Officers

The main duty to look after the welfare of the workers lies on the welfare officer of a factory. Therefore, in every factory where more than 500 workers are ordinarily employed the occupier of a factory is required to appoint such number of welfare officers as may be prescribed by the State Government in this respect. The persons appointed to the above posts are to be fully qualified and to do such duties as are imposed upon them under the rules.

4.18 WORKING HOURS OF ADULT WORKERS

(i) Weekly and Daily Working Hours

Section 51 and 54 contain general provisions regarding weekly and daily working hours. According to Section 51 no adult worker shall be required or allowed to work in a factory for more than 48 hours in a week. As regards daily working hours under Section 54, no adult worker shall be required or allowed to work in a factory for more than 9 hours in a day. But with the previous approval of the Chief Inspector the daily maximum hours may be exceeded in order to facilitate and adjust the change of shifts. The above restriction is applicable to 'workers' only as defined in the Act.

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(ii) Weekly and Substituted Holidays

Section 52 speaks of weekly holiday to the workers of a factory. Accordingly an adult worker shall not be allowed or required to work in a factory on the first day of the week, *i.e.*, Sunday. But if it becomes necessary to make Sunday a working day, a substituted holiday is made compulsory.

(iii) Compensatory Holidays

Such worker who has been deprived of weekly holiday should be allowed compensatory holidays of equal number to the holidays so lost within the month in which the holidays were due to him or within a months immediately following that month.

(iv) Intervals for Rest, Spread Over, Night Shifts and Double Employment

Every adult worker working in a factory is to be allowed rest during working hours of at least half an hour. This interval is to be so placed as to break the working hours for a maximum of 5 hours at a stretch. This period of 5 hours work can be extended to six hours by the permission of the State Government or subject to the control of State Government by the Chief Inspector on sufficient grounds to be recorded in the permission order. (Section 55, 56, 57, 58).

(v) Extra Wages for Overtime

A worker of a factory required to work in excess of the maximum hours of work prescribed under Section 51 and Section 54 is to be paid extra wages for overtime work done by him. Therefore, a worker required to work for more than 9 hours in any day or 48 hours in any week shall be paid at twice the ordinary rate of wages for the extra hours of work done by him. Ordinary rate of wages for this purpose shall be the basic wages plus such allowances including the cash equivalent or the advantage accruing through the concessional sale of food grains and other articles made available to workers excluding bonus. Further, where any worker in a factory is employed on a piece rate basis the time rate wages admissible to worker in. Such jobs shall be deemed to be equivalent to daily average wages for the piece rated worker.

(vi) Notice of Periods of Work for Adult Workers

A notice in the prescribed form containing an abstract of Act and rules framed thereunder, the name and address of Inspector and name and address of Certifying Surgeon is required to be displayed in the factory. The notice so displayed should indicate the periods of work for which an adult worker is required to work everyday in a factory. The notice

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shall be in English language and a languagé understood by the majority of workers. The intention behind the displaying of notice is that no worker is employed to work in contravention of Section 51, 52, 54, 55, 56 and 58 of the Act.

(vii) Section 66

Act provides for further restrictions on employment of women. Thus, no exemption from the provisions of sec. 54 relative to daily hours of work may be granted in respect of any woman. No woman shall be required or allowed to work in any factory except between the hours of 6 a.m and 7 p.m; except when the state Govt. vary the limits laid down. So however there is absolute prohibition on employment of woman between the hours of 10 p.m and 5 a.m,

(viii) Power to Make Exempting Rules and Orders

The State Government has been empowered to make rules for granting exemption from the restrictions imposed with regard to working hours of adults as enumerated above on such conditions as it may deem necessary.

4.19 ANNUAL LEAVE WITH WAGES

(i) Annual Leave with Wages

Section 79 of the Act deals with the provisions of annual leave with wages. The basis of calculation of the annual leave to which a worker would be entitled in a year is the previous calendar year during which he had worked in a factory.

Qualifying Period

The minimum number of days which entitles a worker to earn leave is 240 during a calendar year which period should include

- the days of lay off which may be as a result of contract or agreement or as permissible under Standing Orders;
- the leave earned in the year prior to that in which leave is applied for; and
- in the case of female worker, maternity leave for any number of days not exceeding 12 weeks.

If according to above computation, the total period comes to 240 days or more, then the worker in a factory would be entitled to leave with wages in the subsequent calendar year for a number of days calculated at the rate of:

Rate of Leave

- In the case of an adult, one day for every twenty days of work performed by him during the previous calendar year.
- In the case of child one day for every fifteen days of work performed by him during the previous calendar year.

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(ii) Unavailed Leave

If a worker has not availed of portion of his leave in one calendar year, such remaining portion of leave shall be carried over and added to the- leave to be allowed to him in the succeeding calendar year subject to the condition that the total number of days to be carried forward would not exceed:

- in the case of adult 30 days;
- in the case of child 40 days;

However, if the worker applied for leave with wages but such leave was not granted to him in accordance with any scheme drawn up under the provisions of this section, then in that case, leave refused shall be carried forward without any limit.

(iii) Procedure for Availing of Leave

A worker who wants to avail of leave is required to make an application to the manager of the factory at least 15 days in advance except in the case of public utility concern where the application for leave can availed of in 3 instalments in year at the most. if the worker wants leave with wages due to him to cover a period of illness, in the worker need not apply in advance. The wages, in such cases, admissible to him are required to be paid in advance within 15 days and in case of public utility concern within 30 days from the date of application requesting for grant of leave.

(iv) Unavailed Leave and Notice of Discharge and Dismissal

The unavailed leave of worker shall not be taken into consideration in computing the period of any notice required to be given by the occupier before discharge or dismissal. [Section 79 (12)].

(v) Wages during Leave Period

The wages admissible to a worker during leave availed of by him under Section 78 or 79 are to be calculated in accordance with Section 80 of the Act.

(vi) Advance Payment of Leave Wages

An adult worker who has been allowed leave for not less than 4 days and a child who has been allowed leave for not less than 5 days can claim payment in advance of leave wages admissible to him. (Section 81.)

(vii) Mode of Recovery of Unpaid Wages

Any sum required to be paid by an employer under the above provisions but not paid by him to the worker concerned, can be recovered by the worker under the provisions of Payment of Wages Act, 1936. (Section 82.) Therefore, where wages are due to a worker for annual leave and the employer makes a default in making payment, they can be recovered under the provisions of the above Act.

(viii) Powers of the State Government

The State Government is empowered to make rules directing the managers of factories to keep registers containing such particulars as may be prescribed by it and such registers to be made available to Inspectors for examination, (Section 83.)

PAYMENT AND WAGES ACT, 1936

4.20 INTRODUCTION

In the initial stages of industrialisation, workers had to suffer from exhorbitant delays in payment of wages, arbitrary deductions and other unfair practices on the part of employers. Delay in the payment of wages, deductions of two days wages-for one day's absence, heavy fines for small omissions and commissions, were quite common. Irregularities committed by employers were brought to the notice of the Royal Commission of Labour in India. In the report submitted in 1931, the Commission pointed out wide prevalence of such unfair practices in regard to the payments of wages due to workers such as non-payment of wages, short payment, irregular payment, payment in kind rather than in cash, short measurement of work of piece rate workers, and excessive fines and deductions. The Commission stressed the need for protecting the earned ages of workers by elimination of these practices. The Commission also observed that the purpose of laying down a machinery for evolving a proper and equitable wage structure is defeated if mal-practices in regard to payment of wages are not checked.

In pursuance of the recommendations of the Commission, the Payment of Wages Act, was passed in 1936, and it come into force on 28th March, 1937. It has since been amended several times, and its latest amendment

in 1982 extended its coverage by rasing the wage limit from ₹ 1000 to ₹ 1600.

Object of the Act: The Act is a protective piece of legislation. It seeks to regulate the payment of wages of certain class of workers employed in industry. The main object of Act is to ensure to worker payment of their earned wages on due date without unauthorised deduction. In order to ensure timely payment of wages, the Act regulates the Tanner of payment of wages at regular intervals. It lays down permissible deductions to protect the employed persons against arbitrary or unauthorised deductions being made from their wages.

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Definitions (Sec. 2)

1. **Employed Person:** Employed person includes the legal representative of a deceased employed person.
2. **Employer:** Employer includes the legal representative of deceased employer.
3. **Industrial Establishment:** It means any:
   - Tram-way service or motor transport engaged in carrying passengers and goods or both by road for hire or reward.
   - Air transport service other than such service belonging to, or exclusively employed in the military, naval or Airforce of the Union, or the Civil Aviation Department of the Government of India.
   - Dock, wharf, or jetty;
   - Inland vessel mechanically propelled;
   - Mine, quarry or oil field;
   - Plantation;
   - Workshop, or other establishments in which articles are produced, adopted, or manufactured, with a view to their use, transport or sale;
   - establishment in which any work relating to the construction, development or maintenance of building, roads, bridges or canals or relating to transmission, or distribution of electricity, or any other form of power is being carried on;
   - any other establishment or class of establishment which the Central Government or a State Government may, having regard to the nature there-to the need for protection of persons employed there-in, and other relevant circumstances, specified by notification in the Official Gazzette.

4. **Wages:** "Wages" means all remuneration (whether by way of salary, allowances, otherwise) expressed in terms of money or capable of being expressed which would, if the terms of employment, expressed or implied are fulfilled, be payable to person employed in respect of his employment or of work done in such employment.

The definition of "wages" is made sufficiently wide by including within the expression:

- any remuneration payable under award or settlement between parties or order of a court;
- any additional remuneration under the terms of employment (whether called a bonus or by any other name);
- any remuneration to which the person employed is entitled in respect of overtime work or holiday or any leave period.
- any sum which by reason of termination of employment of the person employed is liable under any other law, contract or instrument which provides for the payment of such sum whether with or without deductions, but does not provide for the time within which the payment has to made;
- any sum to which the person employed is entitled under any other scheme framed under any law for the time being in force.

The amount of bonus payable under the payment of Bonus Act, 1965, the amount of retrenchment compensation payable, and a sum payable to the employee on the termination of his service under the Industrial Disputes Act, 1947, are wages as defined under this Act. The amount of Gratuity payable under the terms of any award is also covered by this Act.

4.21 RESPONSIBILITY FOR PAYMENT OF WAGES

Every employer shall be responsible to pay wages to persons employee by him. But in the case of persons employed (otherwise than by a contractor) in factories, industrial establishments and upon railways, the following persons shall be responsible for payment of wages:-

(*a*) in factories, the person named as manager;

(*b*) in industrial establishments, the person who is responsible to the employer for the supervision and control of the industrial establishment;

(*c*) upon railways (otherwise than in factories) the person nominated

by the railway administration in this behalf for the local area concerned. (Section 3).

Rules for payment of wages

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Under the payment of Wages Act, 1936, rules regarding the payment of wages are as follows:

Fixation of wage-period: Every person responsible for the payment of wages under Sec. 3 shall fix periods, known as Wages Periods in respect of which such wages shall be payable. A wage period shall not exceed one month. (Section 4)

Time of payment of wages: The following rules have been laid down regarding the time of payment of wages:

(a) If the number of persons employed in a factory, an industrial establishment, or railway including daily rated workers, is less than 1000, wages must be paid before the expiry of the seventh day after the last day of the wage period.

(b) In other cases, wages must be paid before the expiry of the tenth day after the expiry of the wage period.

(c) In the case of persons employed on dock, mine, wharf or jetty, the balance of wages found due on completion of the final tonnage account of the ship or wagons loaded or unloaded, shall be paid before the expiry of the seventh day after such completion.

(d) Where the employment of any person is terminated by or on behalf the employer, the wages earned by him shall be paid before the expiry of the second working day from the day on which employment is terminated,

(e) If the employment is terminated due to the closure of establishment for any reason other thanes weekly or other recongnised holiday, wages will be paid before the expiry of second working day from the day on which employment is being terminated.

(f) The State Government may, by a general or special order, exempt the person responsible for the payment of wages from the operation of the above provisions in certain cases.

(g) All payment of wages shall be made on a working day. (Section 5)

Medium of payment of wages: All wages shall be paid in current coin or currency notes or both. The employer may after obtaining the written permission of the employed person pay him wages either by cheque or by crediting the wages- in the bank account. (Section 6)

4.22 DEDUCTION FROM WAGES

The wages of an employed person would be paid to him without deductions of any kind except those authorised under the Payment of Wages Act. This is notwithstanding the Provisions of Sec. 47 of the Indian Railways Act, 1890 (Sec. 7).

Kind of deductions

The following kinds of deductions are permitted under the Act:

1. **Fines (Sec. 8):** Provisions regarding fines are as follow:
   - No fine shall be imposed on any employed person except in respect of such acts omissions on his part as the employer, with the previous approval of the State Government or of the prescribed authority, may have been specified by a notice.
   - The notice specifying the acts and omissions for which fines may be imposed shall be exhibited in the prescribed manner on the premises or the place in which the employment is carried on.
   - No fine shall be imposed on an employed person until he has given an opportunity of showing cause against the fine.
   - The total amount of fine in any one wage period on any employed person shall not exceed three per cent of the rupee wages payable to him in respect of that wages period.
   - No fine shall be imposed on a person who is below the age of fifteen years.
   - No fine shall be recovered from the employed person by instalments or after the expiry of sixty days from the day on which it was imposed.
   - Eve fine shall be deemed to have been imposed on the day of the actor omission.
   - All fines and realisations thereof shall be recorded in a register to be kept by the person responsible for the payment of wages in such form as may be prescribed. All realisation of fines shall be applied only to such purposes as are beneficial to the persons employed in the factory.
2. **Deductions for Absence from Duty (Sec. 9)**
   - Deductions may be made on account of the absence of an employed person from duty from the place or place where, by the terms of employment, he is required to work.

- An employed person shall be deemed to be absent from duty if, though present at the place of work, he refuses to carry out his work, in pursuance of a stay-in strike or for any other cause which is not reasonable.
- The ratio between the amount of deductions for absence from duty and the wages payable shall not exceed the ratio between the period of absence and total period within such wage period.
- If, however, ten or more persons, acting in concert, absent themselves without due notice and without reasonable cause, the deduction for absence from duty from any such person may include such amount not exceeding his wages for eight days as may be due to the employer in lieu of notice.

3. **Deductions for Damage of Loss (Sec. 10)**
   - A deduction for damage to or loss or goods expressly entrusted to the employed person for custody, or for loss of money which he is required to account can be made where such loss is directly attributable to his neglect or default.
   - A deduction for damage or loss shall not exceed the amount of damage or loss caused to the employer by his neglect or default.
   - A deduction for damage or loss shall not be made until the employed person has been given an opportunity of showing cause against the deduction.
   - All deductions and realisations in respect of damage or loss shall be recorded in a register to be kept by the person responsible for the payment of wages.
4. **Deductions for Accommodation and Service (Sec. 11).** Deduction for house accommodation and amenities and service supplied by the employer can be made subject to the following conditions:
   - Deductions cannot be made unless such services have been accepted by the employes person as a term of his employment.
   - Services do not include the supply of tools and raw materials required for the purposed of the employment and no deduction can be made; in that respect.
   - The amount of deduction cannot exceed an amount equivalent to the value of house accommodation, amenity or service supplied.
   - The amenities and services must be authorised by the State Government by a general or special order.

- State Governments are empowered to make rules governing deductions for amenities and services.

5. **Deductions for Recovery of Advance (Sec. 12).** Deductions for recovery of advances or adjustments of over-payment of wages can be made subject to the following conditions:

   - Recovery of an advance of money given before employment shall be made from the first payment of wages in respect of complete wage period, but no recovery can be made of such advance given for travelling expenses.
   - Recovery of an advance of money given after employment began shall be subject to such conditions as the State Government may impose.
   - Recovery of advances of wages not already earned shall be subject to any rules made by the State Government in this regard. The State Government may regulate the extent to which such advances may be given, the instalments by which they may be recovered and the rate of interest that may be charged on such advance.

6. **Deductions for Recovery of Loans (Sec. 12-A)**

   - Deduction for recovery of loans made from any fund constituted for the welfare of labour and the interest due in respect thereof can be made provided the fund is constituted in accordance with the rules approved by the State Government.
   - Deductions can be made for recovery of loans granted for house building or other purposes approved by the State Government and the interest due in respect thereof:

7. **Deductions for Payments to Co-operative Societies and Insurance Schemes (Sec. 13).** These deductions shall include:

- deductions for payments to co-operative societies approved by the State Government-or to a scheme of insurance maintained by the Indian Post Office;
- deduction made with the written authorisation of the person employed for the payment of any premium on his life insurance, policy to the Life Insurance Corporation of India or for the purchase of securities of the Government of India or of any State Government, or for being deposited in any Post office Savings Bank in furtherance of any savings scheme of any such Government.

Theses deductions shall be subject to such conditions as the State Government may impose.

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8. **Other Deductions.** The following deductions are also permissible under the Act;

- deductions of income-tax payable by the employed person;
- deductions required to be made by order of a court
- deductions for subscriptions to, and for repayments of advances from any provident fund to which the Provident Funds Act. 1925 applies or any recognised provident fund or any provident fund approved in this behalf by the State Government.
- deductions for payment of insurance premia of Fidelity Guarantee Bonds.
- Wages and Labour welfare deductions made, with the written authorisation of the employed person, for the payment of his contribution to any fund constituted by the employer are trade union registered under the Trade Unions Act, 1926 for the welfare of the employed persons or the members of their families or both and approved by the state government or any officer specified by it in the behalf, during a continuing of such approval.
- deductions made, with the written authorisation of the employed persons for payment of the fees payable by him for the membership of any trade union registered under the Trade Unions Act, 1926.
- deductions for recovery of losses sustained by a railway administration on account of acceptance by the employed person of counter-feit or base coins or mutilated or forged currency notes.
- deductions for recovery of losses sustained bye a railway administration on account of the failure of the employed person to invoice to bill, to collect or to account for the appropriate changes due to that administration whether in respect of fares freight, demurrage, warfare and carriage or in respect of sale of food in catering establishments or in respect of sale of commodities is grain shops or otherwise;,
- deductions for recovery of losses sustained by a railway administration on account of any rebates of refunds incorrectly granted by the employed person where such loss in directly attributable to his neglect or default;
- deductions made with the written authorisation of the employed person for contribution to the Prime Minister's National Relief Fund or to such other funds as the Central Government may be notification in the official Gazette specify;

- deductions for contribution to any insurance scheme framed by the Central Government for the benefit of its employees.

The list of deductions in Sec. 7 (2) is exhaustive. Further, if any deduction is claimed by an employer, the burden specifically and clearly lies upon him to prove that the deduction is of a nature which is capable of falling within the several clauses of Sec. 7 (2).

There is no provision in the Act limiting the period within which the employer should make the deduction for adjustment of overpayment of wages. Every payment by the employed person to the employer or his agent shall-be-deemed to be a deduction: Any loss of wage resulting from the imposition, for good and sufficient cause, upon a person employed, of any of the following penalties; shall not be deemed to be a deduction from any wages. These penalties are suspension, with-holding of increment or promotion (including stopping of increment at the efficiency bar).

Illegal Deductions. Any deductions other than those authorised under Section 7 of the Act would constitute illegal deductions.

Limit on the amount of deductions (Sec. 7(3))

The total amount of deduction which may be made under Section 7 in a wage period from the wages of any employed person shall not exceed 75 per cent of such wages in asend re such deductions ye wholly or partly made for payments to co-operative societies. In air other case, the deductions shall not exceed 100 per cent of such wages any agreement or contract by which an employee agrees to any deductions other than those authorised under the Act would be null and void under Section 23 of the Act. There is, however, no provision in the Act limiting the period within which the employer should make the deduction for adjustment of over payment of wages.

4.23 WHO MAY FILE APPLICATION AND WHEN

An application for claims arising under this Act may be filed by-

- the employed person himself;
- any legal practitioner; or
- any official of a registered trade union authorised in writing to act on his behalf; or
- any Inspector under the Act; or
- any other person acting with the permission of the Authority appointed under the Act.

Every such application must be made within twelve months from the date on which the deduction from wages was made, or from the date on

which the payment of the wages was due to be made. An application may also be admitted after twelve months if the applicant satisfied the Authority that there was a sufficient cause for not making the application within twelve months. But sufficiency of the cause is to be decided by proper legal principles. Before admitting any such application the Authority must give notice to and hear, the opposite party and admission should be conscientious. The discretionary power conferred on the Authority,, to condone delay in filing an application is not excessive because the aggrieved party can seek redress against abuse of this power by invoking the supervisory jurisdiction of the High Court under Article 227 of the Constitution. (Section 15).

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4.24 PROCEDURE AND DIRECTIONS

When any application for claims under this Act is entertained, the Authority shall hear the applicant and the employer or other person responsible for payment of wages or give them an opportunity of being heard. After such further inquiry (if any) as may be necessary, the Authority may, without prejudice to any other penalty to which such employer or other person is liable under this Act, direct the refund to the employed person of the amount deducted, or the payment of the delayed wages, together with the payment of such compensation as the Authority may think fit, not exceeding ten times the amount improperly deducted and twenty five rupees in case of delayed wages. Even before the amount deducted or the delayed wages are paid before the disposal of the application, the Authority may direct the payment of compensation as the authority may think fit, not exceeding rupees twenty-five.

No direction for the payment of compensation shall be made in the case of delayed wages if the Authority is satisfied that the delay was due to:

- a *bona fide* error or *bona fide* dispute as to the amount payable to the employed person; or
- the occurrence of an emergency, or the existence of exceptional circumstances such that the person responsible for the payment of the wages was unable, though exercising reasonable diligence to make prompt payment, or
- the failure of the employed person to apply for the payment. (Section 15 (3))

If the authority hearing an application is satisfied that the application was malicious or vexatious, it may direct a penalty not exceeding fifty rupees to be paid to the employer or other person responsible for payment of wages, by the person presenting the application. The authority

may further direct that a penalty not exceeding fifty rupees be paid to the State Government by the employer or other person responsible for the payment of wages in case where the application ought not to have been compelled to seek redress under the Act (Sec.15(4)).

Where there is any dispute as to the person or persons being the legal representative or representatives of the employer or of the employed person, the decision of the authority on such dispute shall be final (Sec. 15 (4A))., Any inquiry under this section shall be deemed to be judicial proceeding within the meaning of section 193, 219 and 228 of the Indian Penal Code (Sec.15(413)).

4.25 RECOVERY OF AMOUNT

An amount directed to be paid under Sec. 15 may be recovered.

- if the Authority is a Magistrate, by the Authority as if it were a fine imposed by him as a Magistrate, and
- if the Authority is not a Magistrate, by any Magistrate, to whom the Authority makes application in this behalf, as if it were a fine imposed by such Magistrate. (Section 15 (5))

Single application for same unpaid group (Sec. 16). A single application may be presented under Sec. 15 on behalf of or in respect of any number of employed persons belonging to the same unpaid group. When a single application is made, every person on whose behalf such application is presented may be awarded maximum compensation to the extent specified in Section 15 (3). Employed persons are said to belong to the same unpaid group if:

- they are borne on the same establishment, and
- deductions have been made from their wages in contravention of the Act for the same cause and during the same wage period or periods, or
- if their wages for the same wage period or periods have remained unpaid after the day faxed under Section 5.

The Authority may deal with any number of separate pending applications, presented under Section 15 in respect of persons belonging to the same unpaid group, as single application.

4.26 APPEALS

An appeal may be preferred against the following:

1. An order dismissing either wholly or in part an application made

on the ground that deductions are made contrary to the Act or payment of wages has been delayed.

2. A direction to refund the amount deducted from wages to the employed person.
3. A direction by the Authority to pay penalty to the employer from making, malicious or vexatious application.

The appeal may be preferred before the Court of Small Causes in case of a Presidency town and before the District Court in other cases. The appeal must be preferred within 30 days of the date on which the order or direction was made. The Court may, if it thinks fit, submit any question of law for the decision of the High Court and, if it so does, shall decide the question in conformity with such decision. (Section 17).

Who may make an Appeal (Sec. 17). The appeal may be preferred by:

1. The employer or other person responsible for the payment of wages if the total sum directed to be paid by way of wage and compensation exceeds ₹ 300 or such direction has the effect of imposing on the employer or the other person a financial liability exceeding rupees one thousand, or
2. An employed person,
3. Any legal practitioner,
4. Any official of a registered trade union authorised in writing to act on his behalf,
5. Any inspector under this Act,
6. Any person permitted by the Authority to make an application under Sec. 15(2).
7. If the total amount of wages claimed to have been withheld from him exceeds twenty rupees or from the unpaid group to which he belongs or belonged exceeds fifty rupees.
8. Any person directed to pay a penalty under Sec. 15(4).

Conditions for an Appeal (Sec. 17). No appeal shall be made as aforesaid unless:

(a) The memorandum of appeal in accompanied by a certificate by the prescribed authority to the effect that the appellant has deposited the amount payable under the direction appealed against.

Where an employer prefers an appeal the authority against whose decision the appeal has been preferred may, and if so directed by the Court shall, pending the decision of the appeal, withhold payment of any sum in deposit with it. Any order dismissing either wholly or in

part an application made under Sec. 15 (2) or a direction made under Sec. 15(3) or Sec. 15(4) shall be final save as provided in Sec. 17(1). The appeal under Section 17 must be governed by and disposed of according to the rules of practice and procedure prescribed by the code of Civil Procedure.

Conditional Attachment of Property (Sec. 17-A). Where at any time after an application has been made under Section 15(2) or where at any time after an appeal has been filed under Sec. 17 and where the Authority in the first instance and the court in the second instance, is satisfied that the employer or other person responsible for the payment of wages is likely to evade payment of any amount that may be directed to be paid, then the Authority or the Court may direct the attachment of so much of the property of the employer or other person responsible for the payment of wages as is, in the opinion of the Authority or Court, sufficient to satisfy the amount which may be payable under the direction. Before giving such a direction, the employer or other person must be given an opportunity of being heard except when the Authority or Court is of the opinion that the ends of justice would be defeated by the delay.

The provisions of the code of Civil Procedure, 1908 relating to attachment before judgement shall, so far as may, apply to any order of attachment.

Offences and Penalties (Sec. 20)

1. Whoever being responsible for the payment of wages to an employed person:
   - fails to pay wages in time;
   - makes unauthorised deductions from wages;
   - imposes fines in contravention of Sec. 8;

Shall be punishable with fine which shall not be less than two hundred rupees but which may extend to rupees one thousand.

2. Whoever:

- fails to fix wages periods or fixed wage periods exceeding one month;
- fails to pay wages on a working day;
- fails to pay wages in current coins or currency or both;
- fails to record fines and all realisations in the register;
- fails to apply all such realisations as per the provisions of Section 8(8).

Shall be punishable with fine which may extend to rupees five hundred for each offence.

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3. Whoever being required under this Act to maintain any record or to furnish any information or return:

   - fails to maintain such registers or records; or
   - wilfully refuses or without lawful excuse neglects to furnish such information or return; or
   - wilfully furnishes or causes to be furnished any information or return which he knows to be false; or
   - refuses to answer or wilfully gives a false answer to any question necessary for obtaining any information required to be furnished under this Act;

Shall, for each such offence, be punishable with fine which shall not be less than two hundred rupees but which may extend to one thousand rupees.

4. Whoever:

   - wilfully obstructs an Inspector in the discharge of his duty under this Act: or
   - refuses or wilfully neglects to afford an Inspector any reasonable facility for making any entry, inspection, examination, supervision or inquiry authorised by or under the Act in relation to any railway, factory or industrial or other establishment; or
   - wilfully refuses to produce on the demand of an Inspector any register or other document kept in pursuance of the Act; or
   - prevents or attempts to prevent any person from appearing before at inspector acting in pursuance of his duties under the Act; shall be punishable with fine which shall not be less than two hundred rupees but which may extend to one thousand rupees.

5. If any person who has been convicted of any offence punishable under the Act is again guilty of an offence involving contravention of the same provision, he shall be punishable on a subsequent conviction with imprisonment for a term which shall not be less than one month but which may extend to three months, or with fine which shall not be less than five hundred rupees but which may extend to three thousand rupees, or with both. But no cognizance shall, be taken of an earlier conviction made more than two years before the date of commission of the offence being punished.

6. If any person fails or wilfully neglects to pay the wages of any employed person by the fixed date, he shall without prejudice

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to any other action that may be taken against him, he punishable with an additional fine which may extend to one hundred rupees for each day for which such failure or neglect continues.

Cognizance and Trial of Offences (Sec. 21). No court shall take cognizance of:

1. a complaint against any person for an offence arising out of non-compliance with the provisions of the Act relating to delay in payment of wages and unauthorised deductions from wages, unless an application in respect of the facts constituting the offence has been presented under Section 15 and has been granted wholly or in part and the Authority or the appellate court granting such application has sanctioned the making or the complaint;
2. a contravention of provision dealing with fixation of wage periods or with payment of wages in current coin or currency notes except on a complaint made by or with the sanction of an Inspector under the Act;
3. any offence punishable under Section 20 (3) and 20 (4) except on a complaint made by or with the sanction of an Inspector under the Act.

In imposing any fine for an offence under Sec. 21(1) above the Court shall take into consideration the amount of any compensation already awarded against the accused in any proceedings taken under Section 12. Before sanctioning the making of a complaint against any person for an offence under Sec. 20(1), the Authority or tote appellate court, as the case maybe, shall give such person an opportunity of showing cause against the granting of such sanction. The sanction shall not be granted if such person satisfies the Authority or Court that his default was due to:

- a *bona fide* error or *bona fide* dispute as to the amount payable to the employed person; or
- the occurrence of an emergency, or the existence of exceptional circumstances, —*such* that the person responsible for the payment of the wages was unable, though exercising reasonable diligence, to make prompt payment, or
- the failure of the employed person to apply for or accept payment.

Bar on, Suits (Sec. 22). No Court shall entertain any suit for the recovery of wages or of any deduction from wages in so far as the sum so claimed:

- forms the subject of an application under Section 15 for claims arising out of deductions from wages or delay in payment of wages and penalty for malicious or vexatious claims which has been presented

by the plaintiff and which is pending before the authority appointed, or of an appeal under Section 17 ; or

- has formed the subject of a direction under Section 15 in favour of the plaintiff; or
- has been adjudged, in any procedure under Section 15 not to be onto the plaintiff; or
- could have been recovered by an application under Section 15;

where an application has been presented after a period of twelve months from the date on which the deduction from the wages was made or from the date on which the payment of the wages was due to be made, as the case may be without any sufficient cause. The provisions of the Act and rules made under it do not bar a civil suit for recovery of arrears payable to a workman whose dismissal has been set aside.

Protection (Sec. 22-A). No suit, prosecution or other legal proceeding shall be against the Government or any officer or the Government for anything which is in good faith done or intended to be done under the Act.

Contracting Out (Sec. 23). Any contract or agreement whereby an employed person relinquishes any right conferred by the Act shall be null and void in so far as it purports to deprive him of such right.

Application of Act (Sec. 24). In relation to railways, air transport services, mines and oil fields, the powers conferred upon the State Government by the Act shall be powers of the Central Government.

Display of Notice (See. 25). The person responsible for the payment of wages to persons employed in a factory or an industrial or other establishment-shall cause to be displayed a notice containing such abstracts of the Act and of the rules made thereunder in English and in the language of the majority of the persons employed in the factory or An industrial or other establishment, as may be prescribed.

4.27 PAYMENT OF WAGES IN CASE OF DEATH

In case of death of an employed person or in case of his where about not being known, all amounts payable to him as wages, shall

1. be paid to the persons nominated by him in this behalf in accordance with the rules made under the Act;
2. be deposited with the prescribed authority;
   - where no nomination has been made, or
   - where for any reasons such amounts cannot be paid to the person nominated.

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The prescribed authority shall deal with the amounts deposited in the prescribed manner. Where the amounts payable by an employer as wages are disposed of in the manner referred to above, the employer shall be discharged of his liability to pay those wages. (Section 25-A)

4.28 POWER TO MAKE RULES

The State Government is empowered to make rules to regulate the procedure to be followed by Authorities and Courts. The State Government may by notification in the official Gazette, make rules for the purpose of carrying into effect provisions of the Act.

In making any rule under Sec. 26, the State Government may provide that a contravention of the rule shall be punishable with fire which may extend to two hundred rupees. All rules made under See. 26 shall be subject to the condition of previous publication, and the date to be specified under Sec. 23(3) of the General Clauses Act, 1897 shall not be less than three months from the date on which the draft of the proposed rules was published.

Every rule made by the Central Government under this Act shall be laid as soon as may be after it is made, before each House of the Parliament. If both House agree in making any modification in the rule, the rule shall thereafter have effect only in such modified form. If both Houses agree that the rule should not be made, it shall have no effect. But any such modification or annulment of the rule shall be without prejudice to the validity of anything previously done under that rule. (Section 26)

Obligations of Employers

Under the Act every employer is required:

1. to see that all his workmen are paid their wages regularly and in time as required under the Act (Sec. 3 & 5);
2. to fix wage periods which shall not exceed one month (Sec. 4);
3. to pay wages in current coin or currency notes or both (See. 6);
4. not to make unauthorised deductions (Sec. 7);
5. to impose fines only for permissible acts and omissions and after giving adequate opportunity to show cause against the fines and deductions (Sec. 8);
6. to maintain registers and records giving particulars of persons employed, the work performed by them, the wages paid to them and the deductions made from their wages, fines imposed and realisations made (Sec. 10, 13A);

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7. not to enter into any agreement with an employed person where by the relinquishes any right conferred by the Act (Sec. 23); and
8. to display a notice containing abstracts of the Act and the rules made thereunder in English and 0' the language of the majority of the employed persons (See. 25).

Rights of Employers: Every employer has the right:

- to deduct from the wages of a worker an amount not exceeding his wages for 8 days as may, by any terms be due to the employer in lieu of due notice, if the worker together with 10 or more workers absents himself from duty without notice or without any reasonable cause, or go on strike or resort to stay-in strike (Sec. 9(2));
- appeal to District Court against the directions made by the Authority appointed under the Act for payment of wages and compensation, if the amount of these sums exceeds rupees three hundred (Sec. 17).

Right of Employees: Every workman in entitled:

- to receive his wages in the prescribed wage period in cash or by cheque or by credit to his bank account (Sec. 3);
- to refuse-to agree to any deductions and fines other than those authorised under the Act. (Sec 7, 8);
- approach within six months the prescribed authority to claim unpaid or delayed wages, unauthorised deductions and fines aong with compensation (Sec. 15,16); and
- to appeal against the direction made by the authority if the amount of wages claimed exceeds rupees, one hundred (Sec. 17).

THE WORKMEN'S COMPENSATION ACT, 1923

4.29 GENESIS OF THE ACT

A beginning of social security in India was made with the passing of the Workmen's Compensation Act in 1923. Prior to 1923, it was almost impossible for an injured workman to recover damages or compensation for any injury sustained by him in the 'ordinary course of his employment. Of course, there were rare occasions when the employer was liable under the common law for his own personal negligence. The dependants of a deceased workman could, in rare cases, claim damages under the Fatal Accidents Act, 1855; if the accident was due to a wrongful act,

neglect or fault of the person who caused the death. In 1921, the government formulated some proposals for the grant of compensation and circulated them for opinion. The proposals received general support. As a result, the Workmen's Compensation Act was passed in March 1923 and was put into force on July 1, 1924. Subsequently, there were a number of amendments to the Act. The Act contains 36 Sections and four Schedules.

4.30 OBJECT OF THE ACT

The object of the Act is to impose an obligation upon employers to pay compensation to workers for accidents arising out of and in the course of employment. The scheme of the Act is not to compensate the workman in lieu of wages, but to pay compensation for the injury sustained to him.

4.31 SCOPE AND COVERAGE

The Act extends to the whole of India and applies to any person-who is employed, otherwise than in a clerical capacity, in the railways, factories, mines, plantations, mechanically propelled vehicles, loading and unloading work on a ship, construction, maintenance and repairs of roads, bridges, etc., electricity generation, cinemas, catching or training of wild elephants, circus, and other hazardous occupations and employments specified in Schedule II to the Act. Under sub-section (3) of section 2 of the Act, the state governments are empowered to extend the scope of the Act to any class of persons whose occupations are considered hazardous after giving three months notice in the Official Gazette. The Act, however, does not apply to members serving in the Armed Forces of the Indian Union, and employees covered under the provisions of the Employees State Insurance Act, 1948 as disablement and dependants benefit are available under this Act.

4.32 DEFINITIONS OF WORKER'S COMPENSATION ACT

Workman

In order to be a "workman" within the meaning of section 2(1)(n) of the Workmen's Compensation Act, a person should first be employed; second, his employment should not be of a casual nature; third, he should be employed for the purposes of the employer's trade or business; and, lastly, the capacity in which he works should be one set out in the list in Schedule II of the Act. This definition has been amended very recently.

Dependants

For the purposes of the Act dependants have been grouped into two classes:

- Those who are considered dependants without any proof; and
- Those who must prove that they are dependants.

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The first group includes a widow, a minor legitimate son, an unmarried legitimate daughter or a widowed mother. The following are included in the second group if they were wholly or partially dependant on the earnings of the workers at the time of his or her death; a widower, a parent other than a widowed mother, a minor illegitimate son, an unmarried illegitimate daughter or a daughter legitimate or illegitimate if married and minor, or if widowed, and a married brother or unmarried sister or widowed sister, if a minor, a widowed daughter-in-law, a minor child of a predeceased son, A minor child of a predeceased daughter where no parent of the child is alive, or a paternal grandparent, if no parent of the workman is alive.

4.33 DISTRIBUTION OF COMPENSATION

The compensation shall be paid by the employer to a workman for any personal injury sustained by him in an accident arising out of and in the course of his employment. In Schedule I to the Act, the percentage loss of earning capacity or disablement caused by different types of injuries has been listed. However, the employer will not be liable to pay compensation for any kind of disablement (except death) which does not continue for more than three days, if the injury is caused when the workman was under the influence of drink or drugs or wilfully disobeyed a clear order or violated a rule expressly framed for the purpose of securing his safety or wilfully removed or disregarded a safety device. A workman is also not entitled to compensation if he does not present himself for medical examination when required, or if he fails to take proper medical treatment which aggravates the injury or disease. In case it is not fatal, an employment injury may' cause any injury resulting in permanent total disablement, permanent partial disablement, or temporary disablement (Section 3).

The rate of compensation in case of death is an amount equal to 50 per cent of the monthly wages of the deceased workman multiplied by the relevant factor or an 10 and Social Security amount of As.₹ 50,000, whichever is higher. Where permanent total disablement results from the injury, the compensation will be an amount equal to percent of the monthly wages of the injured workman multiplied by the relevant

factor, or an amount of ₹ 60,000 whichever is higher. Where the monthly wages of a workman exceed two thousand rupees, his monthly wages for the above purposes will be deemed to be two thousand rupees only.

Where permanent partial disablement results from the injury, if specified in Part II of Schedule; I, such percentage of the compensation which would have been payable in the case of permanent total disablement as is specified therein as being the percentage of the loss of earning capacity caused by that injury. The percentage loss of earning capacity depends on the loss of limbs and varies from 1 per cent to 90 per cent. In the case of an injury not specified in Schedule I, such percentage of the compensation is payable in the case of permanent total disablement as is proportionate to the loss of earning capacity (as assessed by the qualified medical practitioner) permanently caused by the injury. Where more injuries than one are caused by the same accident, the amount of compensation payable under this head shall be aggregated but shall not in any case exceed the amount which would have been payable if permanent total disablement had resulted from the injuries.

In case of temporary disablement, a half-monthly payment of the sum equivalent to 25 per cent of monthly wages of the workman has to be paid. Half-monthly payment as compensation will be payable on the 16th day from the date of disablement. In cases where the disablement is for 28 days or more, compensation is payable from the date of disablement. In other cases, it is payable after the expiry of a waiting period of 3 days. Thereafter, the compensation will be payable half-monthly during the period of disablement or during a period of 5 years, whichever is shorter. There is also a provision for commutation of half-monthly payments to a lump sum amount by agreement between the parties or by an application by either party to the Commis sioner for Workmen's Compensation if the payments continue for not less than six months (Section 4 and 7).

If the workman contracts any occupational disease peculiar to that employment, that would be deemed to be an injury by accident arising out of and in-the course of his employment for purposes of this Act. In the case of occupational diseases, the compensation will be payable only if the workman has been in the service of the employer for more than six months. Some of the occupational diseases listed in Schedule III to the Act are anthrax, poisoning by lead, phosphorous or mercury, telegraphist's cramp, silicosis, asbestosis, and bagassosis (Section 3).

4.34 AUTHORITY

It is provided that all cases of fatal accidents should be brought to the notice of the Commissioner for Workmen's Compensation; and if the employer admits the liability, the amount of compensation payable should

be deposited with him. Where the employer disclaims his liability for compensation to the extent claimed, he has to make provisional payment based on the extent of liability which he accepts; and such payment must be deposited with the Commissioner or paid to the workman. In such cases, the Commissioner may, after such enquiry as he thinks fit, inform the depend ants that it is open to them to prefer a claim and may give such other information as he thinks fit. Advances by the employers against compensation are permitted only to the extent of an amount equal to 3 months' wages. He is also empowered to deduct an amount not exceeding ₹ 50 from the amount of compensation in order to indemnify the person who incurred funeral expenses. The employer is required to file annual returns giving details of the compensation in order to indemnify tie person who incurred funeral expenses. The employer is required to file annual returns giving details of the compensation paid, the number of injuries and other particulars (Sections 4A, 8 and 16).

The amount deposited with the Commissioner for Workmen's Compensation is payable to the dependants of the workman. The amount of compensation is to be apportioned among the dependants of the deceased workman or any of them in such proportion as the Commissioner thinks fit (Sections 2 and 8).

If an employer is in default, in paying the compensation within one month from the date it fell due, the Commissioner may direct the recovery of not only the amount of the arrears but also a simple interest at the rate of six per cent per annum on the amount due. If, in the opinion of the Commissioner, there is no justification for the delay, an additional sum, not exceeding 50 per cent of such amount, may be recovered from the employer by way of penalty (Section 4-A).

4.35 CLAIMS AND APPEALS

In case the compensation is not paid by the employer, the workman concerned or his dependants may claim the same by filing an application before the Commissioner for Workmen's Compensation. The claim shall be filed within a period of two years of the occurrence of the accident or death. The application which is filed after the period of limitation can be entertained if sufficient cause exists. An appeal will lie to the High Court against certain orders of the Commissioner if a substantial question of law is involved. An appeal by an employer against an award of compensation is incompetent unless the memorandum of appeal is accompanied by a certificate that the employer has deposited the amount of such compensation. Unless such a certificate accompanies the memorandum of appeal, the appeal cannot be regarded as having been

validly instituted. The period of limitation for an appeal under Section 30 is sixty days (Sections 10 and 30).

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4.36 ADMINISTRATION

The Act is administered by state governments which are required to appoint Commissioners for Workmen's Compensation. The functions of the Commissioner include:

(*i*) Settlement of disputed claims;

(*ii*) Disposal of cases of injuries involving death; and

(*iii*) Revision of periodical payments (Section 20).

The Commissioner may recover as an arrear of land revenue any amount payable by any person under this Act, whether under an agreement for the payment of compensation or otherwise (Section 31): The Act made provision for the framing of the rules by the State and Central Government and also their publication (Section 32-36). 12 and Social Security.

4.37 SCHEDULE IV

Factors for Working out a Lump sum Equivalent of Compensation Amount in Case of Permanent Disablement and Death:

Completede years of age on the last birthday of the workman immediately preceding date on which the compensation fell due	**Factors**
1	2
not more than 16	228.54
17	227.49
18	226.38
19	225.22
20	224.00
21	222.71
22	221.37
23	219.95
24	218.47
25	216.91
26	215.28
27	213.57

28	211.79
29	209.92
30	207.98
31	205.95
32	203.85
33	201.66
34	199.40
35	197.06
36	194.64
37	192.14
38	189.56
39	186.90
40	184.17
41	181.37
42	178.49
43	175.54
44	172.52
45	169.44
46	166.29
47	163.07
48	159.80
49	156.47
50	153.09
51	149.67
52	146.20
53	142.68
54	139.13
55	135.56
56	131.95
57	128.33
58	124.70
59	121.05
60	117.41
61	113.17
62	110.14
63	106.52
64	102.93
65 or more	99.37

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THE EMPLOYEES' STATE INSURANCE ACT, 1948

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4.38 GENESIS OF THE ACT

The Employees' State Insurance Act, 1948, is a pioneering measure in the field of social insurance in our country. The subject of health insurance for industrial workers was first discussed in 1927 by the Indian Legislature, when the applicability of the Conventions adopted by the International Labour Conference was considered by the Government of India. The Royal Commission on Labour, in its report (1931), stressed the need for health insurance for workers in India. One of the earlier decisions of the Labour Ministers' Conferences between 1940 and 1942 was to invite an expert to frame a scheme of health insurance for workers. In pursuance thereof, the responsibility for preparing a detailed scheme of health insurance for industrial workers was entrusted in March 1943 to Prof. B.P. Adarkar who submitted his report in December 1944.

This was considered by the Government of India and State governments as well as other interested parties. The Adarkar Plan and various other suggestions emerged finally in the form of Workmen's State Insurance Bill 1946, which was then referred to a Select Committee in November 12, 1947: The Select Committee extended the coverage to all the employees in factories, and changed its name from Workmen's State Insurance Bill to Employees' State Insurance Bill The Employees' State Insurance Act came into force from 19th April 1948. The scheme framed under the Act aims at providing for certain cash benefits to employees in the event of sickness, maternity, employment injury, and medical facilities in kind, and contains provisions for certain other matters having bearing thereon.

4.39 APPLICABILITY OF THE ACT

Under Section 1(4) of the Act, the implementation of the scheme is territorial. The Act applies in the first instance to all factories using power and employing 20 or more persons on wages. The provisions of the Act have also been extended, or are being gradually extended, under Section 1(5) of the Act to cover

(a) Smaller power-using factories employing 10 to 19 persons;

(b) Non-power using factories employing 20 or more persons;

(c) Shops;

(d) Hotels and restaurants;

(e) Cinemas, including preview theatres;

(f) Newspaper establishments; and

(g) Road motor transport undertakings employing 20 or more persons.

The Act, however, does not apply to a mine or railway running shed, and specified seasonal factories. The State Government may extend the provisions of the Act to cover other establishments or class of establishments, industrial, commercial, agricultural or otherwise, in consultation with the Corporation and with the approval of the Central Government, after giving six months notice of its intention to do so in the Official Gazette.

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4.40 DEFINITIONS

Employee

The term "employee" as defined under Section 2(9) of the Act, refers to any person employed on wages in, or in connection with, the work of a factory or establishment to which this Act applies. It has a wide connotation and includes within its scope clerical, manual, technical and supervisory functions. Persons whose remuneration (excluding the remuneration for over-time work) does not exceed ₹ 6,500 a month are covered under the Act. The Act does not make any distinction between casual and temporary employees or between technical and non-technical employees. There is also no distinction between those employed on time-rate and piece-rate basis. Employees employed directly by the principal employer and those employed by or through a contractor on the premises of the factory and those employed outside the factory premises under the supervision of the principal employer are all included under the Act: It also covers administrative staff and persons engaged in the purchase of raw materials or the distribution or sale of products and similar or related functions. However, the definition of "employee" does not include any member of the Indian naval, military or air force.

Wages

"Wages" means all remuneration paid in cash if the terms of the contract are fulfilled, and includes any payment in any period of authorised leave, lockout or strike which is not illegal or lay-off, and includes other remuneration paid at intervals not exceeding two months but does not include

(*i*) Contribution paid to the provident fund or pension fund;

(*ii*) Travelling allowance or value of travelling concession;

(*iii*) Sum paid to defray special expenses; and

(*iv*) Gratuity payable on discharge.

4.41 CONTRIBUTIONS

The main sources of finance are the contributions from employers and employees and one-eighth share of expenses by State Governments towards the cost of medical care. Employees' contribution has to be calculated individually for each employee at 1.75 per cent of the wages paid/payable for every wage period. The employers' contribution, however, may be calculated at the rate of 4.75 per cent of the total wages paid to all the employees covered under the ESI Scheme in each wage period, rounded to the next higher multiple of five paise. The total value of the combined employers' and the employees' share has to be deposited in the State Bank of India or in any other authorised bank or branch through a challan in quadruplicate as per the Performa on or before the 21st of the month following the calendar month in which the wages fall due. A employer who fails to pay his contribution within the periods specified shall be, liable to pay interest and damages for late payment under Section 85(B) of the Act: The Act has laid down the purposes for which the fund may be expended. The accounts of the Corporation shall be audited by auditors. appointed by the Central Government:-

Employees whose average daily wage is below, ₹ 15 are exempted from payment of their contribution; only the employer's contribution will be payable at 4.75 per cent in respect of such employees.

"Contribution period" and "benefit period" is fixed for the purpose of paying contributions and deriving benefits under the Act. In respect of the contribution period from 1st April to 30th September, the corresponding benefit period shall be from 1st January of the year following, to 30th June, and in respect of the contribution period from 1st October to 31st March of the year following, the corresponding benefit period shall be from 1st July to 31st December of the year following. In the case of a newly employed person, the first contribution period shall commence from the date of his employment, and the corresponding first benefit period shall commence on the expiry of 9 months from the said date (Rule 2 and Regulation 4). The daily rate at which sickness benefit is payable to an insured employee during the period of his sickness is called "standard benefit rate".

4.42 REGISTRATION

The registration of a factory/establishment with the Employees' State Insurance Corporation is a statutory responsibility of the employer under Section 2-A of the Act, read with Regulation10-B. The owner of a factory/ establishment to which the Act applies for the first time is liable to furnish to the appropriate regional office, within 15 days after the Act

becomes applicable, a declaration of registration in Form 01. On receipt of the 01 Form the regional office will examine the coverage; and after it is satisfied that the Act applies to the factory/establishment, will allot a code number to the employer.

The forms for the registration of employees are the declaration form and return of declaration forms (covering letter). The principal employer should get the declaration form filled in by every employee covered under the scheme.

The statutory registers to be maintained up to date are:

(a) Register of Employees;

(b) Accident Book in which every accident to employees during the course of employment is recorded; and

(c) Inspection Book (to be produced before an Inspector or any other authorised officer).

As and when required, certain other forms, such as ESIC 32,.ESIC 37, ESIC 53, ESIC 71, ESIC 72, ESIC 86, ESIC 105, shall be filled up.

4.43 BENEFITS

All the benefits under the scheme are paid in cash except medical benefit, which is given in kind. The benefits are:

(a) **Sickness and Extended Sickness Benefit:** For sickness during any period, an insured person is entitled to receive sickness cash benefits at the standard benefit rate for a period of 91 days in any two consecutive benefit periods. The eligibility condition for sickness benefit is that the contribution of an insured person should have been paid/or payable for not less than half the number of days of the corresponding contribution period. An insured person suffering from, any special, long-term ailment - for example, tuberculosis, leprosy, mental disease is eligible for extended sickness benefit at a rate which is 40 % higher than the standard, benefit rate, rounded to the next higher multiple of 5 paise, for a period of 124/309 days. The Director General may enhance the duration of extended sickness benefit beyond the existing limit of 400 days to a maximum, period of 2 years in deserving cases duly certified by a medical board. The facility of extension would be available up to the date on which the insured person attains the age of 60 years. The rate of this benefit is 40 per cent more than the standard benefit rates for 7 days for vasectomy and 14 days for tubectomy. This is paid in addition to the usual sickness benefits.

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(b) **Maternity Benefit:** An insured woman is entitled to maternity benefit at double the standard benefit rate. This is practically equal to full wages for a period of 12 weeks, of which not more than 6 weeks shall precede the expected date of confinement. Additional maternity benefit is given in case of miscarriage. In case of sickness arising out of pregnancy, confinement, premature birth of a child or miscarriage, an additional benefit is given for a period not exceeding one month. The eligibility condition for maternity benefit is 80 days in one or two preceding contribution periods of one year.

(c) **Disablement Benefit:** If a member suffers an injury in the course of his employment, he will receive free medical treatment and temporary disablement benefit in cash, which is about 70 per cent of the wages, as long as the temporary disablement lasts, provided that the temporary disablement has lasted for not less than 3 days, excluding the day of the accident. In case of permanent total disablement, the insured person will be given a life pension at full rate *i.e.*, about 70 per cent of his wages, while in case of partial permanent disablement, a portion of it will be granted as life pension. The benefit is paid for Sundays as well. At the option of the beneficiary, the permanent disablement pension may be commuted to a lump sum payment, if the rate of benefit is less than one rupee and fifty paise per day.

(d) **Dependants' Benefit:** The dependants' benefit consists of timely help to the eligible dependants of an insured person who dies as a result of an accident or an occupational disease arising out of and the course of employment. Pension at the rate of 40 per cent more than the standard benefit rate (70 per cent of wages) will be paid periodically to the widow and children. It will be available to the widow as long as she lives or until. she marries; to sons' and unmarried daughters up to the age of 18 without any proof of education; and to infirm or wholly dependant off-spring as long as the infirmity lasts. Where neither a widow nor a child is left, the dependants' benefit is payable to a dependant parent or grandparent for life, but equivalent to 3/1Ms of the full rate; and if there are two or more parents or grandparents, the amount payable to them shall be equally divided between them.

(e) **Funeral Benefit:** This benefit was introduced in 1968. Accordingly an amount not exceeding rupees one thousand five hundred is payable as funeral benefit to the eldest surviving member of the family of the deceased insured person. The time limit for claiming the benefit is three months from the death of the insured person.

(f) **Medical Benefit:** The kingpin of the scheme is medical benefit,

which consists of free medical attendance and treatment of insured persons and their families. This benefit has been divided into three parts

(i) **Restricted Medical Care:** It consists of out-patient medical care at dispensaries or panel clinics.

(ii) **Expanded Medical Care:** *This consists of consultation* with specialists and supply of such medicines and drugs as may be prescribed by them.

(iii) **Full Medical Care:** It consists of hospitalisation facilities, services of specialists and such drugs and diet as are required for in-patients.

An insured person and members of his family are entitled to medical care of all the above three varieties.

4.44 RESTRICTIONS

When a person is entitled to any of the benefits provided under this Act, he shall not be entitled to receive any similar benefit under any other enactment. An insured person will not be entitled to receive for the same period.

- Both sickness benefit and maternity benefit; or
- Both sickness benefit and disablement benefit for temporary disablement; or
- Both maternity benefit and disablement benefit for temporary disablement.

Where a person is entitled to more than one of the benefits, he has an option to select' any one of them.

4.45 PENALTIES AND DAMAGES

The Act provides for penalties and damages for various offences. It also provides that if any person commits any offence after having been convicted by the court, he will be punishable, for every such subsequent offence, with imprisonment for a term which may extend up to ₹ 2,000 or both. If the subsequent offence is for failure to pay any contribution, then for every such subsequent offence a person is liable to punishment for a term of imprisonment which may extend up to one year and which shall not be less than 3 months; and he will also be liable to pay a fine up to ₹ 4,000:

Any contribution due under the Act and not paid can be recovered through the District Collector under Section 45-B of the Act as arrears

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of land revenue. The employer can raise any dispute for adjudication in the Employees' Insurance Court of the area, set up under Section 74 of the Act.

Under Regulation 31-A, the employer is liable to pay interest at the rate of 6 per cent per annum for each day of default or delay in the payment of his contribution. In addition, under Section 85-B of the Act, the Corporation is empowered to recover damages from the employer who fails to pay the contribution or delays payment. The amount of damages, however, cannot exceed the amount of contribution. The damages can also be recovered as arrears of land revenue.

THE PAYMENT OF GRATUITY ACT, 1972

4.46 GENESIS OF THE ACT

Gratuity as an additional retirement benefit has been secured by labour in numerous instances, either by agreement or by awards. It was conceded as a provision for old age and a reward for good, efficient and faithful service for a considerable period. But in the early stages, gratuity was treated as a payment gratuitously made by an employer at his will and pleasure. In the course of time, gratuity came to be paid as a result of bilateral agreements or industrial adjudication. Even though the payment of gratuity was voluntary in character, it had led to several industrial disputes. The Supreme Court had laid down certain broad principles to serve as guidelines for the framing of the gratuity scheme. They were

1. The general financial stability of the concern;
2. Its profit-earning capacity;
3. Profits earned in the past;
4. Reserves and the possibility of replenishing the reserves; and
5. Return on capital, regard being had to the risk involved.

The first central legislation to regulate the payment of gratuity was the Working Journalists (Conditions of Service) and Miscellaneous Provisions Act, 1955. The Government of Kerala enacted legislation in 1971, for payment of gratuity to workers employed in factories, plantations, shops and establishments. In 1971, the West Bengal Government promulgated an ordinance which was subsequently replaced by the West Bengal Employees' Payment of Compulsory Gratuity Act, 1971. After the enactment of these two Acts, some other state governments also voiced their intention of enacting similar measures in their respective states. It became necessary, therefore, to have a Central law on the subject so as–

1. To ensure a uniform pattern of payment of gratuity to the employees throughout the country, and

2. To avoid different treatment to the employees of establishment having branches in more than one state, when, under the conditions of their service, the employees were liable to transfer from one state to another.

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Hence, the Government of India enacted a legislation on gratuity. The Act came into force from September 16, 1972. The Payment of Gratuity Central Rules also came into force from September 16, 1972.

4.47 OBJECT OF THE ACT

The Act provides for a scheme of compulsory payment of gratuity to employees engaged in factories, mines, oilfields, plantations, ports, railway companies, motor transport undertakings, shops or other establishments and for matters connected therewith or incidental thereto.

4.48 DEFINITIONS

Completed Year of Service

The term 'completed year of service' means continuous service for one year. An employee shall be said to be in continuous service for a period if he has, for that period, been in uninterrupted service, including service which may be interrupted on account of sickness, accident, leave, absence from duty without leave (not being absence in respect of which an order imposing a punishment or penalty or treating the absence as break in service has been passed in accordance with the standing orders, rules or regulation governing the employees of the establishment), lay-off, strike or a lockout or cessation of work not due to any fault of the employees, whether such uninterrupted or interrupted service was rendered before or after the commencement of this Act.

1. Where an employee (not being an employee employed in a seasonal establishment) is not in continuous service within the meaning of the above clause for any period of one year or six months, he shall be deemed to be in continuous service under the employer if he has actually worked for 190 days during the preceding 12 months in an establishment which works less than 6 days a week and 240 days in any other case;

2. Further, for determining the continuous period of six months, an employee should have completed 95 days in an establishment which works for not less than 6 days in a week and 120 days in any other case.

Employee

An employee is a person (other than apprentice) employed on wages (no wage ceiling) in any establishment, factory, mine, oilfield, plantation, railway company or shop, to do any: skilled, semi-skilled or unskilled, manual, supervisory, technical or clerical work, where the terms of such employment are express or implied, and includes any such person, who is employed in a managerial or administrative capacity, but does not include any person who holds a civil post under the Central Government or a State Government, or who is subject to the Air Force Act, 1950, the Army Act, 1950, or the Navy Act, 1957.

Wages

The term 'wages' under the Act means all emoluments which are earned by an employee while on duty or on leave in accordance with the terms and conditions of his employment and which are paid or are payable to him in cash and includes dearness allowance, overtime wages and any other allowance.

Retirement

The term- "retirement" has been defined under the Act as the termination of the service of an employee otherwise than on superannuation. Superannuation means the attainment of such age by the employee as is fixed in the contract or conditions of service as the age on the attainment of which he has to leave the employment where there is no such provision, then attainment of the age of 58 years by the employee.

4.49 PAYMENT OF GRATUITY

Section 3 authorises the appropriate- government to appoint any officer as a controlling authority for the administration of the Act. In Maharashtra, the labour courts in different localities are notified as controlling authorities and the President, Industrial Court; is an appellate authority under the Act. 'Gratuity is payable to an employee on the termination of his employment after he has rendered continuous service for not less than 5 years - on his superannuation; or on' his retirement or resignation; or on his death or disablement due to accident or disease. However, the completion of 5 years of continuous service for earning gratuity is not necessary if the termination of the employment of any employee is due to death or disablement. In case of death of the employee gratuity is payable to his nominee or to the guardian of such nominee.

For every completed year of service or apart, thereof its excess of six months, the employer has to pay gratuity to an employee at the rate of

15 days wages based on the rate of wages last drawn by the ed employee. In the case of Piece-rated employee, daily wages are computed on the average of the total wages received by him for a period of 3 months immediately preceding the termination of his employment. For this purpose, the wages paid for any overtime work will not be taken into account. In the case of an employee employed in a seasonal establishment, and who is not so employed throughout the year, the employer shall pay gratuity at the rate of 7 days wages for each season. The amount of gratuity payable to an employee is not to exceed rupees three lakhs and fifty thousand. The right of employees to receive better terms of gratuity under any award or agreement or contract with the employer is not taken away by this Act.

NOTES

4.50 FORFEITURE

If the services of an employee have been terminated for any act of wilful omission or negligence causing any damage or loss to, or destruction of, property belonging to the employer, his gratuity can be forfeited to the extent of the damage or loss so caused to the employer. The gratuity payable to an employee can be wholly forfeited, if the services of such employee have been terminated for his riotous or disorderly conduct or any other act of violence or an offence involving moral turpitude committed by him in the course of his employment.

4.51 EXEMPTION

The Act provides for the grant of exemption from the operation of the Act to any person or class of persons if they are in receipt of gratuity or pensionary benefits not less favourable than the benefits conferred under the Act.

4.52 NOMINATION

An employee who has completed one year of service has to name his/her nominee in the prescribed form. An employee in his nomination can distribute the amount of gratuity amongst more than one nominee. If an employee has a family at the time of making the nomination, it has to be made in favour of one or more members of the family. If nomination is made in favour of a person who is not a member of his family, the same is void. However, if the employee has no family at the time of making a nomination, he can make the nomination in favour of any person. But is such employee acquires a family subsequently, then

such nomination becomes invalid forthwith, and thereafter the employee has to make a fresh nomination in favour of one or more members of his family: Nomination once made can be modified after giving due notice to the employer, If a nominee predeceases the employee, a fresh nomination is required to be made:

A person who is entitled to gratuity has to apply himself/herself or, through an authorised person to the employer for gratuity within the prescribed time. Even if the application is made after the prescribed time, the employer has to consider the same. Similarly, the employer has to give notice to the person entitled to gratuity and to the controlling authority immediately after it became payable, specifying the amount of gratuity, and thereafter make arrangements for its payment.

4.53 SETTLEMENT OF CLAIMS

The employee and the employer or any other person raising the dispute regarding the amount of gratuity may make an application to the controlling authority to decide the dispute. No appeal by and employer shall be admitted unless the employer produces a certificate of the controlling authority to the effect that he has deposited with the controlling authority an amount equal to the amount of gratuity required to be deposited or deposits with the appellate authority such amount Section 8 stipulates that an aggrieved employee can file an application to the controlling authority for recovery of the amount of gratuity. The controlling authority will issue a certificate to the collector for recovery of that amount. The collector shall recover the amount, together, with compound interest, at the rate of nine per cent per annum from the date of expiry of the prescribed time as arrears of land revenue, and pay the same to the person entitled to it.

4.54 OFFENCES AND PENALTIES

Section 9 declares certain acts as offences and prescribes penalties for them. Whoever, for the purpose of avoiding any payment to be made under this Act, makes or causes to be made any false statement or false representation, is punishable with imprisonment up to 6 months and/or fine upto ₹ 1,000.

No court shall take cognizance of any offence punishable under this Act unless a complaint is made by or under the authority of the appropriate government.

THE EMPLOYEES PROVIDENT FUNDS AND MISCELLANEOUS

NOTES

4.55 GENESIS OF THE ACT

Legislation for compulsory institution of contributory provident fund in industrial undertakings was discussed several times at tripartite meetings in which representatives of the Central and State governments and of employers and workers took part. A large measure of agreement was reached on the need for such legislation. A non-official Bill on this subject was introduced in the Lok Sabha in 1948 to provide for the establishment and grant of provident fund to certain classes of workers by their employers. The Bill was withdrawn only on an assurance by the government that it would soon consider the introduction of a comprehensive bill. There was also a persistent dema that the Central Government extend the benefits of Coal Mines Provident Fund Scheme to workers employed in other industries. The view that the proposed legislation should be undertaken was largely endorsed by the Conference of Provincial Labour Ministers' held in January 1951. On 15th November 1951, the Government of India promulgated the Employees' Provident Funds Ordinance which came into force on that date. It was subsequently replaced by the Employees' Provident Funds Act passed on 4th March 1952.

4.56 OBJECT OF THE ACT

The Act was passed with a view to making some provision for the future of the industrial worker after his retirement or for his dependants in case of his early death and inculcating the habit of saving among the workers. The object of the Act is to provide substantial security and timely monetary assistance to industrial employees and their families when they are in distress and/or unable to meet family and social obligations and to protect them in old age, disablement, early death of the bread-winner and in some other contingencies.

The Act provides for a scheme for the institution of provident fund for specified classes of employees. Accordingly, the Employees' Provident Fund-Scheme was framed under Section 5 of the Act, which came into force on 1st November 1952. On a review of the working of the scheme over the years, it was found that provident fund was no doubt an effective old age and survivorship benefit; but in the event of the premature death of an employee, the accumulations in the fund were not adequate enough to render long-term financial protection to his

family. This lacuna led to the introduction of the Employees' Family Pension Scheme with effect from 1st March 1971. The Act was further amended in 1976 with a view to introducing Employees' Deposit Linked Insurance Scheme, a measure to provide an insurance cover to the members of the provident fund in covered establishments without the payment of any premium by these members. Thus three schemes have been framed under the Employees' Provident Funds and Miscellaneous Provisions Act.

4.57 APPLICABILITY OF THE ACT

The Employees' Provident Funds and Miscellaneous Provisions Act, 1952 is applicable from the date of functioning or date of set-up of establishments provided the factory/establishment employed twenty or more persons. The Act, however, does not apply-to co-operative societies employing less than 50 persons and working without the aid of power. The Central Government is empowered to apply the provisions of this Act to any establishments employing less than 20 persons after giving not less than two months' notice of its intention to do so by a notification in the Official Gazette. Once the Act is applied, it does not cease to be applicable even if the number of employees falls below 20. An establishment/factory, which is not otherwise coverable under the Act, can be covered voluntarily with the mutual consent of the Act.

4.58 DEFINITIONS

Employee

"Employee" as defined in Section 2(f) of the Act means any person who is employed for wages in any kind of work manual or otherwise, in or in connection with the work of an establishment and who gets wages directly or indirectly from the employer and includes any person employed by or through a contractor in or in connection with the work of the establishment.

Employer

In relation to a factory establishment, as per Section 2(e) of the Act the employer means the owner or occupier including the agent of such owner or occupier, the legal representative of a deceased owner or occupier and where a person has been named as a manager' of the factory and in relation to other establishment, the person who has the ultimate control over the affairs of the establishment.

Membership

Employees drawing a pay not exceeding ₹ 5,000 per month are eligible for membership of the fund. Every employee employed in or in connection with the work of a factory or establishment shall be entitled and required to become a member of the fund from the date of joining the factory or establishment.

4.59 THE EMPLOYEES' PROVIDENT FUND SCHEME, 1952

Contribution

The statutory rate of contribution to the provident fund by the employees and the employers, as prescribed in the Act, is 10% of the pay of the employees. The term "wages" includes basic wage, dearness allowance, including cash value of food concession and retaining allowance, if any. The Act, however, provides that the Central Government may, after making such enquiries as it deems fit, enhance the statutory rate of contribution to 12% of wages in any industry or class of establishments.

The contributions received by the Provident Fund Organisation from unexempted establishments as well as by the Board of Trustees from exempted establishments shall be invested, after making payments on account of advances and final withdrawals, according to the pattern laid down by the Government of India from time to time. The exempted establishments are required to follow the same pattern of investments as is prescribed for the unexempted establishments. The provident fund accumulations are invested in government securities, negotiable securities or bonds, 7-year national saving certificates or post office time deposits schemes, if any.

EPF Interest Rate

Under Para 60(1) of the Employees' Provident Fund Scheme, the Central Government, on the recommendation of the Central Board of Trustees, declares the rate of interest to be credited annually to the accounts of provident fund subscribers.

Withdrawals

Under the scheme, a member may withdraw the full amount standing to his credit in the fund in the event of

(*i*) Retirement from service after attaining the age of 55;

(*ii*) Retirement on account of permanent and total incapacity;

(iii) Migration from India for permanent settlement abroad; and

(iv) Termination of service in the course of mass retrenchment (involving 3 or more persons). The membership for this purpose is reckoned from the time of joining the covered establishment till the date of the settlement of the claim.

A member can withdraw up to 90% of the amount of provident fund at credit after attaining the age of 54 years or within one year before actual retirement on superannuation whichever is later. The Scheme provides for non-refundable partial withdrawals/ advances to meet certain contingencies

(1) Financing of life insurance policies;

(2) House-building;

(3) Purchasing shares of consumers co-operative credit housing societies;

(4) During temporary closure of establishments;

(5) Illness of member, family members;

(6) Member's own marriage or for the marriage of his/her sister, brother or daughter/son and post-matriculation education of children;

(7) Damages to movable and immovable property of members due to a calamity of exceptional nature;

(8) Unemployment relief to individual retrenchee members;

(9) Cut in supply of electricity to the factory/establishment; and

(10) Grant of advance to members who are physically handicapped for the purchase of equipment.

Nomination

If there is no nominee, the amount shall be paid to the members of the family in-equal shares except:

- Sons who have attained majority;
- Sons of a deceased son who have attained majority;
- Married daughters whose husbands are alive;
- Married daughters of a deceased son whose husbands are alive.

The nomination form shall be filled in duplicate and one copy duly accepted by the provident fund office will be kept by members. Incase of change, a separate form for a fresh nomination should be filled in duplicate.

Transfer

When a member leaves service in one establishment and obtains re-employment in another establishment, whether exempted or unexempted, in the same region or in another region, he is required to apply for the

transfer of his provident fund account to the Regional Provident Fund Commissioner in the prescribed form. The actual transfer of the provident fund accumulations with interest thereon takes place in cases of:

(*i*) Re-employment in an establishment, whether exempted or unexempted, in another region/sub-region;

(*ii*) Re-employment in an exempted establishment in the same region/ sub-region;

(*iii*) Leaving service in an exempted establishment and re-employment in an unexempted establishment;

(*iv*) Re-employment in an establishment not covered under the Act.

A member of the fund is entitled to get full refund of both the shares of contributions made by him as well as by his employer with interest thereon immediately after leaving the service.

Exemption

An establishment/factory may be granted exemption under Section 17 if, (*i*) in the opinion of the appropriate government, the rules of its provident fund with respect to the rates of contributions are not less favourable than those specified in Section 6 of the Act, and (*ii*) if the employees are also in enjoyment of other provident fund benefits which on the whole are not less favourable than the benefits provided under the Act or any scheme in relation to the employees in any other establishment of a similar character. While recommending to the appropriate government grant of exemption under this section, the Employees' Provident Fund Organisation usually takes into consideration the rate of contribution, the eligibility clause, the forfeiture clause and the rate of interest. Also, the totality of the benefits provided under the rules of the exempted funds is taken into consideration.

The Central Government is empowered to grant exemption to any class of and soda] security establishments from the operation of the Act for a specified period, on financial or another grounds under section 16(2). The exemption is granted by issue of notification in the Official Gazette and subject to such terms and conditions as may be specified in the notification. The exemptions does not amount to total exclusion from the provisions of the Act. The exempted establishments are required to constitute a Board of Trustees according to the rules governing the exemptions to administer the fund, subject to overall control of the Regional Provident Fund Commissioner. The exempted establishments are also required to maintain proper accounts, submit prescribed returns, invest provident fund accumulations in the manner prescribed by the central Government from time to time, and to pay inspection charges. Exemption is liable to be cancelled for breach of any of these conditions.

SUMMARY

- Industrial Revolution is a epoch-making event, which completely changes the lifestyles of society from agricultural and pastoral to industrial and materialistic one.
- The origin of labour legislation is the history of continuous and relentless struggle for emancipation of working class from cloches of aggressive capitalism.
- The Industrial Disputes Act, 1947, extends to the whole of India, and is applicable to all industrial establishments employing one or more workmen. It covers all employees both technical and non-technical, and also supervisors drawing salaries and wages upto ₹ 1600 per month.
- The term "Industry" includes not only manufacturing and commercial establishments but also professionals like that of the lawyers, medical practitioners, accountants, architects, etc., clubs, educational institutions like universities, cooperatives, research institutes, charitable projects and other kindred adventures.
- Conciliation in industrial disputes is a process by which representatives of management and employees and their unions are brought together before a third person or a body of persons with a view to induce or persuade them to arrive at some agreement to their satisfaction and in the larger interest of industry and community as a whole.
- The Industrial Disputes Act provides the machinery for adjudication, namely, Labour Courts, Industrial Tribunals and National Tribunals. The procedures and powers of these three bodies are similar as well as provisions regarding commencement of award and period of operation of awards.
- The object of the Factories Act, 1948 is to protect human beings from being subject to unduly long hours of bodily strain or manual labour. It also seeks to provide that employees should work in healthy and sanitary conditions.
- The factory is to be got approved and registered after obtaining a licence by the occupier in accordance with the rules framed by the State Government in this behalf.
- Section 11 of the Factories Act, 1948 provides for general cleanliness of the factory. It lays down that dust, fumes and refuse should be removed daily; floors, stair-cases and passages should be cleaned

regularly by sweeping and other effective means while washing of interior walls and roofs should take place at least once in 14 months.

NOTES

- In every factory adequate and suitable separate facilities for washing conveniently situated should be provided and maintained for the use of both male and female workers.
- "Wages" means all remuneration (whether by way of salary, allowances, otherwise) expressed in terms of money or capable of being expressed which would, if the terms of employment, expressed or implied are fulfilled, be payable to person employed in respect of his employment or of work done in such employment.
- The State Government is empowered to make rules to regulate the procedure to be followed by Authorities and Courts. The State Government may by notification in the official Gazette, make rules for the purpose of carrying into effect provisions of the Act.
- The object of the Act is to impose an obligation upon employers to pay compensation to workers for accidents arising out of and in the course of employment.
- The compensation shall be paid by the employer to a workman for any personal injury sustained by him in an accident arising out of and in the course of his employment.
- The Employees' State Insurance Act, 1948, is a pioneering measure in the field of social insurance in our country. The subject of health insurance for industrial workers was first discussed in 1927 by the Indian Legislature.
- The registration of a factory/establishment with the Employees' State Insurance Corporation is a statutory responsibility of the employer under Section 2-A of the Act, read with Regulation10-B.
- Gratuity as an additional retirement benefit has been secured by labour in numerous instances, either by agreement or by awards. It was conceded as a provision for old age and a reward for good, efficient and faithful service for a considerable period.
- The Act was passed with a view to making some provision for the future of the industrial worker after his retirement or for his dependants in case of his early death and inculcating the habit of saving among the workers.

NOTES

REVIEW QUESTIONS

1. Discuss the concept of labour laws.
2. Write short notes on the labour legislation.
3. Discuss the industrial disputes act in detail.
4. Discuss the various provisions governing working hours of adults.
5. What are the provisions for giant of annual leave with pay?
6. Discuss the provisions for overtime wages.
7. Explain briefly the objective, of the payment of Wages Act, 1936.
8. State the procedure laid down under the Act for imposing fines. Does it not discourage employers from using it as a punishment for indiscipline.
9. What is meant by wages under the Payment of Wages Act? What is excluded from the expression "Wages"?
10. What are authorised deductions? Mention some important deductions permissible and not permitted under this Act.
11. Explain the rules for the payment of wages regarding the responsibility for payment. Does this Act create the legal right of workers to receive their earned wages.
12. What is the object of the Workmen's Compensation Act, 1923?
13. What are the various benefits payable under the workmen's Compentation Act 1923?
14. What is the object of the Employees' state Insurance Act, 1948?
15. What is the procedure for registration of a factory or an establishment under the Act?
16. Discuss the various benefits payable under the Employees' state Insurance Act.
17. What is the object of the Payment of Gratuity Act, 1972?
18. What are the benefits payable under the payment of gratuity Act 10972?
19. What is the object of the Employees' provident Funds and Miscellaneous provisions Act, 1952?