INDUSTRIAL RELATIONS MANAGEMENT

DIRECTORATE OF DISTANCE EDUCATION

MBA

Paper 3A1

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INTRODUCTION

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Developments are taking place in the area of labour welfare and industrial relations, although at a very slow pace. Organizations in the country are becoming more and more sensitive to the needs of workers, and those at the management level are taking a scientific approach in dealing with issues concerning their workers or employees. A lot of efforts are being made these days to understand the psychology of workers and promote worker's participation in management as well as to ensure amicable settlement of grievances. What is lacking is the fast pace of positive reforms or the speed required in implementing welfare activities and policies that could bring about a radical improvement in the area of labour welfare and industrial relations in the country.

Labour law seeks to regulate the relations between an employer or a class of employers and their workmen. The reach of this law is so wide that it touches the lives of millions of men and women who constitute the labour force. However, it is unfortunate that barring a few statutes such as the Minimum Wages Act, 1948, most labour legislations are not applicable to unorganized labour which constitutes about 92 per cent of the entire labour force. Further, most labour legislations are more than five decades old. It is felt that our labour laws are overprotective, overreactive, fragmented, outdated and irrelevant and have created hurdles in achieving the target of ensuring fair labour practices. The emergence of globalization, liberalization and privatization has brought new challenges. There is, therefore, mounting pressure to reform labour laws. In view of this, the Second National Commission on Labour was set up by the Government of India. It has made some headway in removing the irritants and stumbling blocks. However, it is unfortunate that no positive steps have been taken to give legislative shape to the recommendations of the Commission.

A survey of cases decided by the Supreme Court and high courts reveals a marked shift in the approach of the Indian judiciary in the area of discipline and disciplinary procedure, voluntary and compulsory retirement, service contract and standing orders, compliance of natural justice, *bandhs* and demonstrations, retrenchment, and among others on managements' prerogative during the pendency of proceedings before the labour tribunal. New norms have also evolved to determine whether a person is a workman or not, and the courts have even exploded the judicial myth on the interpretation of the word 'industry'. The recent trend in the decisions of the Supreme Court is to strike a balance between the earlier approach in the realm of industrial relations wherein only the interests of the workmen were focused on, and the current emphasis on ensuring fast industrial growth in the country. In several decisions, the apex court noticed how discipline in the workplace/industrial undertaking has received a setback. In view of the change in the economic policy of the country, the court felt that it may not now be proper to allow employees to break discipline with impunity. Our country is governed by the rule of law. All action, therefore, must be taken in accordance with the law.

NOTES

This book, *Industrial Relations Management,* follows the self-instruction mode wherein each Unit begins with an Introduction to the topic of the unit followed by an outline of the Unit Objectives. The detailed content is then presented in a simple and structured format interspersed with Check Your Progress questions to test the student's understanding. A detailed Summary and a set of Questions and Exercises are also provided at the end of each unit for effective recapitulation.

UNIT 1 CONCEPTS AND CONTOURS OF INDUSTRIAL RELATIONS

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1.0 INTRODUCTION

In this unit, you will learn about the concepts and contours of industrial relations. Industrial relations deal with the relationship between labour and management and their organization. The concept of 'industrial relations' is very broad and includes in its fold all the relationships in modern industrial society which arise out of employee-employer relationships and also the role of the state in these relations. Explaining the concept of industrial relations, R.A. Lester observed: 'It involves attempt to workable solutions between conflicting objectives and values—between incentive and economic security, between discipline and industrial democracy, between authority and freedom and between bargaining and cooperation.' According to Professor Dunlop, an industrial relations system is regarded as comprising certain groups, certain contexts and a body of rules created to govern the interaction of the groups at the workplace.

The role of the employer in industrial relations has changed significantly with the need for greater employee empowerment. Nurturing employee skills and providing them greater opportunities in the organization has become necessary for the employer. The role of the government is still quite relevant in the unorganized sector. To maintain its the relevance the whole business environment, the current labour laws need to be reviewed in consultation with industry. As the country moves towards globalizing its business environment, the government should realign the laws concerning industrial

relations to become more open and change-friendly. There is a need for the trade unions to act as facilitators, instead of blocking work. The trade unions should focus on the business atmosphere and find out ways of improving employee environment. They need to work collectively with other concerned stakeholders and develop policies which improve the working conditions for employees.

1.1 UNIT OBJECTIVES

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

- Discuss the meaning, scope and objectives of industrial relations
- Identify the problems of industrial relations
- Describe the approaches to industrial relations
- Assess the significance of industrial relations
- Explain the principles of good industrial relations
- Understand the role of trade unions, employers and state in industrial relations
- Discuss the constitutional and legal dimensions of industrial relations

1.2 INDUSTRIAL RELATIONS: AN OVERVIEW

Industrial relations is a dynamic socio-economic process. It is a 'designation of a whole field of relationships that exist because of the necessary collaboration of men and women in the employment processes of industry'.[1] It is not the cause but an effect of social, political and economic forces.[2]

It has two faces like a coin—cooperation and conflict. The relationship, to use Hegal's expression, undergoes change from thesis to antithesis and then to synthesis. Thus, the relationship starting with cooperation soon changes into conflict and after its resolution, again changes into cooperation. This changing process becomes a continuous feature in an industrial relation.

1.2.1 Meaning, Concept and Scope of Industrial Relations

Industrial relations deal with the relationship between labour and management, and their organization. The concept of 'industrial relations' is very broad and includes in its fold all the relationships in modern industrial society which arise out of employee-employer exchanges and also the role of the state in these relations. Explaining the concept of industrial relations, R A Lester observed:

It involves attempt to workable solutions between conflicting objectives and values—between incentive and economic security, between discipline and industrial democracy, between authority and freedom and between bargaining and cooperation.

According to the Encyclopedia Britannica, 'the concept of industrial relations has been extended to denote the relations of the state with employers, workers and their organizations'.

The International Labour Organization (ILO), while dealing with **industrial relations**, states that they deal with either the relationship between the State and

Industrial relations: The relationship between the State and employers and workers' organization or between the occupational organizations themselves

employers and workers' organization or between the occupational organizations themselves.

The significance of industrial relations is aptly described by the (First) National Commission on Labour (1969) as follows:

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A quest for industrial harmony is indispensable when a country plans to make economic progress. Economic progress is bound up with industrial harmony for the simple reason that industrial harmony leads to more cooperation between employers and employees which results in more productivity and thereby contributes to all-round prosperity of the country. Healthy industrial relations on which industrial harmony depends cannot, therefore, be regarded as a matter in which employers and employees are concerned. It is of vital significance for the community as a whole.

The scope of industrial relations varies from time to time and place to place. According to Professor Richardson, the scope of industrial relations includes: 'How people get on together at their work, what difficulties arise between them, how their relations including wages and working conditions are regulated, and what organizations are set up for the protection of different interests.'

1.2.2 Objectives of Industrial Relations

It is difficult to precisely lay down the objectives of industrial relations. However, various authors on the subject attempted to highlight the main objectives of industrial relations.

Nair and Nair citing Kirkaldy (1947) state that there are four objectives for industrial relations:

(*i*) To improve economic conditions of workers;

(*ii*) For state control on industries for regulating production and promoting harmonious industrial relations;

(*iii*) For socialization or rationalization of industries by making state itself a major employer;

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

The objectives of industrial relations require examinations of following key features:

(*i*) ***Employer to individual employee relationships*:** This relates to management's policies and practices that ultimately affect the productivity and well-being of their employees as individuals. With a view to optimizing the interests of the employer and those of employees, necessary steps need be taken which may cover wages and salary administration, career prospects inclusive of planning and promotion, retirement and medical benefits, discipline and redressal of grievances, training and development, counselling, workers' compensation and other related issues such as insurance.

(*ii*) ***Management relations with trade union or group of workers:*** It covers rights and practices, regulated by law or legal machinery. It relates to:

(*a*) Collective agreements

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(*b*) Settlement of industrial disputes

(*c*) Management's rights

(*d*) Formation and recognition of unions as representative body of workers

Another focus of labour management relations are health, safety and welfare of workers.

(*iii*) ***Industrial peace and productivity:*** One of the most important object of industrial relations is to maintain industrial peace and harmony and, thereby, increase productivity. It depends on the quality of union-management relations at workplaces.

1.2.3 Significance of Industrial Relations

The significance of industrial relations is aptly described by the (First) National Commission on Labour (1969). According to it "a quest for industrial harmony is indispensable when a country plans to make economic progress. Economic progress is bound up with industrial harmony for the simple reason that industrial harmony leads to more cooperation between employers and, employees which results in more productivity and thereby contributes to all-round prosperity of the country. Healthy industrial relations on which industrial harmony depend cannot, therefore, be regarded as a matter in which employers and employees are concerned. It is of vital significance for the community as a whole."

1.2.4 Approaches to Industrial Relations

The important approaches to industrial relations are discussed as follows:

1. Psychological approach

It is based on the following assumptions:

- The general impression about a person is radically different when he is seen as a representative of management from that of the person as a representative of labour.
- The management and labour see each other as deficient in thinking regarding emotional characteristics and interpersonal relations.
- The management and labour see each other as less dependable

2. Sociological approach

It is based on the following assumptions:

- Industry is social world.
- Various individuals and groups.
- Social change cannot be overlooked.
- Role of state and political parties.
- Industrial relations are determined by power.
- Difference in individual attitudes and behaviour create problems.

3. Human relations approach

It is based on the following assumptions:

- Industrial relations are basically a problem of human relations, and are influenced, if not conditioned, by all the complex circumstances that affect the latter.

- While the apparent causes of good or bad labour management relations may not be difficult to classify, the real causes underlying outward and visible signs, over which there is seldom any unanimity, have their roots in historical, political, socio-economic factors and depend upon attitudes of workers and employers.
- Many times, work-stoppages which can be apparently ascribed to some simple demand, namely, economic or personnel, are found, on a deeper examination, to have complex roots in the social and cultural attitudes of the worker involved.
- At times, though strikes take place because of certain economic demands, harmonious relations are not necessarily restored even after the monetary benefits demanded are granted to workers.
- On the contrary, it is also possible that even without the apparent demand being satisfied or conceded, good relations are restored once the deeper cause, be it political, social or economic is properly tackled.
- A change in the leadership in the workers' union or a change in the management may radically alter the basic relationship between the management and the workers. As such, a particular state of industrial relations cannot be viewed in isolation from the political, social and economic characteristics obtaining therein nor the remedies to correct certain situations developed without giving due consideration to such factors.

4. Socio-ethical approach

It is based on the following assumptions:

- Labour–management relations survive within the social, economic and political structures of society.
- The aim of labour–management relations may state as maximum productivity. This would lead to fast economic growth and considerable understanding among employers, workers and the government.

5. Gandhian approach

It is based on the following assumptions:

- Any industrial relation should be based on fundamental principles of truth and non-violence.
- The worker is expected to seek redressal of reasonable demands only through collective action; he should avoid strikes and unionism.

1.2.5 Principles of Good Industrial Relations

Good industrial relations are based on the following principles:

- To provide fair redressal of employee grievance
- To provide satisfactory working conditions
- To pay fair and reasonable wages
- To develop infrastructure for training and education of employees
- To provide a proper communication system between employer and employee
- To motivate employees to adapt themselves for technological, social and economic changes

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- To motivate employees to contribute to economic development of the country
- To recognize importance of collective bargaining

1.2.6 Contextual Framework

The relationship between labour and management is based on mutual adjustment of interests and goals. It depends upon economic, social and psychological satisfaction of the parties. Higher the satisfaction, healthier the relationship. In practice it is, however, found that labour and capital constantly strive to maximize their pretended values by applying resources to institutions. In this effort they are influenced by and are influencing others. Both of them try to augment their respective income and improve their power position.

The major issues involved in the industrial relations process are terms of employment such as wages, dearness allowances, bonus, fringe benefits, working conditions, leave, working hours, health, safety and welfare, non-employment, job security, personnel issues such as discipline, promotional opportunities and recognition of trade unions. However, in view of sharply divided and vociferously pressed rival claims, the objectives of labour and management are not amenable to easy reconciliation. This is all the more so because the resources are limited. Be that as it may, the means adopted to achieve the objectives which vary from simple negotiation to economic warfare adversely affect the community's interest in maintaining an uninterrupted and high level of production. Further, in a country like India where labour is neither adequately nor properly organized, unqualified acceptance of the doctrine of 'free enterprise', particularly between labour and management, strengthens the bargaining position of the already powerful management.

It is apparent that the State, with its ever-increasing emphasis on welfare aspect of a governmental activity, cannot remain a silent and helpless spectator in the economic warfare. The legislative task of balancing the conflicting interest in the arena of labour-management relations proves to be an extremely difficult one, in view of mutually conflicting interests of labour and management. The substantive issues of industrial relations are of perennial nature and thus, there can never be a 'solution for all times to come.'[3] There can only be broad norms and guidelines as criteria in dealing with issues of industrial relations. The law plays an important role in shaping the structure of industrial relations.[4] It represents the foundation from which the present system and procedure flows to deal with the problems of industrial relations.

Dimensions of the problems of industrial relations

India is primarily an agricultural country. As per the Census of India, 2001, the total employment in both organized and unorganized sector in the country was of the order of 40.22 crore. Out of this, about 2.65 crore were in the organized sector and the balance 37.57 crore in the unorganized sector.[5] Out of 37.57 crore workers in the unorganized sector, 23.7 crore workers were employed in agriculture sector, 1.7 crore in construction, 4.1 crore in manufacturing activities and 3.7 crore each in trade and transport, communication and services. The workers in the unorganized sector fall in various categories but a large number of them are home-based workers engaged in occupations like *beedi* rolling, *agarbatti* making, *pappad* making, tailoring, *zari* and

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embroidery work. However, the largest chunk of unorganized labour, namely, 60 per cent being agricultural workers and cultivators including small and marginal farmers, who are badly in need of legal/social protection, have been left out. Be that as it may, the importance of industry cannot be minimized. Said J L Nehru:

The alternative (to industrialization) is to remain backward, underdeveloped, poverty-stricken and a weak country. We cannot even retain our freedom without industrial growth.

According to a survey conducted by the National Sample Survey Organization in the year 2004–2005, out of 45.9 crore which constitute the total labour force, 43.3 crore persons are engaged in unorganized labour which constitutes 93 per cent of work force. They are denied job security, social security and other benefits. Most of the labour force, particularly in the unorganized sector, is unskilled, underemployed, self-employed, casual and unprotected. Rural development is essential for upgrading the living conditions of the overwhelming majority of people and providing minimal economic sustenance to the poverty-stricken sections of the community. But, industrial development is necessary for affluence and for bringing the benefit of scientific and technological progress to all sections of the community.

Out of the total of 40.22 crore in terms of 2001 census and 45.9 crore in terms of estimate of National Sample Survey 2004–2005, 12.7 crore were cultivators, 10.6 crore were agricultural labourers, 1.6 crore were in household industries and 15.1 crore were other workers. Most labour legislation is not applicable to them. However, an important recent initiative taken by the Ministry of Labour and Employment to safeguard the interest of unorganized workers has been the enactment of the Unorganized Workers' Social Security Act, 2008. The Act provides for constitution of National Social Security Board which will recommend formulation of social security schemes for unorganized workers from time to time. Accordingly, the National Board was constituted in 2009 which recommended that the social security schemes viz; *Swavalamban Yojna, Rashtriya Swasthya Bima Yojana* (RSBY) providing for health insurance, *Janashree Bima Yojana* (JBY) providing death and disability cover and Indira Gandhi National Old Age Pension Scheme (IGNOAPS) providing for old age pension which may be extended to building and other construction workers, MNREGA workers, Asha workers, Anganwadi workers and helpers, porters/coolies/gangmen and casual and daily wagers.

Industrial unrest and work-stoppages

The importance of sustained industrial production underlines the need of avoiding work-stoppages and loss of production. The economics of work-stoppages may be recapitulated. Between 1921 and 2010, India lost about 8.62 million[6] man-days in work-stoppages caused by industrial disputes between workmen and employers.

The alarming magnitude of the statistical data is even more awe-inspiring considering that in the 2001 census, 402.3 million workers were at a standstill for about 5 days. If one were to add the secondary and tertiary effects of work stoppages, the figures would be gigantic. Thus, it is said that India loses the highest number of man-days and has the highest rate of absenteeism.

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Period-wise details given in Table 1.1.

Table 1.1 *Number of Workers and Man-days Lost*

Period	*Number of workers*	*Number of man-days lost*
1921–25	1,919,714	37,317,994
1926–30	1,551,634	49,192,274
1931–35	831,070	12,240,537
1936–40	2,079,633	36,109,103
1941–45	1,886,340	18,954,560
1946–50	6,267,156	56,524,900
1951–55	2,,972,075	19,608,975
1956–60	4,012-342	33,388,609
1961–65	3,744,153	28,504,000
1966–70	8,224,314	87,849,000
1971–75	8,895,102	119,879,000
1976–80	3,327,493	45,958,117
1981–85	7,546,000	791,017,000
1986–91	7,875,000	168,548,000
1992–98	6,293,000	131,910,000
1999–2004	8,035,000	149,680,000
2005–2009	8,653,326	81,166,877
2010 (P)	331,843	1,677,370
2011 (Jan to May)	45,570	4,85,000

Source. The estimate is based on data given in Appendix II of V B Kaushik, *Indian Trade Unions: A Survey,* (1966) p. 322, for the period 1921–46, Table XXV of *Indian Labour Year Book*, 1950–51, for the period 1947–50, Table 10.1 of the *Indian Labour Statistics,* for the period 1951–60, *Indian Labour Statistics*, 1976, p. 277, for the period 1960–89, *Handbook of Labour Statistics of* 1992 and Annual Report 1998–99, 2004–05 of the Ministry of Labour, Govt. of India (1999) 27, Indian Labour Year Book, 2007 (2009) *Indian Labour Journal* (March, 2011) p. 933, Labour Law Reporter, p. 357.

1.2.7 Barriers to Improving Industrial Relations

Unemployment and underemployment are the most important economic evils in a welfare state. India is no exception. In India, one-sixth of the total population of the country is either unemployed or chronically underemployed. As per the Government of India report,[7] upto the end of June, 2009, 1.07 lakh pensons had been placed on employment exchange. The total number of jobseekers by June, 2009 were about 2 lakh. These are the phenomena of Indian industries that have affected to a considerable extent the standard of living and have also created disparity in the working class. They have hampered the growth of the labour movement and trade unions. Political parties may take advantage of the unemployed millions and divert them from the search for gainful employment towards unproductive political actions. Further, underutilization of human resources in the agricultural sector is likely to divert agriculturist section of job-

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seekers to industrial sectors. Unemployment poses a serious threat to development programmes. Government planners should be sensitive to the present problem of unemployment. Labour law can be modelled or remodelled to implement law, policies and programmes to provide relief to unemployed.

Other difficulties in healthy growth of industrial relations through labour law policy

1. ***Low wages:*** Discontent amongst industrial workers revolves round the question of wages. Low wages figure prominently both in industrial and agricultural sectors.
2. ***Ignorance and illiteracy:*** Another malady of Indian workers is illiteracy. Out of 2.81 million workers employed in tea plantations, mines, jute, cotton textiles, iron, and steel, 2.08 million workers are illiterate. The workers do not fully realize the social and economic implications of the modern industrial system and evils arising therefrom and, therefore, are less likely to insist on reforms. Lack of education among industrial workers has also given rise to the evolution of outside leadership.

   Access to regular employment is mainly limited to better educated workforce. Only 4 per cent of illiterate workforce has access to regular employment. In contrast, approximately 40 per cent of them are casual labourers. Only 9 per cent workers with primary education have access to regular employment while an overwhelming 35 per cent of them are casual labourers.[8] The table below tabulates the percentage distribution of workers with different levels of education by employment status in 2004–05.

   Similarly, workers with higher educational achievements are likely to get higher wages as compared to those who are less educated. Again, as in case of access to regular employment, wages increase significantly only after certain thresholds of educational status (say secondary level) are reached both in rural as well as urban areas. In rural and urban areas, there is not much difference in wages of illiterates and of those up to primary level of education. Even middle level of education brings marginal difference in daily earnings. Wages increase significantly only after minimum secondary level of education.

   For growth to be inclusive, it must create adequate livelihood opportunities and add to decent employment commensurate with the expectations of a growing labour force. The Eleventh Five Year Plan (2007-12) aimed at generation of 58 million work opportunities. The NSSO quinquennial survey has reported an increase in work opportunities to the tune of 18 million under the current daily status (CDS) between 2004-5 and 2009-10. However, the overall labour force expanded by only 11.7 million. This was considerably lower than in comparable periods earlier, and can be attributed to the much larger retention of youth in education and also because of lower labour force participation among working-age women. As a result, unemployment in absolute terms came down by 6.3 million (Table 1.2). The lower growth in the labour force is not expected to continue as educated youth are expected to join the labour force in increasing numbers during the Twelfth Plan and in the years beyond. This means that the pace of job/livelihood creation must be greatly accelerated. The Twelfth Plan Approach Paper, therefore, lays greater stress on skill building which can be

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viewed as an instrument for improving the effectiveness and contribution of labour to overall production. This will push the production possibility frontier outward and take the economy on to a higher growth trajectory and can also be viewed as a means of empowerment.

Table 1.2 *Estimated Persons/Person Days*

(in million)

Approach	*Indicator*	*2004–2005 (NSS 61st Round)*	*2009–2010 (NSS 66th Round)*
Usual (principal + subsidiary) Status (UPSS)	Labour Force	469.0	468.8
	Workforce	457.9	459.0
	Unemployed	11.3	9.8
Current Weekly Status (CWS)	Labour Force	445.2	450.4
	Workforce	425.2	434.2
	Unemployed	20.0	16.1
Current Daily Status (CDS)	Labour Force	417.2	428.9
	Workforce	382.8	400.8
	Unemployed	34.3	28.0

Source: *Derived based on Key Indicators of Employment and Unemployment in India, 2009-10, NSSO.*

3. ***Heterogeneity:*** Another characteristic of Indian labour is its heterogeneity. India is 'a vast country where customs and traditions differ considerably from one part to another. There are distinctions based on caste, creed and religion and provincial jealousy (where residents of one state look down upon residents of another state). In spite of the provisions in the Constitution that there would be no distinction on the basis of caste, creed, etc., there is no denying that these vices are widely prevalent.[9] The effect of this is that workers do not unite for better conditions *inter se* and for reform.

4. ***Absenteeism:*** Absenteeism has been a cause of great concern in most of the organizations in India. There is no hard and fast rule to deal with this problem. Industry-wise and state-wise, absenteeism rate, i.e., percentage of man-days lost due to absence to the number of man-days scheduled to work were 10.01 and 8.96 respectively during 2004.[10] However, it is certain that it requires a great deal of expertise to effectively bring down the cases of absenteeism.

   Disciplining is, of course, the last resort to curb and control absenteeism but now with advancement of behavioural science, some psychological methods have also proved to be very useful which is known as human relations approach.

5. ***Women workers:*** Employment of women in industrial establishments is common in almost all countries—developed and developing. India is no exception. Special provisions of labour law exist to deal with the special problems of women workers employed in factories, mines, plantations and other industrial establishments.

   Women constitute a significant part of the work force in India. According to 2001 census, the total number of women in the country was 494.82 million out of the total population of 1,025.25 million. This means women accounted for 48.26 per cent of the total population. Employment of women in the organized sector (both public and private as on 31 March 2006 was 5.12 million which constituted 19 per cent of the total organized sector employment in the country).

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According to 2001 census, out of 127.73 million cultivators, only 41.89 million constituted female cultivators. Out of the agricultural labourers of 106.77 million in the same year, women agricultural labourers constituted 49.44 million. In case of agricultural labourers, there is parity between men and women.[11] Table 1.3 presents the estimates of employment in organized public and private sectors by gender.

Table 1.3 *Estimates of Employment in Organized Public and Private Sectors by Sex*

(Lakh persons as on March 31)

Year	*Public Sector*			*Private Sector*			*Public and Private Sector Total*		
	Male	*Female*	*Total*	*Male*	*Female*	*Total*	*Male*	*Female*	*Total*
1	**2**	**3**	**4**	**5**	**6**	**7**	**8**	**9**	**10**
2001	162.79	28.59	191.38	65.62	20.90	86.52	228.40	49.49	277.89
2002	158.86	28.87	187.73	63.83	20.49	84.32	222.71	49.35	272.06
2003	156.75	29.05	185.80	63.57	20.64	84.21	220.32	49.68	270.00
2004	153.07	28.90	181.97	62.02	20.44	82.46	215.09	49.34	264.43
2005	150.86	29.21	180.07	63.57	20.95	84.82	214.42	50.16	264.58
2006	151.85	30.03	181.88	66.87	21.18	88.05	218.72	51.21	269.93
2007	149.84	30.18	180.02	69.80	22.94	92.74	219.64	53.12	272.76
2008	146.34	30.40	176.74	74.03	24.72	98.75	220.37	55.12	275.49

Note: (i) Includes all establishments in the Public Sector irrespective of size of employment and non-agricultural establishments in the Private Sector employing 10 or more persons

(ii) Excludes Sikkim, Arunachal Pradesh, Dadra & Nagar Haveli and Lakshadweep as these are not yet covered under the programme.

(iii) Due to non-availability of data as per NIC 1998, information in respect of J & K, Meghalaya, Mizoram, Daman & Diu not included in total.

Source: (Ministry of Labour and Employment (DGE&T) Economic Survey 2010-11)

The employment of women workers in modern industrial system has given rise to several problems. First, a set of major social evils involved in the employment of women is widespread disorganization of family life. The lack of domestic care of the development of a child's personality may continue even in his adult life. The increasing number of juvenile delinquents, stillborn children, abortions, morbidity of women, abnormal pregnancies and premature births are clear reflections of employment of women. 'Second, the economic problem involved in industrial employment of women is in no way less significant. The inadequacy of family income and the desire to supplement the meagre family income compels women workers to work in industry. But employment in such an establishment does not provide them adequate wages. They are generally placed either in lower jobs or in traditional jobs which carry lower salaries and are not generally given higher posts. Third, 'equal pay for equal work' for both men and women has not been fully implemented and despite legislation, there is disparity of pay between men and women. Fourth, the employment of women in industry creates a variety of other problems such as hours of work (particularly during night), overtime, health, safety, welfare and maternity leave. Fifth, the legal protection

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afforded to women workers is also inadequate and involves problems of inadequate inspecting staff. Sixth, working women face the problem of sexual harassment for which norms have been laid down by the Supreme Court for prevention and regulation.

6. ***Child labour:*** Another major problem of industrial relations is that of child labour. It is a common and serious problem for the country. It ultimately affects the personality and creativity of children. Data regarding the extent of employment of child labour are inadequate. According to the 2001 census, the estimated figure of working children was 12.6 million. This figure rose to 17.02 million according to the estimates of the 43rd National Sample Survey conducted in 1987–88. However, the incidence of child labour in India has declined from around 5 per cent in 1993–94 is approximately 3 per cent in 2004–05.[12]

The evil of employment of children in agricultural and industrial sectors in India is a product of economic, social and, among others, inadequate legislative measures. Social evils involved in the employment of children are widespread illiteracy resulting in lack of development of child's personality which may continue even in his adult life and negligence and indifference of the society towards the question of child labour. There is also lack of proper appreciation on the part of parents as to how continuance of child education would benefit his employment prospects and improve the standard of living.[13] The economic problems involved in the employment of children are in no way less significant. Poverty resulting in inadequate family income and the desire to supplement it compels children to work. Indeed, the parents of low income groups like artisans cannot afford to educate their wards even if education is free. For them, an uneducated child is an asset; desire to be educated becomes a double liability because of: (*a*) loss of earning if the child does not work; and (b) expenditure on education, howsoever, small.[14] Thus, the economic evils have not only deprived children at work from education but also led to high infant mortality, morbidity and malnutrition, particularly in weaker sections of the society in urban areas. The indifference of legislators to provide adequate legislation to regulate employment of children has failed to minimize the growth of child labour. The socio-legal problems involved in the employment of children in agriculture and industries are: (*a*) is it feasible to abolish child labour particularly of those: (*i*) who are orphans, destitutes, neglected, and abandoned children; (*ii*) children who have to work for livelihood; (*iii*) children belonging to migrant families; and (*iv*) handicapped children? If not, what should be done mediately and immediately (*b*) Should child labour be banned in hazardous employment? If so, what are the alternatives? (*c*) What should be the minimum age for different kinds of employment? (*d*) What should be the duration of their work including rest interval? Is it desirable to adjust the working hours in such a manner as to provide for schooling of children? (*e*) What privileges should be afforded to them in matters of leave and holidays? (f) What protection should be afforded to them in matters of health, safety and welfare?

The legislature has met the first problem by providing certain minimum standards of age, physical fitness[15] and sometimes educational attainments. The second problem has also been dealt with by the legislature by prohibiting employment in certain establishments or part of establishments.[16] The third problem has been met by prohibiting employment of women and children in certain dangerous work. The rest of the problems have been met by the legislature by imposing various restrictions on the

conditions of work such as limited hours of work, provisions for holidays, rest intervals, leave, health, safety and welfare amenities.

India has been following a proactive policy in the matter of tackling the problem of child labour by undertaking constitutional, statutory and developmental measures that are required for its elimination. The recently enacted Right of Children to Free and Compulsory Education Act, which came into effect from 1 April, 2011 is a major initiative taken by the government in this direction. Steps have been initiated to realign National Child Labour Policy with the provisions of the Right to Education Act. Under the National Child Labour Policy, 100 National Child Labour Projects (NCLPs) are in operation for rehabilitation of about 2.11 lakh working children. A major activity undertaken under the NCLP is the establishment of special schools to provide non-formal education, vocational training, supplementary nutrition, stipend, health care, etc., to children withdrawn from employment. So far, 1.87 lakh children from special schools of NCLPs have been mainstreamed into formal education system. The target is to eliminate child labour in a sequential manner, beginning with its elimination from hazardous occupations through a determined move towards its complete elimination from other occupations. Besides, a large number of NGOs are working for elimination of child labour under the grant-in-aid scheme.

Apart from continuing the existing 100 NCLPs during the Tenth Plan, government has approved setting up of additional 150 NCLPs in child labour endemic districts during the 10th Plan. The expanded scheme in additional 50 districts has already been launched in January, 2004 and states have been asked to set up NCLPs in these identified 50 districts. In the remaining 100 districts, the scheme would be launched after additional 100 districts are identified on the basis of the 2001 census report which is in process. Government has also launched the INDOUS (INDUS) Child Labour Project on 16 February 2004 during the visit of Mr Arnold Levine, Deputy Undersecretary, US Department of Labour and Mr Kari Tapiola, Executive Director, International Labour Organization to India.

1.3 ROLE OF STATE, EMPLOYERS AND TRADE UNIONS IN INDUSTRIAL RELATIONS

In this section, you will learn about the role of state, employers and trade unions in industrial relations.

1.3.1 Role of the State in Industrial Relations

In the sphere of industrial relations, the state cannot remain a silent spectator. It has to play a persuasive and sometimes coercive role in regulating industrial relations in so far as they concern collective bargaining and the consequent direct action which either party may resort to for the realization of its claims. The state's anxiety about work stoppages arises because of two factors: (*i*) the impact on the community by way of inconveniences inflicted by interruption in supply of essential goods/services; and (*ii*) social cost to the parties themselves in the form of loss of wages/production. It has, therefore, a special interest in the methods chosen by the parties for regulation of their mutual relations. For instance, adoption of collective bargaining will require well-organized unions and employers' associations. The state, when it moves towards this

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Check Your Progress

1. What does the concept of industrial relations include?
2. What is the basis of the relationship between labour and management?
3. Identify the major issues involved in the industrial relations process.

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goal, takes upon itself the task of formulating rules for maintenance of discipline, social justice, labour welfare and peace and harmony. It may intervene through conciliation process or compulsory adjudications. In the process, it will have to define permissible area of intervention.

As a corollary to its role in maintaining peace, the state has provided for conciliation and adjudication machinery to settle industrial disputes under the Industrial Disputes Act, 1947. This can be best performed either by creating conditions in which adjudication would succeed in preference to strife or by compelling the parties to accept direct intervention of the state in public interest. In either case, better results are achieved where the existence of the third party is not overtly felt.

Quite apart from the above roles played by the state, there are others which have a special significance in our context. The first is that of the state as an employer, which has two aspects, i.e., direct employment of labour by the state and employment in industrial corporations constituted by the state. Handling of industrial relations in the case of its own employees, to whom all legislation framed for industry is applicable, falls in this category. This function of the state as an employer has been there over a very long period; it has been there even prior to Independence. To this was added another when, as a matter of policy, it was decided to operate a mixed economy wherein industries were to be run by both private entrepreneurs and the state. The role of the state in these matters has been watched with great interest in recent years. The policy statements in this regard show that as an employer, the state binds itself to the rules which it frames for private employers. Where standards of good employment are disparate, the state seeks to set standards with a view to influencing employers in the private sector. While this is the policy, in practice, it so happens that there is a fair amount of interaction between what the employers do for their employees in the two sectors. And this interaction is influenced by the new consciousness among the workers and ease of communication within the working class.

1.3.2 Role of Trade Unions and Employers in Industrial Relations

The First National Commission on Labour has suggested that employers' associations should accept the following functions:

(i) Undertake promotion of collective bargaining at various levels;

(ii) Encourage observance and implementation by its members of bipartite and tripartite agreements in real spirit and form;

(iii) Expedite implementation of wage awards by members without undue delay and reservations;

(iv) Work towards elimination of unfair labour practices by employers;

(v) Encourage adoption by members of personnel policies conducive to productivity and industrial peace;

(vi) Promote rationalization of management or organization to improve productivity;

(vii) Arrange employers' education (a) in the concept of labour partnership in industry, (b) for ensuring identity of interests of labour and management and (c) for promoting harmony between the goals of industry and of the community; and

(viii) Work towards the collective welfare of its members through training, research and communication in the field of labour management relations.

We do not propose statutory provisions to compel employers' associations to undertake the above functions, but hope that these functions would voluntarily be adopted and discharged by them.

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Role of employers

The role played by the employers in the country's development needs no elaboration. Consistent with their interests, they have contributed to the national progress. However, the community will be directly concerned with employers' organizations only when it fails to get goods of approved quality at reasonable prices. Service and courtesy to customers are really an indication of good employer practices. Employers' organizations should see that their members do not exploit the community through combines, trusts or monopoly operations. These observations have a special relevance in the context of other developments in the economy. The surpluses that are generated in an industry are a social product; their distribution has to be according to the contribution made by labour and capital, keeping in view that the community has an equal claim on the increases in production and productivity.

Employers' organizations have a stake in the success of the national plans for economic development. In this context, important aspects of social responsibilities of employers are in the following fields:

(i) **Promotion of national integration:** Employers' organizations can help to achieve national integration by paying due regard to the sentiments of the local people where a project is located. But this has to be within the overall national interest.

(ii) **Eliciting responsive cooperation from the unions in improving levels of production and productivity:** This does not require elaboration in view of the more detailed discussion elsewhere.

(iii) **Maintaining high standards of quality and competitive prices in the international market:** Difficulties of foreign exchange are well known; these have hit employers in their expansion plans. What is suggested, therefore, falls within employers' enlightened self-interest.

(iv) **Helping civic authorities and seeking their cooperation in matters connected with improvement of the area in which the establishment is located:** Where an establishment is set up in an already settled town, this function acquires special significance. By the very setting up of a unit, particularly if the size is large, civic amenities get taxed. It is true that the employer in turn is taxed on that score, but the duty of the employer should not end there. He has to see that by establishing his unit he does not make the life of persons in the area more difficult. The advantages that accrue through an industrial establishment are looked upon by the people as a matter of right; not so the inconveniences.

(v) **Bridging the gap in regional disparities in the economic development of the country:** This is indeed a governmental function, but the employers' organizations can certainly help.

(vi) **Pursuing of policies that are conducive to the development of industry and economy:** This is essential for the fulfilment of priorities of planned development from time to time.

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1.4 CONTOURS OF INDUSTRIAL RELATIONS

In this section, you will learn about the constitutional and legal dimensions of industrial relations in India.

1.4.1 Labour and the Constitutional Framework

Welfare state: Assumption by the community, acting through the state, of the responsibility for providing the means where by all its members can reach certain minimum standards of health, economic security and civilized living and can share according to their capacity in the social and cultural heritage

The aim of Indian Constitution is to set-up a welfare state. The distinguishing characteristics of the **welfare state** is the assumption by the community, acting through the state, of the responsibility for providing the means where by all its members can reach certain minimum standards of health, economic security and civilized living and can share according to their capacity in the social and cultural heritage. The constitution of India guarantees complete freedom and protection to every individual for the fullest realization of his individual personality. The Constitution of India has conferred innumerable rights on the protection of labour. In the subsequent sections, you will see in brief what all these rights are.

Fundamental rights and their application

Fundamental rights are enumerated in Part III of the Constitution. The whole object of Part III is to provide protection for the freedom and rights mentioned therein against arbitrary action by the State. Of particular relevance is Article 14 which provides that 'the State shall not deny to any person equality before the law or equal protection of the laws within the territory of India'. In addition to this, Article 16 guarantees equality of opportunity in matters of public employment. Further Article 19, inter alia, guarantees 'the right to freedom of speech and expression,' to assemble peacefully and without arms; to form associations or unions, to acquire, hold and dispose of property and to practise any profession, or to carry on any occupations, trade or business. These constitutional guarantees are of great practical significance in the area of labour management relations.

Equal protection constitutes a limitation on the legislative power to select or decide which business or industry must achieve minimial standards. The right to carry on trade, profession or business limits the burden which the legislation may place on business in the interest of workers. The freedom of speech, assembly, association and unionization protect workers in their efforts to achieve their objectives through self organizing, picketing or striking.

Article 21 provides protection of life and personal liberty. It provides that no person shall be deprived of his life or personal liberty except according to procedure established by law. Article 23 prohibits traffic in human beings and forced labour. It says (i) Traffic in human beings and begar and other similar forms of forced labour are prohibited and any contravention of this provision shall be an offence punishable in accordance with law. Life, in Article 21, has been interpreted by the Supreme Court as including livelihood and the Court has held in several cases that any employment

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4. What are the causes of the state's anxiety about work stoppages?
5. What are the social responsibilities of employers?

below minimum wage levels is impremissible as it amounts to forced labour as understood in Article 23. Holding a person in bondage is a constitutional crime. Article 24 places a ban on employment below the age of 14 in any factory, mine or in any other hazardous employment.

A survey of decided cases reveals that the vires of the Industrial Disputes Act, 1947 has been challenged time and again on the ground of infringement of fundamental rights guaranteed under Articles 14 and 19 before the high courts and the Supreme Court. In Niemla Textile Finishing Mills Ltd v. Industrial Tribunal, Punjab, the Supreme Court observed that neither the Industrial Disputes Act nor any provision thereof is void as infringing the fundamental rights guaranteed by Article 14 or 19. Thus, it has now been settled that the provisions of Industrial Disputes Act are not violative of the fundamental rights guaranteed under the Constitution.

Application of Fundamental Rights

The idea of 'equal protection before the law' embodied in Article 14 of our Constitution serves as the philosophical foundation for equal treatment of similarly situated workers by the employer. This principle finds resonance in the idea of 'equal pay for equal work' enumerated in Article 39(d) which is further enforced through the Equal Remuneration Act, 1976. This statutory intervention also holds importance from the viewpoint of gender-justice since it was a clear command against discrimination between men and women who performed a similar quantum of work.

With respect to the liberties of individual workers and trade unions, the most significant rights are those enumerated in Article 19(1) which includes the 'freedom of speech and expression', the 'freedom to assemble peacefully without arms', the 'right to form associations or unions' and the 'freedom to pursue a livelihood'. While 'freedom of speech and expression' is usually understood as a guarantee against the curtailment of citizens' rights by the State, it is also possible to describe the methods adopted by trade unions such as demonstrations, picketing and strikes as forms of expression which can be subjected to 'reasonable restrictions' by the State.

Right to demonstrate

The question of the 'right to demonstrate' can be understood both in light of Article 19(1)(a) as well as Article 19(1)(c) in the Indian context. At one level the right to demonstrate can be understood as a form of expression since it draws attention to the grievances of workers and can facilitate 'collective bargaining' with the employers. Peaceful and orderly demonstrations enable workers to effectively communicate their demands not only to the employers but also to governmental agencies as well as the general public. The right to demonstrate can also be viewed as part of the 'right to form associations or unions' since such activities aid unionisation by way of drawing more members into the fold of the agitating union. Quite clearly, the government is within its powers to impose restraints on demonstrations, picketing and strikes with respect to the grounds enumerated in Article 19(2), 19(3) and 19(4).

It is quite understandable that for a demonstration to be effective it ordinarily has to be conducted in close proximity to the workplace. In *Kannan* v. *Superintendent of Police, Cannanore*, it was observed that a lawful demonstration or 'satyagraha'

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would lose all significance if workmen are asked to choose a place far away from the business premises of the employer. In *Kameshwar Prasad* v. *State of Bihar and Others*, it was observed that to ban every type of demonstration would be a breach of the freedom of expression. However, reasonable restrictions can be imposed to prevent such demonstrations as would cause breach of public tranquillity. It must also be borne in mind that such activities can directly interfere with the employer's business, especially when the workplace is a location for commercial exchanges. Such a situation clearly involves a consideration of the employer's right to conduct and continue trade or business, which is constitutionally protected under Article 19(1)(g).

As far as the 'right to strike' is concerned, it should not be understood as an absolute right which is an extension of Article 19(1)(c) since it is subject to statutory controls. Section 22 of the Industrial Disputes Act, 1947 lays down a prohibition against strikes in public utility services, except in circumstances where statutory notice has been given. Section 23 of the same legislation prescribes a general prohibition of strikes in all industries, during the pendency of conciliation proceedings, arbitration or litigation between the workers and the management, concerning the issue at hand.

Right to form associations or unions

The 'right to form associations or unions' has several dimensions, such as an individual worker's right to join or leave an association, the freedom for a group of workers to organise and that of an existing trade union to expand its membership or dissolve itself. At the same time, the exercise of Article 19(1) rights by the workers' are to be scrutinised and balanced with their impact on the employer's right to conduct business or trade which is protected under Article 19(1)(g).

It was the Trade Unions Act, 1926 which was the first legislation to recognize the workers' right to organise and it immunised the office-bearers of trade unions from exposure to charges of 'criminal conspiracy' and civil liability that could arise as a result of collective action. The procedure for registration of unions and the grant of 'legal personality' was laid down to enable the exercise of the 'Right to form associations or unions'. However, a significant question which remains outside the statutory purview till date is that of how to ensure the 'recognition of unions' by employers. In order to ensure that workers' interests are protected and pursued where there is a 'multiplicity of unions' in the same establishment, it is desirable for the employer to engage with a union that is truly representative of the workforce.

In industrial relations, it is a usual ploy for managements to follow a 'divide and rule' policy by conferring benefits on one union and extending 'step-motherly' treatment to others. The provision of basic facilities to unions can be seen as an essential limb of the 'right to form associations or unions' since the same enables unions to expand or 'unionise' further by enrolling more members. In the English decision in *Crouch* v. *The Post Office and Another*, it was held that a smaller union should not be denied facilities by an employer, since granting exclusive privileges to larger unions creates an environment where the leaders of the recognised union can dictate terms to the rest of the workforce. This problem can become magnified if the leaders of the recognised union are outsiders who are likely to push their own agenda at the expense of the legitimate interests of the workers. The dilemma from the standpoint of an individual worker seems to be that even though it is desirable for an employer to recognise one

representative union to ensure effective 'collective bargaining', there is also a need to ensure a level-playing field among unions in order to protect the diverse interests present in the workforce.

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In the past there have been several legislative attempts to incorporate provisions for the recognition of unions, but barring the exception of a few State-level legislations, there is no central legislation which lays down definitive criterion for granting recognition to a union. In the absence of any Central legislation on the point, employers have traditionally refused to recognize trade unions mainly on five grounds:

(i) Cases where office-bearers of the union were outsiders

(ii) Trade Unions involved in political activities and with ex-employees and outsiders who are disapproved of by the management

(iii) Unions that consist of only a small segment of the workforce in a particular industry and are hence unrepresentative

(iv) Existence of several rival unions, i.e. the problem of 'multiplicity of unions'

(v) Non-registration of Trade Unions under the Trade Unions Act, 1926.

Rights against exploitation

Article 23 of our Constitution lays down a prohibition against 'forced labour', which is enforceable both against the State and private parties. The expression 'forced labour' includes a prohibition against slavery and bonded labour as well as trafficking in women, children or disabled people. The use of the words 'begar and other similar forms of forced labour' contemplate a prohibition against work of an involuntary nature without payment. In interpreting the phrase 'forced labour', the idea of 'force' must be construed to include not only physical or legal force but also force arising from the compulsion of economic circumstances which compels the worker to accept exploitative working conditions.

The understanding of Article 23 was expanded by the decision in *People's Union for Democratic Rights and others* v. *Union of India* which was also followed in *Sanjit Roy* v. *State of Rajasthan*. In that case, it was held that when a person provides labour or service to another for remuneration which is less than the prescribed minimum wages, the labour so provided clearly falls within the ambit of the words 'forced labour' under Article 23. The rationale adopted was that when someone works for less than the minimum wages, the presumption is that he or she is working under some compulsion. Hence it was held that such a person would be entitled to approach the higher judiciary under writ jurisdiction (Article 226 or Article 32) for the enforcement of fundamental rights which include the payment of minimum wages.

Article 24 of the Constitution of India is also enforceable against private citizens and lays down a prohibition against the employment of children below the age of fourteen years in any factory or mine or any other hazardous employment. This is also in consonance with Articles 39(e) and (f) in Part IV of the Constitution which emphasize the need to protect the health and strength of workers, and also to protect children against exploitation. The Child Labour (Prohibition and Regulation) Act, 1986 specifically prohibits the employment of children in certain industries deemed to be hazardous and provides the scope for extending such prohibition to other sectors.

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Directive principles of state policy: To promote the welfare of the people by securing and protecting as effectively as it may, a social order in which justice, social, economic and political shall inform all institutions of national life

Directive principles of state policy and their application

The Preamble has been amplified and elaborated in the Constitution, particularly in '**Directive Principles of State Policy**'. The State has been directed to promote the welfare of the people by securing and protecting as effectively as it may, a social order in which justice, social, economic and political shall inform all institutions of national life. Further, the state has been directed to secure, *inter alia*, (*a*) adequate means of livelihood; (*b*) proper distribution of ownership and control of the material resources of the community so that it may subserve the common need; (*c*) prevention of the concentration of wealth and means of production; (*d*) equal pay for equal work for men and women; (*e*) the health and strength of workers; (*f*) right to work, to education and to public assistance in cases of undeserved want; (*g*) just and humane conditions of work and for maternity relief; (*h*) living wage and decent standard of life of labourers; (*i*) participation of workers in the management of undertakings or industrial establishments by suitable legislation or otherwise and (*j*) higher level of nutrition and standard of living and improving public health.

These provisions spell out the socio-economic objectives of the national policy to be realized by legislation. These are the directives to the legislature and executive organs of the State which are committed to make, interpret and enforce law.

Application of Directive Principles of State Policy

Article 38 of the Directive Principles of State Policy reflects the intent of the State to work towards an egalitarian society where there is equal opportunity for all citizens and social justice prevails. In this respect Article 39, 41, 42, 43 and 43-A are considered to be the 'magna carta' of industrial jurisprudence in the Indian context. Article 39 reinforces the idea of working towards social equality and also enumerates several principles that are sought to be enforced by way of statutes. For instance, Article 39(a) recognises that all citizens have the right to an adequate means of livelihood, which corresponds to the idea of protecting the basic dignity of individuals that has been read under Article 21 as well. As mentioned earlier, there is a directive for ensuring 'equal pay for equal work' for both men and women, which corresponds to the idea of 'equal protection before the law' and is enforced by the Equal Remuneration Act, 1976. Article 39(e) also emphasizes the need to ensure that the health and strength of workers is not adversely affected and that they are not forced to enter unsuitable occupations. This is read in conjunction with Article 42 which lays down that the State shall make provision for securing just and humane conditions of work.

Article 39(f) enumerates the importance of protecting children from exploitation and to give them proper opportunities and facilities to develop. These ideas are in consonance with the prohibitions against 'forced labour' and employment of children below the age of fourteen years, which have been laid down under Article 23 and 24 respectively. Article 39(f) places an obligation upon the State to provide for the sustenance and education of deprived children.

Article 41 highlights the State's responsibility to make effective provision for securing the right to work, the right to education and to public assistance in conditions of need. Article 42 also enumerates the State's obligation to make provision for Maternity Relief. The same is done by way of the Maternity Benefit Act, 1961 and the

Employee's State Insurance Act, 1948 for factories coming under the latter legislation. Likewise, Article 43 imposes an obligation towards ensuring the provision of a 'living wage' in all sectors as well as acceptable conditions of work. Article 43-A which was introduced by the 42nd Amendment in 1976, has a direct bearing on labour laws, in so far as it provides that the State shall take steps by suitable legislation or any other means to secure the participation of workers in the management of industrial establishments. The other principles enumerated in Part IV which have a bearing on Labour Laws are Article 45 that talks about the obligation to provide free and compulsory education for the promotion of educational and economic interests of weaker sections and Article 47 that emphasizes the need for improvement in the level of the standard of living and of public health.

1.4.2 Distribution of Law-making Power

Distribution of power imposes another limitation on the overriding labour policy. It will be observed that the power to make laws for the whole or any part of the territory of India is vested in the Parliament. This power extends only to such subjects of legislations as are enumerated in Union List and Concurrent List of the Seventh Schedule of the Constitution. Further, the Parliament has been empowered to make laws on any of the matters of the State List under the following conditions. *First*, if the Council of States declares by resolution supported by not less than two-third of the members present and voting that it is necessary or expedient in the national interest that the Parliament should make laws in respect to any matter enumerated in the State List specified in the resolution, it shall be lawful for the Parliament to make laws on such matters. The resolution will remain in force for the period of one year unless relaxed. *Second*, the Parliament is empowered to legislate on any matter enumerated in the State List while proclamation of emergency is in operation. *Third*, the Parliament is empowered to legislate for two or more states by their consent. Such a legislation shall apply to such states and any other state by which it is adopted afterwards by resolution passed in this behalf by each of the houses of state legislature. The Parliament has also been given power to legislate on such matters as are not enumerated in the Seventh Schedule. Quite apart from this, fundamental rights and freedom of inter-state trade and commerce impose express limitation on the legislative power.

The power to make laws for the whole or any part of the state is vested in the state legislature, which may make laws on such subjects as are enumerated in the State List and Concurrent List of the Seventh Schedule of the Constitution. But, where laws made by the state legislature on matters enumerated in the Concurrent List are inconsistent with a central act on the same matter, the state laws will be inoperative to the extent of inconsistency. There is, however, one exception to it, namely, if a law made by the state legislature is inconsistent with the Union law, state law will prevail over the Union law, if the same has been referred for the consideration of the President and it has received his assent. State legislations too are subject to limitations like those imposed by fundamental rights and freedom of inter-state trade and commerce.

The main topics directly affecting labour relations are included in each of the following lists:

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Union List: List I

Item 13: Participation in international conferences, associations and other bodies and implementation of decisions made there at

Item 55: Regulation of labour and safety in mines and oilfields

Item 61: Industrial disputes concerning union employees

Item 94: Inquiries, surveys and statistics for the purposes of any of the matters in the list

Concurrent List: List III

Item 20: Economic and social planning

Item 22: Trade unions; industrial and labour disputes

Item 23: Social security and social insurance; employment and unemployment

Item 24: Welfare of labour including conditions of work, provident fund, employers' liability, workmen's compensation, invalid and old age pensions and maternity benefits

Item 25: Vocational and technical training of labour

Item 36: Factories

Item 37: Boilers

Item 45: Inquiries and statistics for the purposes of any of the matters specified in List II or List III

State List: List II

Item 9: Relief for disabled and unemployable

In addition to the aforesaid items, there are several other items. A perusal of the items mentioned in the lists of the Seventh Schedule reveals that the Parliament has been vested with wide powers in labour matters. However, it 'may sometimes happen that in the course of making a law, one may incidentally touch upon subject assigned to the other. This incidental encroachment, however, is not considered bad, for the reason that the entries in the lists have to be widely construed and some amount of overlapping could not altogether be avoided. If the legislation is in pith and substance on a matter assigned to one legislative body, an incidental encroachment into the territory of the other could be considered permissible. Pith and substance and incidental encroachment are the doctrines evolved by courts to ensure that the federal machinery could function without serious friction.'

There 'is however, no provision in the Constitution which lays down that a Bill which has been assented to by the President would be ineffective as an Act if there was no compelling necessity for the Governor to reserve it for the assent of the President. There might be a genuine doubt about the applicability of any of the provisions of the Constitution which required the assent of the President to be given to it in order that it might be effective as an Act. If the Governor in exercise of his discretion decided to reserve the Bill for consideration of the President to avoid any future complication, that could not be put forward as a proof of the existence of repugnancy between the

Parliamentary enactment and the Bill which had been reserved for the assent of the President.'

The Supreme Court in a catena of cases laid down the following tests for repugnancy:

(*i*) whether there is direct conflict between the two propositions?

(*ii*) whether Parliament intended to lay down an exhaustive code in respect of the subject matter replacing the Act of the State Legislature?, and

(*iii*) whether the law made by the Parliament and the law made by the state legislature occupy the same field?

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1.4.3 Legal Enactments Relevant to Constitutional Framework

As you have seen, under the Constitution of India, Labour is a subject in the concurrent list where both the Central and State Governments are competent to enact legislations. As a result , a large number of labour laws have been enacted catering to different aspects of labour namely, occupational health, safety, employment, training of apprentices, fixation, review and revision of minimum wages, mode of payment of wages, payment of compensation to workmen who suffer injuries as a result of accidents or causing death or disablement, bonded labour, contract labour, women labour and child labour, resolution and adjudication of industrial disputes, provision of social security such as provident fund, employees' state insurance, gratuity, provision for payment of bonus, regulating the working conditions of certain specific categories of workmen such as plantation labour, beedi workers etc. This is how we have a large number of labour legislations, which can be categorized as follows:

(a) Labour laws enacted by the Central Government, where the Central Government has the sole responsibility for enforcement

1. The Employees' State Insurance Act, 1948
2. The Employees' Provident Fund and Miscellaneous Provisions Act, 1952
3. The Dock Workers (Safety, Health and Welfare) Act, 1986
4. The Mines Act, 1952
5. The Iron Ore Mines, Manganese Ore Mines and Chrome Ore Mines Labour Welfare (Cess) Act, 1976
6. The Iron Ore Mines, Manganese Ore Mines and Chrome Ore Mines Labor Welfare Fund Act, 1976
7. The Mica Mines Labour Welfare Fund Act, 1946
8. The Beedi Workers Welfare Cess Act, 1976
9. The Limestone and Dolomite Mines Labour Welfare Fund Act, 1972
10. The Cine Workers Welfare (Cess) Act, 1981
11. The Beedi Workers Welfare Fund Act, 1976
12. The Cine Workers Welfare Fund Act, 1981

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(b) Labour laws enacted by Central Government and enforced both by Central and State Governments

13. The Child Labour (Prohibition and Regulation) Act, 1986.
14. The Building and Other Constructions Workers' (Regulation of Employment and Conditions of Service) Act, 1996.
15. The Contract Labour (Regulation and Abolition) Act, 1970.
16. The Equal Remuneration Act, 1976.
17. The Industrial Disputes Act, 1947.
18. The Industrial Employment (Standing Orders) Act, 1946.
19. The Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979.
20. The Labour Laws (Exemption from Furnishing Returns and Maintaining Registers by Certain Establishments) Act, 1988
21. The Maternity Benefit Act, 1961
22. The Minimum Wages Act, 1948
23. The Payment of Bonus Act, 1965
24. The Payment of Gratuity Act, 1972
25. The Payment of Wages Act, 1936
26. The Cine Workers and Cinema Theatre Workers (Regulation of Employment) Act, 1981
27. The Building and Other Construction Workers Cess Act, 1996
28. The Apprentices Act, 1961

(c) Labour laws enacted by Central Government and enforced by the State Governments

29. The Employers' Liability Act, 1938
30. The Factories Act, 1948
31. The Motor Transport Workers Act, 1961
32. The Personal Injuries (Compensation Insurance) Act, 1963
33. The Personal Injuries (Emergency Provisions) Act, 1962
34. The Plantation Labour Act, 1951
35. The Sales Promotion Employees (Conditions of Service) Act, 1976
36. The Trade Unions Act, 1926
37. The Weekly Holidays Act, 1942
38. The Working Journalists and Other Newspapers Employees (Conditions of Service) and Miscellaneous Provisions Act, 1955

39. The Workmen's Compensation Act, 1923
40. The Employment Exchange (Compulsory Notification of Vacancies) Act, 1959
41. The Children (Pledging of Labour) Act 1938
42. The Bonded Labour System (Abolition) Act, 1976
43. The Beedi and Cigar Workers (Conditions of Employment) Act, 1966

(d) There are also Labour laws enacted and enforced by the various State Governments which apply to respective States.

The Ministry of Labour & Employment is mandated to create a work environment conducive to achieving a high rate of economic growth with due regard to protecting and safeguarding the interests of the working class in general and those of the vulnerable sections of the society in particular. The Ministry has been performing its assigned duties through the above stated legislations with the help and cooperation of State Governments.

It needs to be stated that in a dynamic context, laws need to be reviewed from time to time. Hence, review / updation of labour laws is a continuous process in order to bring them in tune with the emerging needs of the economy such as attaining higher levels of productivity & competitiveness, increasing employment opportunities, attaining more investment both domestic and foreign etc.

1.5 SUMMARY

Some of the important concepts discussed in this unit are:

- Industrial relations is a dynamic socio-economic process. It is a 'designation of a whole field of relationships that exist because of the necessary collaboration of men and women in the employment processes of industry'.
- Industrial relations deal with the relationship between labour and management, and their organization.
- With a view to optimizing the interests of the employer and those of employees, necessary steps need be taken which may cover wages and salary administration, career prospects inclusive of planning and promotion, retirement and medical benefits, discipline and redressal of grievances, training and development, counselling, workers' compensation and other related issues such as insurance.
- The relationship between labour and management depends upon economic, social and psychological satisfaction of the parties. Higher the satisfaction, healthier the relationship.
- The importance of sustained industrial production underlines the need of avoiding work-stoppages and loss of production.
- Discontent amongst industrial workers revolves round the question of wages. Low wages figure prominently both in industrial and agricultural sectors.

Check Your Progress

6. What is the provision under Article 14 of the Constitution?
7. Which Articles of the Indian Constitution are considered the 'magna carta' of industrial jurisprudence?
8. In which List is labour included in the Indian Constitution?

- In the sphere of industrial relations, the state has to play a persuasive and sometimes coercive role in regulating industrial relations in so far as they concern collective bargaining and the consequent direct action which either party may resort to for the realization of its claims.
- Trade unions, also known as labor unions in the United States, are organizations of workers in a common trade who have organized into groups dedicated to improving the workers' work life.
- The Constitution of India has conferred innumerable rights on the protection of labour.
- Article 23 prohibits traffic in human beings and forced labour. It says (i) Traffic in human beings and begar and other similar forms of forced labour are prohibited and any contravention of this provision shall be an offence punishable in accordance with law.
- Articles 39, 41, 42, 43 and 43-A are considered to be the 'magna carta' of industrial jurisprudence in the Indian context.
- A perusal of the items mentioned in the lists of the Seventh Schedule reveals that the Parliament has been vested with wide powers in labour matters.

1.6 ANSWERS TO 'CHECK YOUR PROGRESS'

1. The concept of 'industrial relations' is very broad and includes in its fold all the relationships in modern industrial society which arise out of employee-employer exchanges and also the role of the state in these relations.
2. The relationship between labour and management is based on mutual adjustment of interests and goals.
3. The major issues involved in the industrial relations process are terms of employment such as wages, dearness allowances, bonus, fringe benefits, working conditions, leave, working hours, health, safety and welfare, non-employment, job security, personnel issues such as discipline, promotional opportunities and recognition of trade unions.
4. The state's anxiety about work stoppages arises because of two factors: (*i*) the impact on the community by way of inconveniences inflicted by interruption in supply of essential goods/services; and (*ii*) social cost to the parties themselves in the form of loss of wages/production.
5. Social responsibilities of employers are as follows:
   (i) Promotion of national integration
   (ii) Eliciting responsive cooperation from the unions in improving levels of production and productivity
   (iii) Maintaining high standards of quality and competitive prices in the international market

(iv) Helping civic authorities and seeking their cooperation in matters connected with improvement of the area in which the establishment is located

6. Article 14 provides that 'the State shall not deny to any person equality before the law or equal protection of the laws within the territory of India'.
7. Articles 39, 41, 42, 43 and 43-A are considered to be the 'magna carta' of industrial jurisprudence in the Indian context.
8. Labour is a subject in the concurrent list where both the Central and State Governments are competent to enact legislations.

1.7 QUESTIONS AND EXERCISES

Short-Answer Questions

1. What are the principles of good industrial relations?
2. What is the significance of industrial relations?
3. How is child labour a barrier to harmonious industrial relations?
4. What is the role of the state in industrial relations?
5. Write a note on the application of workers' right to form associations in India.

Long-Answer Questions

1. Discuss the objectives of industrial relations.
2. Explain the role of trade unions and employer unions in industrial relations.
3. Describe the application of Fundamental Rights with respect to industrial relations.
4. Explain how the Directive Principles of State Policy is significant for achieving cordial industrial relations.
5. Discuss how labour law making powers are distributed under the Indian Constitution.

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UNIT 2 TRADE UNIONISM AND INDUSTRIAL RELATIONS

NOTES

Structure

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2.1 Unit Objectives
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  2.4.1 Role of Trade Unions in India
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  2.5.3 International Labour Organization (ILO): Origin, History, Objectives and Functions
2.6 Summary
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2.0 INTRODUCTION

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

A survey of the development of trade unions in India shows that most of the unions are affiliated with either of the four central trade union federations, *viz*., the Indian National Trade Union Congress, All India Trade Union Congress, Hind Mazdoor Sabha and United Trade Union Congress. Besides these, some trade unions are affiliated with seven other trade union federations, *viz*., Bhartiya Mazdoor Sangh, Hind Mazdoor Panchayat, Centre of Indian Trade Union, National Federation of Independent Trade Unions, National Labour Organization, Trade Union Coordination Committee and United Trade Union Congress (Lenin Sarani). These trade union organizations have been patronized by different political parties in the country. Further, a survey of trade unions in India reveals that over the years, the trade union movement has undergone significant development. Both workers and non-workers have been involved. The beginnings of the movement were the outcome of the efforts made by certain social reformers and labour leaders.

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2.1 UNIT OBJECTIVES

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

- Discuss the meaning and scope of trade unions
- Identify the various types of trade unions
- Explain the evolution and development of trade union movements in India
- List the characteristics of various central trade unions in India
- Assess the functions and problems of trade unions
- Explain the role of ICFTU, WFTU and ILO in industrial relations

2.2 LABOUR OR TRADE UNION MOVEMENT: CONCEPTS AND SIGNIFICANCE

Trade union: A legal organization, consisting of workers who endeavour to achieve common goals in order to improve their work life conditions

A **trade union**, also commonly known as a labour union, is a legal organization, consisting of workers who endeavour to achieve common goals in order to improve their work life conditions. Generally, a trade or labour union comprises of individual workers and professionals working in an organization, and may also include its past workers. Trade/labour unions play an significant role in organizing and empowering workers. At the onset, the unions had to face many problems mainly due to the illiteracy and unawareness of the workers; so, there was a need for the trade union leaders to organize the disorganized.

2.2.1 Concept and Significance of Labour Movement

Labour movement refers to an organized effort on the part of workers to improve their economic and social status by united action through the medium of labor unions. It is a broad term for the development of a collective organization of labour force, to campaign for better working conditions and treatment from their employers and governments. For the realization of their goals, they especially put emphasis on implementation of specific laws governing labour relations. The term labour movement basically refers to the following two ideas:

- Workers, especially blue-collar or manual workers, share common political and economic interests which may be advanced through organized trade union and political action.
- Trade unions can form an effective alliance with left of centre parties in Parliament with the objective of forming a government in which workers' interests would be of central importance.

The most important goal of trade unions has been to secure an equal distribution of the benefits of economic growth. They pursue the goal of ensuring transparent governance, execution of core labour standards, employment generation, social security and poverty reduction.

As the representatives of the union members, the leaders of the trade union, hold discussions with the employers to negotiate labor contracts (Collective bargaining). These negotiations may be around key areas like wages, work rules, redressal of

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complaints, rules related to recruitment and retrenchment, promotions, workplace benefits, security and other policies. The agreements negotiated by the union leaders are binding on the rank and file members and the employer and in some cases on other non-member workers. The political structure and the autonomy of Trade Unions are varied across different countries. Over the years, trade unionism has developed and evolved influenced by various political and economic factors.

Scope

Modern day trade unions have highly developed social and economic policies and an efficient organizational management . They have a vision of achieving social justice for all, and to realize it, they deploy methods like collective bargaining with can lead to more severe steps like taking industrial action and enforcing strikes or lockouts to further certain goals.

Industrial action

While most of the problems between employees and the employer are sorted out on the table, there are times when a solution cannot be found on certain issues. In such situations, a trade union may use some kind of industrial action to achieve its goals.

- ***Strike*** – Workers decide not to work for a certain period.
- ***Slowing down production*** – Employees work at a minimal pace so as to avoid disciplinary action but also bring down production drastically.
- ***Picketing*** – Workers disrupt work by demonstrating with banners and slogans.
- ***No overtime*** – Workers refuse to work overtime to slow down production.

Political activity

Trade unions also actively participate in the political process by promoting legislation which are in the interests of workers. To realize their goals they often engage in campaigns, initiate lobbying, or at times even provide economic support to individual candidates for public office or to political parties, for example the Labour Party in Britain.

2.2.2 Types of Trade Unions

Trade unions can largely be classified as:

(a) **Company unions** that represent only a single firm and might not be part of any trade union movement. It is commonly called a house union, and such unions are often not legally registered.

(b) **General unions** represent employees from several firms belonging to the same industry. It is commonly called an industrial union.

(c) **Craft unions** that represent skilled workers belonging to a specific field like carpentry or welding.

(d) **White-collar unions** represent salaried professionals or educated workers who work in offices.

A survey of the development of trade unions in India shows that most of the unions are affiliated with either of the four central trade union federations, viz.,

- Indian National Trade Union Congress

Company unions: That represent only a single firm and might not be part of any trade union movement

White-collar unions: Represent salaried professionals or educated workers who work in offices

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- All India Trade Union Congress
- Hind Mazdoor Sabha
- United Trade Union Congress

Besides these, some of the trade unions are affiliated with seven other trade union federations, viz., Bhartiya Mazdoor Sangh, Hind Mazdoor Panchayat, Centre of Indian Trade Union, National Federation of Independent Trade Unions, National Labour Organization, Trade Union Coordination Committee and United Trade Union Congress (Lenin Sarani). These trade union organizations have been patronized by different political parties in the country. Further, a survey of the trade unions in India reveals that over the years the trade union movement has undergone significant development. Both workers and non-workers have been involved. The beginnings of the movement were the outcome of the efforts made by certain social reformers and labour leaders. 'The early... trade union movement (was) often full of difficulties. Strike committees (arose) calling themselves trade unions and demanding the privileges of trade unions, without any means of discharging the responsibilities thereof'.[1] The position has considerably changed since then. The number of unions has gone up and membership and funds of trade unions have increased.

2.3 DEVELOPMENT OF TRADE UNIONISM IN INDIA

The labour movement in India is about fourteen decades old, it may be traced from 1860s. Early years of the movement were generally led by philanthropists and social reformers, who organized workers and protected them against inhuman working conditions. The early years of labour movement were often full of difficulties. Strike committees arose calling themselves trade unions and demanding the privileges of trade unions without any means of discharging responsibilities thereof. The position of trade unions has considerably improved since then. The number of trade unions has gone up and its membership and funds have increased. The development during the span of about one hundred and forty-five years may be considered broadly under the following six periods:

(*i*) Pre-1918
(*ii*) 1918–24
(*iii*) 1925–34
(*iv*) 1935–38
(*v*) 1939–46
(*vi*) 1947 and since.

(i) Pre-1918 Period

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

Check Your Progress

1. Identify the types of actions a trade union may use to achieve its goals.
2. What are the different categories of trade unions?

In 1875, Sarobji Shapuri in Bombay made a protest against poor working conditions of workers at that time. The deplorable conditions of workers were brought to the notice of the Secretary of State for India. The first Factory Commission was, therefore, appointed in 1875, and as a result the Factories Act, 1881 was enacted. This Act was, however, was inadequate to meet the evils of child labour. Moreover, no provision was made to regulate the working conditions of the women workers. This gave rise to a great disappointment to workers. Thereupon, another Factory Commission was appointed in 1884. In the same year, Mr N.M. Lokhande organized the conference of the Bombay factory workers and drew up a memorandum signed by 5,300 workers demanding a complete day of rest on Sunday, half-an-hour recess, working hours between 6.30 a.m. to sunset, the payment of wages not later than 15th of the month, and compensation for injuries. In 1889, in Bombay, workers of spinning and weaving mills demanded Sunday as holiday, regularity in the payment of wages, and adequate compensation in case of accidents.

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

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

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

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

In 1903, the employees of press and machine section of Madras government went on strike for overtime work without payment. The strike prolonged for six months and after great hardship and starvation workers returned to work. Two years later in 1905, the workers of the Government of India Press, Calcutta, launched a strike, over the question of:

(*i*) Non-payment for Sunday and gazetted holidays.

(*ii*) Imposition of irregular fines

(*iii*) Low rate of overtime pay.

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

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

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

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

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

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

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

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

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

(ii) 1918–1924 Period

The period 1918-1924 can perhaps be best described as the era of formation of modern trade unionism. This period witnessed the formation of a large number of

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trade unions. Important among these were Madras Labour Union, Ahmedabad Textile Labour Association, Indian Seamen's Union, Calcutta Clerks's Union, and All India Postal and RMS Association. One of the significant features of this period was that the All India Trade Union Congress (AITUC) started in 1920.

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

Several factors were responsible for its formation and growth: First, the economic conditions of workers played an important role in the formation of trade unions. The demand of Indian goods increased enormously for two reasons:

(*i*) The shortage of shipping facilities led restricted imports of several commodities for which, India was dependent on foreign countries.

(*ii*) There was great demand of Indian goods from the allies and neutral countries. For these reasons the prices of Indian commodities, viz., salt, cotton, cloth, kerosene rose high. Naturally the cost of living steadily increased. The employer earned huge profits. The wages of workers were increased but they could not keep pace with the soaring prices of commodities. This resulted in further deterioration of workers' conditions. Further, there was shortage of labour in some of the industrial centres due to the epidemic of influenza. These reasons led to the formation of trade unions to improve their bargaining positions.

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

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

Fourth, the other factor responsible for the growth of trade union move was the worldwide unrest in the post-war period. The war awakened the minds of industrial workers.

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

(iii) 1925–1934 Period

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

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

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

(iv) 1935–1938 Period

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

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

The year 1938 saw the most important state enactment, *viz.*, the Bombay Industrial Disputes Act, 1938. The significant features of the Act were:

(*a*) Compulsory recognition of unions by the employer

(*b*) Giving the right to workers to get their case represented either through a representative union or where no representative union in the industry/centre/unit existed through elected representatives of workers or through the government labour officer.

(*c*) Certification of Standing Orders which would define with sufficient precision the conditions of employment and make them known to workmen.

(*d*) The setting up of an Industrial Court, with original as well as appellate jurisdiction to which parties could go for arbitration in case their attempts to settle matters between themselves or through conciliation did not bear fruit.

(*e*) prohibition of strikes and lockouts under certain conditions. The scope of the Act was limited to certain industries in the province.

(v) 1939–1946 Period

World War II like World War I brought chaos in industrial relations. Several reasons may be accounted for the industrial unrest and increased trade union activity. First, the rise in prices could not keep pace with the increase in wages. Second, there was a split in AITUC due to nationalist movement. Third, the post-World War II witnessed retrenchment and therefore faced the problem of unemployment. During this period the membership of registered trade unions increased from 667 in 1939–40 to 1087 in

1945–46. Further, the number of women workers in the registered trade unions increased from 18,612 in 1939–40 to 38,570 in 1945–46. Moreover, the period witnessed a large number of strikes.

During the emergency, the Defence of India Rules, 1942 remained in force. Rule 81 A of the Rules, empowered the government to:

(*i*) To require employers to observe such terms and conditions of employment in their establishments as may be specified.

(*ii*) To refer any dispute to conciliation or adjudication.

(*iii*) To enforce the decisions of the adjudicators.

(*iv*) To make general or special order to prohibit strikes or lockouts in connection with any trade dispute unless reasonable notice had been given. These provisions thus permitted the government to use coercive processes for the settlement of 'trade disputes' and to place further restrictions on the right to use instruments of economic coercion.

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

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

(vi) 1947 and Since

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

In 1948, the Socialist Party formed an organization known as Hind Mazdoor Sabha. The aims and objects of the Sabha are to:

(*i*) Promote the economic, political, social and cultural interest of the Indian working class.

(*ii*) Guide and co-ordinate the activities of affiliated organizations and assist them in their work.

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

(*iv*) Promote the formation of federation of unions from the same industry or occupation.

(*v*) Secure and maintain for the workers freedom of association, freedom of speech, freedom of assembly, freedom of press, right of work or maintenance; right of social security and right to strike.

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(*vi*) Organise and promote the establishment of a democratic socialist society in India.

(*vii*) Promote the formation of co-operative societies and to foster workers' education.

(*viii*) Cooperate with other organizations in the country and outside having similar aims and objectives.

A year later in 1949, another organization, namely, the United Trade Union Congress was formed. The aims and objects of the United Trade Union Congress as given in its Constitution are: (*i*) Establishment of socialist society in India. (*ii*) Establishment of a workers and peasants state in India. (*iii*) Nationalization and socialization of the means of production. (*iv*) Safeguarding and promoting the interests, rights and privileges of the workers' in all matters' social, cultural, economic and political. (*v*) securing and maintaining for the workers' freedom of speech, freedom of press, freedom of association, freedom of assembly, right to strike, right to work or maintenance and the right to social security. (*vi*) Bringing about unity in the trade union movement.

The same year also witnessed the passing of the Industrial Disputes Act, 1947 and the Trade Unions (Amendment) Act, 1947. The former Act introduced the adjudication system on an all India level. It prohibits strikes and lockouts without giving fourteen days' prior notice and during the pendency of conciliation proceeding before a Conciliation Officer in public utility services. In non-public utility services, it prohibits strikes and lockouts during the pendency of proceedings before Board of Conciliation, Labour Court, Tribunal, National Tribunal and Arbitration (when a notice is given under Section 10-A of the Act). The Act further prohibits strikes and lockouts during the operation of settlement or award in respect of any matter covered under settlement or award. The Act provided for recognition of trade unions and penalties for unfair labour practices by employers and unions. Again in 1950, the Trade Unions' Bill was introduced in the Parliament providing for registration and recognition of trade unions and penalties for certain unfair labour practices. On dissolution of the Parliament, the bill lapsed and has not since been brought forward by governments before the Parliament.

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

The period also saw the amendments in the Trade Unions Act in 1960. The amended Act brought four new provisions:

(*i*) Minimum membership subscription has been incorporated.

(*ii*) The Registrar of trade unions has been empowered to inspect account books, register, certificate of registration and other documents connected with the return submitted by them under the Trade Unions Act

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(*iii*) Government is empowered to appoint Additional and Deputy Registrar with such powers and functions as it deems fit.

(*iv*) Fate of the application for registration where applicants (not exceeding half of them) cease to be members or disassociate themselves from the application has been statutorily decided.

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

The Act was once again amended in 1964. It made two changes;

(*i*) It disqualified persons convicted by the court of an offence involving moral turpitude from becoming office-bearers or members of the executive of a registered trade unions.

(*ii*) It required for submission of annual returns by registered trade union on a calendar year basis.

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

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

The unity move

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

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

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

(*i*) To reduce multiplicity of unions, it is proposed to change the existing provision of enabling any seven workmen to form a trade union by

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providing for a minimum qualifying membership of 10 per cent of workmen (subject to a minimum of ten) employed in the establishment or industry where the trade union is proposed to function or hundred workmen, whichever is less, for the registration of trade unions.

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

(*iii*) The Act does not lay down any time limit for registration of trade unions. It is proposed to provide for a period of sixty days for the registration of trade unions by the Registrar after all the formalities have been completed by the trade unions. It is also proposed to provide that a trade union whose certificate of registration has been cancelled would be eligible for re-registration only after the expiry of a period of six months from the date of cancellation of registration, subject to certain conditions being fulfilled by the trade union.

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

(*v*) It is proposed to empower the Registrar of Trade Unions to verify the membership of registered unions and connected matters and report the matter to the state and central governments.

(*vi*) Penalties specified in the Act for the contravention of its provisions are proposed to be enhanced.

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

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

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

However, the aforesaid Bill lapsed. Six years later the Trade Unions and the Industrial Disputes (Amendment) Bill, 1988 was introduced in the Rajya Sabha on 13.5.88 but it has not yet received the colour of the Act.

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

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

The year 2001 witnessed several amendments of great importance, made in the Trade Unions Act, 1926. However, such amendments came into force w.e.f. 9.1.2002.

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

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

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

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

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

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

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

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

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

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

(*x*) A fourth practice that compromises the trade union movement is the tendency to convert unions into closed shops.

Most of the unions are affiliated with either of the four central trade union federations, viz., Indian National Trade Union Congress, All India Trade Union Congress, Hind Mazdoor Sabha and United Trade Union Congress. Besides these some of the trade unions are affiliated with seven other trade union federations, *viz*., Bhartiya Mazdoor Sangh, Hind Mazdoor Panchayat, Centre of Indian Trade Union, National Federation of Independent Trade Unions, National Labour Organization, Trade Union Coordination Committee and United Trade Union Congress (Lenin Sarani). These trade union organizations have been patronised by different political parties in the country. Further, a survey of the trade unions in India reveals that over the years the trade union movement has undergone significant development. Both workers and non-workers have been involved. The beginnings of the movement were the outcome of the efforts made by certain social reformers and labour leaders. 'The early ... trade union movement (was) often full of difficulties. Strike committees (arose) calling themselves trade unions and demanding the privileges of trade unions, without any means of discharging the responsibilities thereof.[2] The position has considerably changed

since then. The number of unions has gone up and membership and funds of trade unions have increased.

2.3.1 Central Trade Union Organizations

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In India, currently there are twelve central trade union organization. The are:

1. INTUC (Indian National Trade Union Congress)
2. AITUC (All India Trade Union Congress)
3. BMS (Bhartiya Mazdoor Sangh)
4. UTUC (United Trade Union Congress)
5. HMS (Hind Mazdoor Sangh)
6. CITU (Centre of Indian Trade Union)
7. NLO (National Labour Organization)
8. UTUC (Lenin Sarai) United Trade Union Congress
9. TUCC (Trade Union Co-ordination Committee)
10. NFITUC (National Federation of Independent Trade Unions)
11. HMKP (Hind Mazdoor Kisan Panchayat)
12. IFFTU (Indian Federation of Free Trade Union)

Table 2.1 *Percentage Distribution of Income of Workers' and Employers' Unions by Sources During 2008*

Sl. No.	Sources of Income	Percentage to total in respect of			
		Workers' Unions		Employers' Unions	
		Central Unions	State Unions	Central Unions	State Unions
1	2	3	4	5	6
1	Contribution from Members	26.4 (11,83,72,141)	45.1 (31,15,46,831)	-	27.1 (10,06,168)
2	Donations	11.2 (5,03,57,840)	26.1 (17,98,65,704)	-	8.6 (3,18,339)
3	Sale of Periodicals, Books etc	12.7 (5,68,49,537)	2.8 (1,93,94,660)	-	1.7 (63,123)
4	Interest on Investments	7.8 (3,47,13,407)	5.6 (3,83,70,790)	-	10.1 (3,76,818)
5	Income from Miscellaneous Sources	41.9 (18,75,66,972)	20.4 (14,10,43,837)	-	52.5 (19,50,987)
All Sources		**100.0 (44,78,59,897)**	**100.0 (69,02,21,822)**	**-**	**100.0 (37,15,435)**

Source: *http://industrialrelations.naukrihub.com*

Of the central trade union organizations, five unions are very important, namely AITUC, INTUC, HMS, UTUC and BMS. Let us discuss the salient features of these five trade unions.

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1. The All India Trade Union Congress (AITUC)

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

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

The trade unions that remained in the AITUC after the splits were working under the control of the communists. The splits greatly reduced the strength of the AITUC and it ceased to be the most representative central organization of workers in the country as early as 1948.

2. Indian National Trade Union Congress (INTUC)

The decision to set up the 'Indian National Trade Union Congress' or Rashtriya Mazdoor Congress—popularly known as INTUC was taken on 3 May 1947.

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

I (i) to establish an order of society which is free from hindrance in the way of an all-round development of its individual members, which fosters the growth of human personality in all its aspects, and goes to the utmost limit in progressively eliminating social, political or economic exploitation and inequality, the profit-motive in economic activity and organization of society and anti-social concentration of power in any form;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

IV (i) to establish just industrial relations;

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

(iii) to take recourse to other legitimate methods including strikes or any suitable form of satyagraha where adjudication is not applied to settlement of disputes within a reasonable time or where arbitration is not available for the redress of grievances;

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

V (i) to foster the spirit of solidarity, service, brotherhood, cooperation and mutual help among the workers;

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

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

It is a common knowledge that the INTUC always echoes the language of the Congress governments on vital issues like conciliation, arbitration, adjudication, strikes, trade unions rights, etc. However, the INTUC has played a major role in evolving peaceful and democratic methods of settling disputes in the industry by voluntary mutual negotiations or conciliation or on its failure by arbitration. Its unflinching support to economic policies and five year plans, its emphasis on the need of peaceful and planned

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progress without strikes or lockouts, its objectives to remove the vestiges of social and economic disparities by just means has made it one of the foremost labour organizations of workers in the country.

3. The Hind Mazdoor Sabha (HMS)

The Hind Mazdoor Sabha (Indian Labour Congress) was set up at Calcutta at a conference held on December 24 and 25, 1948.

The aims and objects of the Hind Mazdoor Sabha are:

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

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

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

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

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

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

(vii) to promote the formation of cooperative societies and foster workers' education; and

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

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

4. The United Trade Unions Congress (UTUC)

The Socialist Party of India being aware of the long association of the AITUC with Communist Party of India and of INTUC with the Indian National Congress convened a conference at Calcutta to be held on December 24, 25 and 26, 1948 which led to the founding of the Hind Mazdoor Panchayat, later on known as Hind Mazdoor Sabha. Some of the dissatisfied leaders who had assembled in connection with conference held at Calcutta convened another meeting under the presidentship of Mrinal Kanti Bose and passed a resolution emphazing the need for building an independent democratic central organization of labour. The meeting was unanimously of the opinion that it was not possible to work in the communist-dominated AITUC, nor it was possible for them to support the newly set up organization which according to them had become a Praja Socialist Party show. So it was decided to form an 'United Trade Union Committee' and to call a conference of trade unionists during the Easter holidays. The conference which met at Calcutta on April 29 and May 1, 1949 established a new organization called the United Trade Union Congress known as UTUC.

Aims and Objects

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

(a) to establish a socialist society in India;

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

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

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

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

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

In the promotion and realization of the above aims and objects, the UTUC shall employ all legitimate, peaceful, democratic methods, such as education, propaganda, mass meetings, negotiations, demonstrations, legislation, and the like, and in the last resort, by strikes and similar other methods, as the UTUC may, from time to time decide.

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

5. Bhartiya Mazdoor Sangh

The Bhartiya Mazdoor Sangh (BMS) established in 1959 which is affiliated to Bhartiya Janta Party, a communal political party of the Hindus; the Hind Mazdoor Panchayat (HMP) affiliated to Samyukta Socialist Party of India and the Indian Federation of Independent Trade Unions which is not affiliated to any political party. These three new organizations of workers are seeking recognition from the Government of India for the purposes of representation on the Indian Labour Conference.

2.4 FUNCTIONS, ROLE AND PROBLEMS OF TRADE UNIONS

The key functions of trade unions are as follows:

- Negotiating terms of compensation and workplace conditions through collective bargaining.

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Check Your Progress

3. What was the earliest sign of labour agitation in India?
4. When was the AITUC formed?
5. Which political party formed the Hind Majdoor Sabha and when?
6. Name the central trade unions to which most of the trade unions in India are affiliated.

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- Facilitating smooth relations between worker members and the employer.
- Taking joint action to implement terms of collective bargaining.
- Raise fresh demands of worker members.
- Finding ways to solve their problems.
- Many trade unions also ensure other benefits like insuring workers against unemployment, and for conditions like ill health, old age and funeral expenses.
- Apart from these, trade unions may also provide professional training and legal advice to its members.

According to Prof Clark Kerr, Unions assume the following role:

(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 a whole, e.g. in France Agricultural Unions, Federations of unions, Civil Servants Union, etc.

(c) **Agents of state:** As in U.S.S.R., ensuring targets of production at fixed price. In the 1974 Railway strike, INTUC stood behind Govt, 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 by 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:** where unions consider the interests of the organization along with workers. They think that their members' fate is inextricably linked with that of the organization and they swim or sink together.

(g) **Unions as change agents:** lead the changes rather than be led by them, thus performing the pioneering role.

The tradition of industrial relations is under tremendous pressure, because it was made to cater to the requirements of a controlled, protected and regulated market and was unable to address the new imperatives of a competitive, global market. A tug of war is going on between 'forces of change' and 'forces of Inertia'. The Market requires a flexible, resilient and aggressive employee relations approach, while traditional industrial relation wants to remain adhered to status quo without any change.

Traditional institutions of IR are losing their importance and relevance. Trade unions are marginalised and kept outside the mainstream of business. Strike is losing its cutting edge. Collective bargaining is being replaced by collaborative and productivity and individual bargaining. Ideological obsessions are being replaced by business pragmatism.

Traditional Industrial relations is at the crossroads today.

2.4.1 Role of Trade Unions in India*

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In India, over the years, the functions of trade unions have undergone a change both in their object and scope. The traditional role of trade unions has been confined to redress of grievances of their members regarding employment, non-employment, terms of employment and conditions of service and is still a predominant part of its activities. The Welfare State requires widening in the outlook and functions of trade unions. The role that trade unions can most effectively play in a planned economy, in addition to their traditional activities, may be as follows:

(i) To help, formulate and implement various five-year plans.

(ii) To maintain discipline in the industry.

(iii) To exercise utmost restraint regarding interruption of work and thereby maintaining industrial peace and harmony.

(iv) To assume increased responsibility for the success of higher productivity.

(v) To extend the working of various co-operative societies, e.g., credit societies, fair-price shops, housing co-operatives, co-operative stores, canteens, etc.

(vi) To observe the wage restraint according to the requirements of economic development.

(vii) To assist the Government in the workers' education programme and also to train workers.

(viii) To ensure that management carries out the provisions of minimum standard statutes properly.

(ix) To settle industrial disputes through the machinery provided under the Industrial Dispute Act, 1947.

(x) To uplift the status of women workers.

(xi) To encourage small savings among working classes.

(xii) To encourage family planning in the working classes.

(xiii) To help and improve the content and standard of labour research.

(xiv) To participate actively in the joint management council.

(xv) To induce the labour class to effectively participate in social security schemes.

(xvi) To help the state in the prohibition policy in accordance with the Directive Principles of the State policies as enshrined in the Constitution of India by discouraging drinking habits amongst working classes.

(xvii) To help the workers in getting housing accommodation.

(xviii) To help in evolving safety measures and in implementing all safety provisions.

(xix) To frame the programme for retaining surplus labour.

(xx) To run cultural and welfare activities

(xxi) To protect personnel and properties of the establishment against antisocial elements.

* This part has been reproduced from SC. Srivastava, Trade Unions' Participation in the planned Economy of India.

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(xxii) To check false rumours being propagated during wartime; (xxiii) to uplift the status of backward classes.

Several factors motivated the widening of the sphere of activities of trade unions.

First, the Government of India has committed itself to the task of economic reconstruction as its main objective. The cooperation of trade unions is a sine quo non feature for industrial development.

Second, an extension of these activities of trade unions seems to offer a genuine opportunity to workers and may create further incentive for workers to join trade unions.

Third, trade unions have now been accepted as an integral part of the apparatus of industrial and economic administration of the country and should discharge their responsibilities and functions effectively.

Fourth, the requirements of planned economic development necessitated the enlargement of trade union activities, on patterns most conducive to the achievement of national objectives.

In this part an attempt is made to study and evaluate some of the functions of trade unions in a planned economy.

A. Traditional role of trade Unions

The traditional role of trade unions is to secure higher wages and better service conditions for their workers. This has been considered by them to be their 'primary' and predominant purpose.

A survey of the activities of trade unions of various States during 1956-62 reveals that the activities of trade unions are mainly directed towards making demands for redress of grievances of workers.

B. Role of trade unions in formulating and executing various Five Year Plans

For the successful implementation of the plans the cooperation of trade unions is indispensable. The First Five Year Plan expected co-operation of all Indian organizations of workers in several forms. First, it required discussions in the affiliated unions and their views thereon. The object was to create enthusiasm amongst workers for the plan. A healthy atmosphere was to be created amongst the working class for this purpose. Second, in the interest of national economy, trade unions were required to avoid industrial disputes and maintain industrial peace and harmony. Third, the trade unions' help was also required to increase production. Fourth, it was expected that the outlook of a union with regard to the question of wages was to be attuned according to the requirement of economic development, in keeping with considerations of social justice. Fifth, the plans also required trade unions to devote more time to promote welfare and cultural activities especially in organizing and running consumers' and credit societies. Lastly, the trade unions were to be associated at various levels, namely, individual, industry, regional and national level.

The plan expected an effective role of workers in execution of the plan as increases in the standard of living of the common man depended on their efforts.

The Planning Commission in the Second Five Year Plan again sought the cooperation of trade unions for realizing the targets of production in the plan. A new approach was adopted to minimize the conflict between employers and workers based more on moral rather than legal sanction. The emphasis was on prevention of industrial unrest.

The Third Five Year Plan emphasized the 'need for a considerable adaptation in outlook, functions and practices of trade unions to suit the conditions which have arisen and are emerging'. The Planning Commission considered the trade union 'as an essential part of the apparatus of industrial and economic administration of the country' and expected that the trade unions should be prepared for the discharge of these responsibilities. It, inter alia, required trade unions to play a responsible role in matters such as observance of Code of Discipline, etc.

The fourth plan again emphasizes the constructive work and responsibility of trade unions in the national economy in addition to their traditional activities. The Planning Commission added that 'inevitably, strong trade union organizations are able to assume greater responsibilities in serving their members as well as in participating and shaping economic, social policies and programmes'. The various forums in which labour is represented provide a ready means through which trade unions can make an effective and continuous contribution in the area of policy. These include, besides tripartite bodies like the Indian Labour Conference, Development Councils constituted under the Industrial (Development and Regulation) Act, Industrial Committees, Productivity Councils, Labour Welfare Board, Port Trust, Dock Labour Boards and others. The Planning Commission expected similar participation of trade unions in private sectors.

The constructive role and indispensability of the cooperation of trade unions for achievement of the target has been repeatedly emphasized in all Five Year Plans. Unfortunately the response of the trade unions has not been encouraging due to several reasons:

(i) Absence of a unified trade union movement.

(ii) Lack of adequate finances of trade unions.

(iii) Lack of attitudes towards organized life.

(iv) Lack of encouragement either by the employer or government to actively associate themselves with these programmes.

C. Role of trade unions in maintaining discipline in the industry

The Welfare State requires that trade unions should be responsible for maintaining discipline in industries. Trade unions should, therefore, discourage their members who are:

(i) Habitual late-comers;

(ii) Absent without giving notice;

(iii) Interfering with or creating disturbance to normal work;

(iv) Insubordinate;

(v) Negligent towards their duty;

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(vi) Careless in operation of plant and machine; and

(vii) Causing damage to property, etc.

The impact of these work stoppages on the developing economy of India undoubtedly is enormous. Writes Professor Charles A. Myers: '. . . Work Stoppages, which are part of the western concept of collective bargaining, are costly. . . . India cannot afford them now when it needs more resultant strain on India's productive potentialities have magnified the intensity of the situation.'

Under the circumstances, the need for avoiding interruption of work and maintaining peace in industry in a developing economy is obvious. In the interest of the national economy, unions and employers should exercise the utmost restraint in interruption of work so as to maintain peace in industry. The Code of Discipline in industry also contains provisions for avoidance of industrial disputes. For instance, management and unions jointly agree that 'they will avoid (a) litigation, (b) sit-down and stay-in strikes and (c) lock-outs'. Further, for the avoidance of industrial disputes, the Planning Commission suggested that the duties and responsibilities of employers and workers should be laid down in specific terms.

D. Role of trade unions in achieving higher productivity of labour

The cooperation of trade unions is a 'must' for productivity improvement. This was best described in the Annual Report by the Director General of the International Labour Organization:

Economic development and technological change are the two great motive forces transforming the material conditions of societies. In so doing they require the organizations of society to respond to new problems, to grow and to adjust themselves. Nowhere is this more so than in the sphere of labour relations, and especially perhaps in the growth and functions of trade unions.

He added:

> The autonomous growth of trade unions and the process of dialogue and accommodation among separate interest groups and the State are both desirable in themselves and a means of strengthening society for the work of economic development. They are desirable because trade unions and labour relations in this sense provide scope for individual and group freedom and initiative. They can be a means of strength for economic development by diffusing powers of decision, spreading responsibilities, and encouraging more spontaneity and facility for adjustment to change throughout the economically active group of population.

The need to make efforts for higher productivity through propaganda by the trade unions is significant in India in view of the growing importance of the industrial economy and dependence on it. 'The whole economic health of the country depends upon increased productivity of labour. Such increases will largely depend on improved conditions of work and improved methods and machinery. It will also greatly depend upon the utmost participation by the mass of workers in speeding up and improving production and that improvement can best be effected through modern industrial trade union organization. All this would depend upon the extent to which employers associate workers with the productive efforts and make the workers feel that in increased production lies the good of both the employers and workers. The employer should

consult workers in respect of new machinery, method of production and the way in which economy could be effected in cost of production.' However, the suggestions stated in the First Plan are not exhaustive. We would like to mention that the industrial establishments should reserve a certain proportion of the profit for workers. This would create feelings of dignity and sincerity among workers as they may consider the industry to be their own.

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However, neither the conditions prevailing in our country nor the response of the trade unions towards the movement for higher productivity is satisfactory. One trade union view is that 'productivity is not the means to exploit labour. The fact will have to be brought home to management. On the contrary, they will have to recognize that a worker first and foremost is a human being and any dealing with him will have to be on that basis.' Mr Michael pleaded that to achieve the object of higher productivity the proper atmosphere has to be created by the employer. In the thirteenth session of the I.N.T.U.C. He said: 'Let the employers who cry for higher productivity create a climate for that and give better treatment to their workers. The productivity that the employers clamour for can be possible only when the workers have attained a fair wage, and on the condition that the additional gains of productivity will be shared by the workers.'

In the Tenth Convention the general secretary of the H.M.S. said: 'It is necessary that the trade union movement should be vigilant and play an active role in ensuring that the productivity movement does not degenerate into merely a drive for intensifying labour. . . . The contribution that trade unions can possibly make is seriously restricted by the unsatisfactory state of industrial relations in general . . . when workers see that the employers are reluctant even to grant recognition to their union and to bargain with them on matters concerning service conditions. It is unrealistic to expect that the workers or the trade unions will feel particularly enthusiastic about productivity in the plant.'

The General Secretary of A.I.T.U.C. stated in his report: 'In the name of productivity, the existing time rates will be sought to be converted into piece rates. . . . But later on the employers will revise the norms and bring down the rates as also the complement of workers. . . . There is a tendency to look at the problem of speed-ups in an under-developed country like India on the same levels as in the advanced countries. And that generally leads to trouble. . . . Our workers are still fresh from the fields, . , . the average level of industrial skill takes time to rise . . . wages, nourishment and other conditions here are not at all conducive to greater speed-ups. We import European machines and techniques but not European wages and conditions.'

It has been generally accepted that 'action to raise productivity should be accompanied by appropriate employment policies, by appropriate policies to ensure that the benefits of higher productivity are fairly distributed through higher wages or lower prices or both, and thereby safeguards to ensure satisfactory working conditions. Such measures are essential in order to ensure that increases in productivity are translated into improvement much as measures which should accompany action to raise productivity but rather as integral parts of programmes to raise productivity. ... No less important are the questions of industrial and human relations.'

The abovementioned principles were accepted in the seminar on productivity. 'For increasing the national wealth and per capita income and for improving the standard

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of living, people must be made aware of the significance of higher productivity as a means of achieving these objectives.'

It follows that trade unions are dissatisfied with the attitude of employers and wage rates prevalent in our country. They consider that higher productivity movement can be successful only if the employers give:

(i) Better treatment
(ii) Higher wages
(iii) A share in additional gains
(iv) Recognize their union and bargain with it,
(v) Improve their terms of employment and conditions of service

Only lip service has been rendered to these considerations but unless and until a concrete step is taken towards these problems it is doubtful whether trade unions can play an effective role in the higher productivity movement.

E. Role of trade unions in the development of co-operative societies

In a Welfare State trade unions are required to run various types of co-operative societies, e.g., co-operative stores, credit societies, housing co-operatives, co-operative banks, cheap department stores, fair-price shops, canteens, etc. Setting up of co-operative societies, if properly managed by the agency of trade, will help the trade union movement in two ways:

(i) This will offer genuine opportunity to many workers to join trade unions and would thereby strengthen the trade union movement.

(ii) This will advance the economic position of the union members and thereby strengthen the union finances.

The Ahmedabad Textile Labour Association has been instrumental in establishing co-operative societies. 'The association has a special section for encouraging co-operative enterprise among the working class. At the end of 1956-57, there were 203 Co-operative Societies of Industrial Workers in the Ahemdabad Textile Labour Association. The number of co-operative societies affiliated to the Majdoor Sahakari Bank Ltd. increased from 4 in the beginning of the year to 76 at the end of 1956-57. The capital and membership of the bank at the end of 1956-57 were ₹ 654,540 and 28,000 respectively. With a view to strengthening the co-operative movement among the industrial workers in the city, the Association submitted a proposal to the Government for the formation of a federation of various types of co-operative societies of the workers.' Besides, many unions in Mumbai were instrumental in establishing various types of co-operative societies, e.g., credit societies, housing co-operatives, co-operative stores, canteens, etc. Delhi Cantt. Board Employees' Association was also instrumental in establishing a co-operative thrift and credit society. A total of 2,748 consumers' co-operative stores and fair-price shops had been set up by April 1, 1967, in about 3,954 industrial establishments employing 300 or more workers.

However, except for the aforesaid and a few others, little or no enthusiasm has been shown by the rest of the unions in this direction. To begin with, such activities require adequate support from employers and government particularly in financial matters. The First Five Year Plan, therefore, recommended that trade unions should

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devote time to organizing and running consumers' and credit societies and that 'the employers could help such activities by providing facilities such as accommodation, clerical help, loans to start such societies, etc.' It is significant to note that as a result of continued efforts of I.N.T.U.C., 'the Government of India has agreed to allow the workers to withdraw an amount from their Provident Fund Contribution to purchase shares of Co-operative Societies'. However, the progress in this regard is hardly satisfactory.

F. Role of trade unions in sponsoring and assisting workers' education programmes

In a developing economy, trade unions are required to play a major and constructive role in the nation's development. A strong democratic and enlightened trade union movement is essential. Workers' education, naturally, has to play a key role in streamlining the trade unions in our country. Under the circumstances, the need for workers' education programmes appears to be indispensable for the economic development of an under-developed country such as India. This has become all the more important in view of the illiteracy of workers.

G. Role of trade unions in family planning programme

Trade unions can vitally contribute towards the success of family planning. The unions have links with the majority of the population. Out of the total urban population of about 92.2 million' public sector undertakings alone absorbs about 16 million as workers; the mining sector employs a considerable labour population, the coal mines alone having a population of four lakhs. The private undertakings do not lag behind as employers of the labour force. Labour leaders can easily popularize the family planning programme. Workmen hail from all parts of the country and, if trade unions direct them, they can easily and efficiently carry the message of the programme to each corner of the land. Trade unions can find out the location of labourers' families, group them into sectors, and constitute a committee with a group leader to help them in implementing the programme. These unions can lend their propaganda machinery to the programme. Due to the closeness of leadership with the man in the street, unions can prove to be a boon to the programme in finding out and removing any defects.

Family planning officials should seek the co-operation of trade union leaders with a friendly smile, not in bureaucratic tones, if the programme is to be made a success in fact and not in files alone.

H. Role of trade unions in industrial safety

Another important function of trade unions is to promote safety consciousness amongst the working class. It can help in the safety campaigns by showing films and audiovisual aids to workers with the help of central and regional labour institutes, the Central Board of Workers' Education and similar other bodies. The programme can also be discussed either in their educational forum or in cultural programmes, e.g., safety weeks, etc.

Further, the trade unions can help in the implementation of the safety provisions. The trade unions can insist on their members keeping in view the following measures to prevent accidents: (i) workers must co-operate with the employer in carrying out the provisions meant for safety; (ii) they should make proper use of all safeguards, safety devices and other appliances provided for their protection or the protection of

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others. They should not interfere with, remove, displace, damage or destroy any safety devices or other appliances furnished for their protection.

Conclusions

From the foregoing discussion it is evident that the role of trade unions should be orientated in such a way as to enable the country to achieve national and economic solidarity. Unfortunately, the response of the trade unions towards this objective has been far from satisfactory. Many unions, have to change their outlook and extend the scope of their activities so as to strive for a much more organized life. On the other hand, the managements should encourage trade unions in order to get them effectively associated in the programmes of national and economic development. The Government is also required to lend its co-operation in realizing the avowed objectives of trade unions. This, in effect, requires the reappraisal of labour policy and practices.

Source: *S.C. Srivastava's Trade Unions participation in the lanned, Economy of India; Sydney University, Australia, 1970.*

2.4.2 Problems of Trade Unions

Trade unions in India have been facing many problems, which may be discussed under the following heads:

1. Outside leadership

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

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

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

Several factors have been responsible for the outside interference in the executive of trade unions.

(i) The majority of workers are illiterate.

(ii) Fear of victimisation and of being summarily dismissed by management were further responsible for outside interference in the trade unions movement.

(iii) The financial weakness of the trade union and absence of full time trade union workers have given the opportunity to an outsider to interfere in the trade unions' administration and in the executive of trade unions.

Outsiders in the union executive and the law

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

Section 22 — *Proportion of office-bearers to be connected with the industry*: (1) Not less than one half of the total number of the office-bearers of every registered

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Trade Union in an unorganised sector shall be persons actually engaged or employed in an industry with which the Trade Union is connected:

Provided that the appropriate Government may, by special or general order, declare that the provision of this Section shall not apply to any Trade Union or class of Trade Unions specified in the order.

Explanation: For the purpose of this Section 'unorganised sector' means any sector which the appropriate Government may, by notification in the office Gazette declare.

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

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

(3) No member of the Council of Ministers or a person holding an office of profit (not being in engagement or employment in an establishment or industry with which the Trade Union, is connected), in the Union or a State, shall be a member of the executive or other office-bearer of a registered Trade Union.

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

(*a*) What is meant by an 'outsider'?

(*i*) Can an ex-worker or a worker whose services had been terminated by the employer be treated as an outsider?

(*ii*) Can a full time employee of a trade union be treated as an outsider?

(*b*) Should there be a legal ban on non-employees holding position in the executive of the Union? Does it affect Article 19 of the Constitution?

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

Concept of the outsider

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

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

A question therefore arises whether an employee whose services are terminated otherwise than retrenchment or retirement would be an outsider. The Supreme Court, however, answers the question in the negative. It also raises the issue whether it is desirable to permit dismissed workers in the executive of the trade union.

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2. Rights of minors to membership of trade unions

Section 21 provides that any person who has attained the age of fifteen years may be a member of a registered Trade Union subject to any rules of the Trade Union to the contrary, and may, subject as aforesaid, enjoy all the rights of a member and execute all instruments and give all acquittances necessary to be executed or given under the rules.

3. Inter-union and intra-union rivalries

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

(*a*) between one Trade Union and another, or

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

Section 28B permits the parties to a trade union dispute to refer such dispute to arbitration. Such arbitration agreement must be on the prescribed form and signed by the parties in the manner prescribed by regulation. Further, Section 28C empowers the Registrar to follow such procedure as he thinks fit in adjudging the disputes referred to him. The procedure that may be followed by the Registrar will be subject to such regulation as may be made in this regard. Any person aggrieved by the award of the Registrar in a reference may appeal to the Court within such period as may be prescribed by Regulation. The Bill also permits the parties to trade union disputes to apply jointly or separately in the manner prescribed by Regulation for Adjudication of Disputes to the Registrar.

4. Victimization

Victimization and unfair labour practice are "like twins who cling together". According to some, unfair labour practice can stand by itself, but victimization must always keep company with unfair labour practice. For instance, where the employer interferes with employees' right to self-organization or with the formation of any labour organization, or where the employer closes the door on any settlement by negotiation, there may be unfair labour practices. In such cases, no punishment need be inflicted on any employee. It cannot be said that there is any victimization. Thus, separate existence of unfair labour practice is conceivable.

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Victimization "is a serious charge by an employee against an employer, and, therefore, it must be properly and adequately pleaded giving all particulars upon which the charge is based to enable the employer to fully meet them. The charge must not be vague or indefinite being, as it is an amalgamation of facts as inferences and attitudes.

The onus of establishing a plea of victimization will be upon the person pleading it. Since a charge of victimization is a serious matter reflecting to a degree, upon the subjective attitude of the employer evidenced by acts and conduct, it has to be established by safe and sure evidence. Mere allegations, vague suggestions and insinuations are not enough.

5. Multiple unions

Multiple unionism both at the plant and industry levels pose a serious threat to industrial peace and harmony in India. The situation of multiple unions is said to prevail when two or more unions in the same plant or industry try to assert rival claims over each other and function with overlapping jurisdiction. The multiple unions exist due to the existence of craft unions, formations of two or more unions in the industry. Multiple unionism is not a phenomenon unique to India. It exists even in advance countries like UK and USA. Multiple unionism affects the industrial relations system both positively and negatively. It is sometimes desirable for the healthy and democratic health of labour movement. It encourages a healthy competition and acts as a check to the adoption of undemocratic practice, authoritative structure and autocratic leadership. However, the negative impacts of multiple unions dominate the positive impacts. The nature of competition tends to convert itself into a sense of unfair competition resulting in inter-union rivalry. The rivalry destroys the feeling of mutual trust and cooperation among leadership. It is a major cause for weakening the Trade Union Movement in India. Multiple unionism also results in small size of the unions, poor finances, etc.

6. Finance

Sound financial position is an essential ingredient for the effective functioning of trade unions, because in the process of rendering services or fulfilling their goals, trade unions have to perform a variety of functions and organise programmes which require enormous financial commitments. Hence, it is imperative on the part of a trade union to strengthen its financial position.

But it is felt that the income and expenditure of trade unions in India over the years is such, with few exceptions, that the financial position of the union is generally weak, affecting their functioning. It is opined that, "trade unions could be more effective, if they paid more attention to strengthening their organisations and achieving higher attention of financial solvency."

The primary source of income to the unions is membership subscription. Their other sources of union finances are donations, sale of periodicals, etc. The items of expenditure include: allowances to office bearers, salaries to office, annual convention/ meeting expenses, rents, stationery, printing, postage, telegrams, etc. Most of the trade unions in India suffer from inadequate funds. This unsound financial position is mostly due to low membership and low rate of membership fee. Trade Union Act, 1926, prescribed the membership fee at 25 paise per member per month. But the National Commission on Labour recommended the increase of rate of membership subscription

Check Your Progress

7. List any three functions of trade unions.
8. Identify the factors responsible for the outside interference in the executive of trade unions.
9. What is the provision under Section 21 of the Trade Unions Act, 1926?

from 25 paise to ₹ 1 in the year 1990. But the Government did not accept this recommendation.

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2.5 INTERNATIONAL LABOUR MOVEMENT

The labour movement is a broad term for the development of a collective organization of working people, to campaign for better working conditions and treatment from their employers and governments, in particular through the implementation of specific laws governing labour relations. With ever increasing levels of international trade and rising influence of multinational corporations, there has been debate and action within the labour movement broadly to attempt international co-operation. This has led to renewed efforts to organize and collectively bargain internationally. A number of international union organizations have been established in an attempt to facilitate international collective bargaining, to share information and resources and to advance the interests of workers generally.

2.5.1 International Conference of Free Trade Unions (ICFTU)

The International Confederation of Free Trade Unions (ICFTU) was an international trade union. It came into being on 7 December 1949 following a split within the World Federation of Trade Unions (WFTU), and was dissolved on 31 October 2006 when it merged with the World Confederation of Labour (WCL) to form the International Trade Union Confederation (ITUC). Prior to being dissolved, the ICFTU had a membership of 157 million members in 225 affiliated organisations in 148 countries and territories.

It was a confederation of national trade union centres, each of which links together the trade unions of that particular country. Membership was open to bona fide trade union organisations, that were independent of outside influence, and had a democratic structure.

The ICFTU cooperated closely with the International Labour Organisation and had consultative status with the United Nations' Economic and Social Council and with specialised agencies such as UNESCO, FAO, etc. It maintained contacts with the International Monetary Fund, the World Bank and the World Trade Organisation and had offices in Geneva, New York and Washington.

Activities

The ICFTU organised and directed campaigns on issues such as:

- the respect and defence of trade union and workers' rights,
- the eradication of forced and child labour,
- the promotion of equal rights for working women,
- the environment,
- education programmes for trade unionists all over the world,

- encouraging the organisation of young workers,
- sends missions to investigate the trade union situation in many countries.

2.5.2 World Federation of Trade Unions (WFTU)

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The World Federation of Trade Unions (WFTU) was established in 1945 to replace the International Federation of Trade Unions. Its mission was to bring together trade unions across the world in a single international organization, much like the United Nations. After a number of Western trade unions left it in 1949, as a result of disputes over support for the Marshall Plan, to form the International Confederation of Free Trade Unions, the WFTU was made up primarily of unions affiliated with or sympathetic to Communist parties. In the context of the Cold War, the WFTU was often portrayed as a Soviet front organization. A number of those unions, including those from Yugoslavia and China, left later when their governments had ideological differences with the Soviet Union.

The WFTU has declined precipitously in the past twenty years since the fall of the Communist regimes in the Soviet Union and Eastern Europe, with many of its former constituent unions joining the ICFTU. In January 2006 it moved its headquarters from Prague, Czech Republic to Athens, Greece and now focuses on organizing regional federations of unions in the Third World, campaigning against imperialism, racism, poverty, environmental degradation and exploitation of workers under capitalism and in defense of full employment, social security, health protection, and trade union rights. The WFTU continues to devote much of its energy to organizing conferences, issuing statements and producing educational materials.

As part of its efforts to advance its international agenda, the WFTU develops working partnerships with national and industrial trade unions worldwide as well as with a number of international and regional trade union organizations including the Organization of African Trade Union Unity (OATUU), the International Confederation of Arab Trade Unions (ICATU), the Permanent Congress of Trade Union Unity of Latin America (CPUSTAL), and the General Federation of Trade Unions of CIS.

The WFTU holds consultative status with the Economic and Social Council of the United Nations, the ILO, UNESCO, FAO, and other UN agencies. It maintains permanent missions in New York, Geneva, and Rome.

The following Trade Unions Internationals are constituted within the WFTU:

- Trade Unions International of Agriculture, Food, Commerce, Textile, and Allied Industries
- Trade Unions International of Public and Allied Employees
- Trade Unions International of Energy, Metal, Chemical, Oil and Allied Industries
- Trade Unions International of Transport Workers
- Trade Unions International of Building, Wood and Building Materials Industries
- World Federation of Teachers Unions

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2.5.3 International Labour Organization (ILO): Origin, History, Objectives and Functions

The International Labour Organization (ILO) has played a key role in promoting international labour standards. It was set up in 1919 under the Treaty of Versailles. India is a founder member of ILO.

There are certain fundamental principles of the ILO that were laid down at the time of its inception. These principles are known as the Charter of Freedom of Labour. The main principles of ILO are as follows:

- Labour is not a commodity.
- Freedom of expression and of association are essential to sustained progress.
- Poverty anywhere constitutes danger to prosperity everywhere.
- The war against want requires to be carried on with unrelenting vigour within each nation and by continuance and concerted international effort in which the representatives of workers and employers, enjoying equal status with those of the governments, join with them in free discussion and democratic decision with a view to promotion of common welfare.

The aforesaid principles were modified at the 26th session of ILO held in Philadelphia in 1944. It also adopted a Declaration that concerns with the aims and purposes of the organization. This Declaration is known as the Philadelphia Charter.

By 2008, ILO had adopted 190 conventions and 198 recommendations. India had ratified 42 of the 190 conventions and one protocol. The Constitution of India and labour legislation uphold all the fundamental principles envisaged in the 8 core international labour standards. It ratified 4 of the 8 core conventions of ILO. With regard to the others, India seeks to proceed with progressive implementation of the concerned standards and leave the formal ratification for consideration at a later stage when it becomes practicable.

The ILO has influenced labour legislation in India. Most labour legislation has been enacted in conformity with ILO conventions.

Today, the ILO stands as one of the specialized agencies of the United Nations with longer history than any of its sister organizations.

Organizational structure of ILO

The organizational structure of ILO consists of the following:

1. The International Labour Conference

The International Labour Conference consists of four delegates who are nominated by the member states. Among the four delegates two are government delegates and two are non-government delegates. One of the two government delegates represents employers of the member state and the other represents workers of the member state. The two non-government delegates are nominated with the reference of all the representatives organizations of employers and workers. Each of the delegates has the right to vote on all matters, which are discussed in the conference.

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Each of the delegates can have at most two advisers for each item on the agenda of the meeting. The advisers are nominated by the respective governments. At least one of the advisers should be a woman if the questions discussed in the meeting are related to women. The advisers are not allowed to vote. They can give their opinion only when their delegates request them to speak with the permission of the President of the Conference. When a delegate authorize his adviser as his deputy, then the adviser is allowed to speak and vote in the conference.

ILO also has a consultative relationship with different non-governmental international organizations such as the International Confederation of Free Trade Unions, the World Federation of Trade unions and the International Federation of Christian Trade Unions. Therefore the ILO Conference is also attended by the representatives of these non-governmental international organizations.

The International Labour Organization is the supreme body of the ILO organization. It directs and supervises all the work of the Governing Body and the International Labour Office and also elects the members of the Governing Body. The International Labour Organization acts as a world parliament for all the labour and social issues and questions. It has created standard Conventions and Recommendation, which are considered as world-wide uniform standards of labour.

The procedure of the Conference is regulated by its own. It can appoint different committees to discuss and present a report on any matter.

2. The Governing Body

Earlier the Governing Body consists of 24 members that includes 12 government representatives of 12 member states, 6 members represent employers' organizations and 6 members represents workers' organizations. Currently the Governing Body consists of 56 members, out of which 28 members represents government, 14 members represents employers organization and 14 members represents workers organizations.

Ten seats out of the twenty-eight government seats are permanently allotted to the ten states of chief industrial importance. Presently the ten permanent members are Canada, China, France, India, Italy, Japan, Soviet Union, the United Kingdom, USA and Germany. The employers and workers delegates of International Labour Conference elect the employers and workers representatives of the Governing Body. It is mandatory that at least two representatives each of the employers and the workers should from non-European countries.

The tenure of office for the members of the Governing Body is three years. The members will remain in the office of the Governing Body until the elections are held for the Governing Body, even after the completion their three period. The Governing Body elects a Chairman and two Vice-Chairmen, to ensure participation of all the representatives.

The Governing Body itself regulate the procedure and time of meeting. In case a special meeting is to be arranged, it should be approved in written by the at least sixteen representatives of the Governing Body.

The Governing Body works under the general direction of the International Labour Conference. It appoints the Director General of the International Labour Office.

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It decides and prepares agenda, which is to be discussed in the International Labour Conference. It also performs all tasks that are assigned to it by the Conference.

3. The International Labour Office

The International Labour Office acts as:

- Secretariat
- World information centre
- Publishing house

The Director General of the International Labour Office is the administrative head and works according to the instructions of the Governing Body. The Director General controls the conduct of the International Labour Office and elects all the staff members of the International Labour Office according to the regulations of the Governing Body. The staff member should belong to different countries with a certain percentage of women.

The main function of the International Labour Office is to collect and distribute information on different subjects related to the international adjustment of the conditions of industrial life and labour.

Making of international labour standard

The annual conference sets normative standards on important matters such as regulation of hours of work and weekly rest in industry, equal remuneration for equal work, abolition of forced labour, discrimination in employment, protection of workmen against sickness, disease and work-injury, regulation of minimum wages, prohibition of night work for women and young persons, recognition of the principle of freedom of association, organization of vocational and technical education, and many areas concerning labour management relations. The standards are evolved after a full debate in the Conference. Usually the standards are accepted after discussions in the Conference over two successive years. Agreed standards on a specified subject are then converted into an international instrument, a 'Convention' or a 'Recommendation', each having a different degree of compulsion. A 'Convention' is binding on the member-state which ratifies it; a 'Recommendation' is intended as a guideline for national action.[3]

ILO declaration on fundamental principles and rights at work

The ILO declaration on Fundamental Principles and Rights at Work, adopted by the International Labour Conference in June 1998, declares *inter alia* that all member states, whether they have ratified the relevant conventions or not, have an obligation to respect, promote and realize the principles concerning the fundamental rights which are the subject of those conventions, namely:

(*a*) freedom of association and the effective recognition of the right to collective bargaining;

(*b*) elimination of all forms of forced or compulsory labour;

(*c*) effective abolition of child labour; and

(*d*) elimination of discrimination in respect of employment and occupation.[4]

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The primary goal of the ILO today is to promote opportunities for women and men to obtain decent and productive work in conditions of freedom, equity, security and human dignity. The goal is not just the creation of jobs but the creation of jobs of acceptable quality.[5]

The Government of India has ratified Convention 122 on Employment and Social Policy in 1998. Article 1 of the Convention lays down:

1. With a view to stimulating economic growth and development, raising levels of living, meeting manpower requirements, and overcoming unemployment and under employment, each member shall declare and pursue, as a major goal, an active policy designed to promote full, productive and freely chosen employment.
2. The said policy shall aim at ensuring that:
   (*a*) There is work for all who are available for and seeking work;
   (*b*) Such work is as productive as possible;
   (*c*) There is freedom of choice of employment and fullest possible opportunity for each worker to qualify for, and to use skill and the endowments in a job for which he is well suited, irrespective of race, colour, sex, religion, political opinion, national extraction or social origin.
3. The said policy shall take due account of the state and the level of economic development and mutual relationships between employment objectives and other economic and social objectives, and shall be pursued by methods that are appropriate to national conditions and practices.[6]

The aforesaid convention was ratified by India at a time when unemployment levels were high. One, therefore, has to presume that the government is now committed to pursue an active policy designed to promote full, productive and freely chosen employment.[7]

From the commitments of the Government of India, it can be deduced that the following rights of workers have been recognized as inalienable and must, therefore, accrue to every worker under any system of labour laws and labour policy. These are:

(*a*) Right to work of one's choice

(*b*) Right against discrimination

(*c*) Prohibition of child labour

(*d*) Just and humane conditions of work

(*e*) Right to social security

(*f*) Protection of wages including right to guaranteed wages

(*g*) Right to redressal of grievances

(*h*) Right to organize and form trade unions and right to collective bargaining

(*i*) Right to participation in management

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Functions of ILO

The functions of ILO are related to the objectives laid in the Conference. The major activities of ILO focus on the following:

- Improving the working conditions of the workers
- Developing human resources and social institutions
- Research and planning

The major functions of ILO are:

- **Means Adopted:** ILO should maintain international standards, which is to be followed by all the employers' and workers' organizations. Conventions and recommendations is a way to set international standards. There are other ways and procedures to set international standards, such as:
  - Resolution and conclusion adopted by expert committees
  - Resolution and reports adopted different labour organizations
  - Resolution of autonomous bodies dealing with social and security question of workers
- **Creation of international standards of labour:** ILO creates international standards of labour on matters that are related with working and social conditions of workers. It adopts the Conventions and Recommendations, which consider various areas such as basic human rights, employment, condition of work, industrial relations and labour administrations.
- **Promotion of employment:** ILO guides and assists all the countries to maintain a higher level of productive employment. ILO makes the following efforts to increase employment:
  - Exploring effects of alternative development strategies on the short-term and long-term employment
  - Helping for the employment, income and organizational requirements of unprotected labour in developing countries
  - Guiding the functioning of labour markets through appropriate policies and measures
  - Encouraging productivity in formal and informal sectors
- **Collection and distribution of information and publication:** ILO acts as the world repository of information about social and working condition of labour. ILO collects these information and provides them to the member countries. ILO also publish major labour and social issues, code of practice on occupational safety and health, workers' education material, textbooks on management and many more.
- **Research and Studies:** ILO also carried out numerous researches and studies related to labour and social issues. The most notable areas on which ILO has worked are industrial relations, social security, working conditions and manpower development.

- **Improvement of working conditions and environment:** ILO has adopted various means of action to improve the working and environmental conditions of the workers. It persuades its member countries to adopt the international standards of labour and also provides relevant information and technical co-operation to the member countries.

2.6 SUMMARY

Some of the important concepts discussed in this unit are:

- A trade union, also commonly known as a labour union, is a legal organization, consisting of workers who endeavour to achieve common goals in order to improve their work life conditions.
- Modern day Trade Unions have highly developed social and economic policies and an efficient organizational management.
- Early years of the movement were generally led by philanthropists and social reformers, who organized workers and protected them against inhuman working conditions.
- The earliest sign of labour agitation in India was a movement in Bengal in 1860 led by Dinabandhu Mitra, a dramatist and social reformer of Bengal followed by some journalists to protest against the hardship of the cultivators and also the plantation workers.
- The period 1918-1924 can perhaps be best described as the era of formation of modern trade unionism.
- In 1935, the All India Red Trade Union Congress merged itself with the AITUC. In 1938, an agreement was arrived at between All India National Trade Union Federation and AITUC and consequently, NTUC affiliated itself with AITUC.
- After Independence, the trade union movement in India got diversified on political considerations. The labour leaders associated with the National Congress Party formed the Indian National Trade Union Congress (INTUC) in 1947.
- In September 1977, an All India Convention of Central Organization of Trade Unions including CITU, BMS, HMS, HMP, the TUCC was called which demanded time bound programmes–ensuring reduction in wage disparity, national wage and price policy and need-based wages for industrial and agricultural workers.
- In India, over the years, the functions of trade unions have undergone a change both in their object and scope. The traditional role of trade unions has been confined to redress of grievances of their members regarding employment, non-employment, terms of employment and conditions of service and is still a predominant part of its activities.
- One of the significant features of the Indian Trade Union Movement is outside leadership.

Check Your Progress

10. When was the ICFTU dissolved?
11. When was the WFTU formed?
12. What are the main principles of the ILO?

- The International Confederation of Free Trade Unions (ICFTU) was an international trade union. It came into being on 7 December 1949 following a split within the World Federation of Trade Unions (WFTU), and was dissolved on 31 October 2006 when it merged with the World Confederation of Labour (WCL) to form the International Trade Union Confederation (ITUC).
- The International Labour Organization (ILO) has played a key role in promoting international labour standards. It was set up in 1919 under the Treaty of Versailles. India is a founder member of ILO.

2.7 ANSWERS TO 'CHECK YOUR PROGRESS'

1. A trade union may use the following industrial actions to achieve its goals.
   - Strike
   - Slowing down production
   - Picketing
   - No Overtime
2. Trade unions can largely be classified as:
   (a) Company unions
   (b) General unions
   (c) Craft unions
   (d) White-collar unions
3. The earliest sign of labour agitation in India was a movement in Bengal in 1860 led by Dinabandhu Mitra, a dramatist and social reformer of Bengal followed by some journalists to protest against the hardship of the cultivators and also the plantation workers.
4. The AITUC was formed in 1920.
5. In 1948, the Socialist Party formed an organization known as Hind Mazdoor Sabha.
6. Most of the unions are affiliated with either of the four central trade union federations, viz., Indian National Trade Union Congress, All India Trade Union Congress, Hind Mazdoor Sabha and United Trade Union Congress.
7. The three key functions of trade unions are as follows:
   - Negotiating terms of compensation and workplace conditions through collective bargaining.
   - Facilitating smooth relations between worker members and the employer.
   - Taking joint action to implement terms of collective bargaining.
8. Several factors have been responsible for the outside interference in the executive of trade unions.

- The majority of workers are illiterate.
- Fear of victimisation and of being summarily dismissed by management were further responsible for outside interference in the trade unions movement.
- The financial weakness of the trade union and absence of full time trade union workers have given the opportunity to an outsider to interfere in the trade unions' administration and in the executive of trade unions.

9. Section 21 of the Trade Unions Act, 1926 provides that any person who has attained the age of fifteen years may be a member of a registered Trade Union subject to any rules of the Trade Union to the contrary, and may, subject as aforesaid, enjoy all the rights of a member and execute all instruments and give all acquittances necessary to be executed or given under the rules.
10. The ICFTU was dissolved on 31 October 2006 when it merged with the World Confederation of Labour (WCL) to form the International Trade Union Confederation (ITUC).
11. The World Federation of Trade Unions (WFTU) was established in 1945 to replace the International Federation of Trade Unions.
12. The main principles of ILO are as follows:
    - Labour is not a commodity.
    - Freedom of expression and of association are essential to sustained progress.
    - Poverty anywhere constitutes danger to prosperity everywhere.
    - The war against want requires to be carried on with unrelenting vigour within each nation and by continuance and concerted international effort in which the representatives of workers and employers, enjoying equal status with those of the governments, join with them in free discussion and democratic decision with a view to promotion of common welfare.

2.8 QUESTIONS AND EXERCISES

Short-Answer Questions

1. List the various types of trade unions.
2. State the meaning and scope of trade unions.
3. Write a note on the development of trade unions during 1925 – 1934 in India.
4. List the major central trade unions in India.
5. How is the ILO structured?

Long-Answer Questions

1. Discuss the development of trade unions in India in post-Independence period.
2. Describe the origin and functions of central trade unions in India.
3. Analyse the problems of trade unions.

4. Explain the role of trade unions in industrial safety and development of cooperative societies.
5. Discuss the structure and functions of ILO.

NOTES

2.9 REFERENCES

1. See the Report of the Bombay Industrial Dispute Committee, 1922.
2. See the Report of, the Bombay Industrial Dispute Committee, 1922.
3. See Govt. of India, Report of the First National Commission on Labour (1968), 473.
4. Govt. of India, Report of the Second National Commission on Labour (2002), 35.
5. *Ibid.*
6. Govt. of India, Report of the Second National Commission on Labour (2002), 35.
7. *Ibid.*

UNIT 3 INDUSTRIAL DISPUTES

NOTES

Structure

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3.0 INTRODUCTION

In this unit, you will learn about industrial disputes. The relationship between labour and management is based on the mutual adjustment of interests and goals. Nevertheless, whenever one of the parties try to further its own interests preventing the other party, conflict arises which leads to work stoppages and loss of revenue for the country. The legislation has provided various Acts to deal with disputes and also for providing a better working environment for workers. There are various machinery for the settlement of industrial disputes. In this unit, you will learn about different statutory measures aimed at curtailing industrial disputes along with different measures of bipartite and tripartite negotiations. You will further gain a significant insight into procedures concerning labour mediation, conciliation, arbitration and adjudications.

3.1 UNIT OBJECTIVES

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

- Discuss the meaning, causes and forms of industrial disputes

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- Explain the role of joint consultation, mediation, conciliation, voluntary arbitration, adjudication, works committees and court of inquiry in resolving industrial disputes
- State the meaning of discipline and causes of employee indiscipline
- Describe the features of code of conduct and code of discipline
- Explain the process of grievance handling

3.2 INDUSTRIAL DISPUTES: MEANING, CAUSES AND FORMS

Industrial dispute: Any dispute or difference between employers and employers or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person

Section 2 (k) of the Industrial Disputes Act, 1947, defines '**industrial dispute**' to mean:

> Any dispute or difference between employers and employers or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person.

The dimensions of the aforesaid definition determine the permissible area of both community intervention in industrial relations as well as labour activity.

Stated broadly, the definition of 'industrial dispute' contains two limitations. (*i*) The adjective 'industrial' relates to the disputes of an industry as defined in the Act, and (*ii*) it expressly states that not all sorts of dispute and differences but only those which bear upon the relationship of employers and workmen regarding employment, non-employment, terms of employment and conditions of labour are contemplated.

Broadly speaking, the definition of 'industrial dispute' may be analysed under four heads:

(i) Factum of industrial dispute;

(ii) Parties to the dispute;

(iii) Subject matter of the dispute; and

(iv) Origin of the dispute

1. Factum of industrial dispute

The existence of a dispute or difference is the key to the expression 'industrial dispute'. The expression 'dispute or difference' connotes a real and substantial difference having some element of persistency and continuity till resolved, and likely, if not adjusted, to endanger the industrial peace of the undertaking or the community. When the parties are at variance, and the dispute or difference is connected with the employment, or non-employment or the terms of employment or with the conditions of labour, there comes into existence an industrial dispute. But there is divergence of opinion among the courts on the issue whether a mere demand to the appropriate government or to the conciliation officer without a dispute being raised by the workmen with the employer regarding such demand can become an industrial dispute. The Supreme Court in *Sindhu Resettlement Corporation Ltd* v. *Industrial Tribunal* answered it in negative. Observed Justice Bhagwati:

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> If no dispute at all was raised by the (workmen) with the management, any request sent by them to the government would only be a demand by them and not an industrial dispute between them and their employer. An industrial dispute, as defined, must be a dispute between employers and employers, employers and workmen and workmen and workmen. A mere demand to a government, without a dispute being raised by the workmen with their employer, cannot become an industrial dispute.

The aforesaid view does not appear to be in conformity with the earlier decision of the Supreme Court in *Bombay Union of Journalists* v. *The Hindu* wherein it was held that industrial dispute must be in existence or apprehended on the date of reference. The net effect of the principle is that even if the demand was not made earlier before the management and rejected by them and is raised at the time of reference or during conciliation proceedings, the dispute may be an 'industrial dispute'.

The aforesaid view in the *Hindu (Supra)* appears to have been followed in *Shambhu Nath Goel* v. *Bank of Baroda*. An employee of the Bank of Baroda was dismissed from service after an inquiry in which the employee appeared and claimed reinstatement. Further, when the union approached the conciliation officer, the management resisted the claim for reinstatement. Thereafter, the employee preferred an appeal to the competent authority. Before the tribunal, the management raised the preliminary objection that the employee had not made a demand. The tribunal accepted the claim of the management and held that the reference was incompetent. Thereafter, the employee preferred an appeal before the Supreme Court. The question arose whether the government's reference was proper and in accordance with the provisions of the Act. The Court observed:

> ... to read into the definition the requirement of written demand for bringing into existence an industrial dispute would be tantamount to rewriting the section.

The Court added:

> Undoubtedly, it is for the government to be satisfied about the existence of the dispute and the government does appear to be satisfied. However, it would be open to the party impugning the reference that there was no material before the government, and it would be open to the tribunal to examine the question, but that does not mean that it can sit in appeal over the decision of the government.

In *Workmen of Hindustan Lever Ltd* v. *Hindustan Lever Ltd*, the Government of Maharashtra referred a dispute between Hindustan Lever Ltd and its workmen for adjudication to the industrial tribunal, Maharashtra. A preliminary objection was raised by the employers that reference was incompetent because the dispute raised by workmen and referred by the government to the industrial tribunal was not an 'industrial dispute' because if the demand as raised is conceded, it would be tantamount to allowing the workmen to decide the strength of the work force required in various grades and it is well-settled that determining and deciding the strength of work force required in an industry is a management function. The industrial tribunal held that the dispute was not an 'industrial dispute'. On appeal, the Supreme Court set aside the award and remitted the matter for disposing of the reference on merits and observed:

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The expression 'industrial dispute' has been so widely defined as not to leave anything out of its comprehension and purview involving the area of conflict that may develop between the employer and the workmen and in respect of which a compulsory adjudication may not be available. This is recognized to be the width and comprehension of the expression.

Be that as it may, the full bench of the Himachal Pradesh High Court in *M/s Village Papers Pvt. Ltd* v. *State of Himachal Pradesh* has summarized the views expressed by the Supreme Court and high courts on the aforesaid subject as follows:

1. A mere demand made to the government cannot become an industrial dispute without it being raised by the workmen with their employer.
2. If such a demand is made to the government, it can be forwarded to the management and if rejected, becomes an industrial dispute.
3. Though it is apparent that for a dispute to exist, there must be a demand by the workmen or the employer. This demand need not be in writing, unless the matter pertains to a public utility service, in view of the provisions of Section 22 of the Industrial Disputes Act, 1947.
4. The demand need not be sent directly to the employer nor it is essential for it to be made expressly. It can be even implied or constructive, *e.g*., by way of filing an appeal or refusal of an opportunity to work when demanded by the workmen. A demand can be made through the conciliation officer, who can forward it to the management and seek its reaction. If the reaction is in negative and not forthcoming and the parties remain at loggerheads, a dispute exists and a reference can be made.
5. Whether a dispute exists has to be decided in each case and is dependent on the facts and circumstances of that case. The crucial time for this examination is the date of making the reference; material which comes into existence after the reference has been made is not relevant.
6. Only that dispute which exists or is apprehended can be referred. If there is a different kind of demand made before the management and the reference pertains to some other demand, then the reference is incompetent, *e.g*., reference pertains to reinstatement whereas the demand pertains to retrenchment compensation.
7. The jurisdiction of the labour court/industrial tribunal is limited to the points specifically referred and matters incidental thereto. Since the scope of its jurisdiction and power is circumscribed by the order of reference, it is not permissible for it to go beyond the terms of reference.
8. Thus, if a reference is made without any demand having been made on the employer either expressly or impliedly, there is no occasion for the employer to point out the nature of the dispute so as to facilitate the government for making an appropriate reference of the dispute.

2. Parties to the industrial dispute

In order to fall within the definition of an 'industrial dispute', the dispute must be between: (*i*) employers, or (*ii*) employers and workmen, or (*iii*) workmen and workmen.

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Besides interpreting the key words, namely 'employer' and 'workman', which are statutorily defined and will be discussed in another section, tribunals and courts have indulged in judicial legislation.

Trade unions as such are not mentioned in the definition of 'industrial dispute' because they act on behalf of the workmen and, therefore, when a trade union raises a dispute, the workmen are deemed to be parties to the dispute.

However, the parties to the industrial dispute do not include disputes (*i*) between government and an industrial establishment or (*ii*) between workmen and non-workmen.

The words 'employers and employers' which did not occur in the Trade Disputes Act, 1929, were inserted in the Industrial Disputes Act, 1947, in order to give the definition of 'industrial dispute' a wide coverage. The disputes between employers and employers may arise in respect of wage matters in an area where labour is scarce or disputes of similar character.

The words 'workmen and workmen' occur in Section 2 (k) to include the disputes between them either directly or through their trade unions. Such a dispute may be demarcation dispute, inter-union dispute, etc. Inter-union dispute has, however, not been held to be an 'industrial dispute'.

The aforesaid three expressions, namely, between employers and employers or between employers and workmen, or between workmen and workmen read with Section 13 (2) of the General Clauses Act, 1897 lead us to make the following categorizations:

(*i*) Where both parties include more than one person: employers and employers, employers and workmen, workmen and workmen.

(*ii*) Where only one of the parties includes more than one person: employer and employers, employer and workman, employers and workman, workmen and workman.

(*iii*) Where both the parties are in singular: employer and employer, employer and workman, workman and workman.

(*iv*) Where both the parties as in category (*i*) include more than one person, the dispute would be a collective dispute. Further, where one of the parties include more than one person, it may be categorized as 'collective dispute'. However, doubts have been expressed whether the dispute between 'employers and workman' would be a 'collective dispute'. Moreover, where both the parties as in category (*ii*) above are composed of single individuals, the case falls into the category of 'individual dispute'.

C. Subject matter of industrial dispute

In order to be an 'industrial dispute', the dispute must be:

> ...connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person.

In practice, however, it is exceedingly difficult to draw a line between various expressions used to indicate the subject-matter of industrial dispute. Generally speaking, the expressions used in Section 2(k) are of wide amplitude and have been put in

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juxtaposition to make the definition thoroughly comprehensive. Thus, the phrase 'conditions of labour' is wide enough to include 'terms of employment' as well as matters connected with unemployment. Similarly, the expression 'terms of employment' includes certain matters relating to 'employment or non-employment'.

It is however, doubtful if the legislature intended any water-tight compartmentalization. The words 'in connection with' widen the scope of 'industrial disputes' and do not restrict it by any means.

The legislature used these phrases in the definition of 'industrial dispute' so that all aspects of labour problems may be resolved through the industrial relations machinery provided under the Industrial Disputes Act, 1947. Any attempt to draw a rigid line would limit, or at least create an impression of limiting the scope of 'industrial dispute' which, it must be emphasized, deals not only with the disputes between employers and workmen but also between 'employers and employers' and between 'workmen and workmen'. However, since every expression used by the legislature indicates certain meaning and idea, it is necessary to examine them.

'Employment' brings in the contract of service between the employer and the employed. The concept of employment involves three ingredients: (*i*) employer, (*ii*) employee and (*iii*) the contract of employment. The employer is one who employs, *i.e.*, one who engages the services of other persons. The employee is one who works on hire basis. The employment is the contract of service between the employer whereunder the employee agrees to serve the employer, subject to his control or supervisions.

'Unemployment' is the opposite of 'employment' and would mean that disputes of workmen which arise out of service with their employers are within the ambit of the definition. It is the positive or negative act of the employer that leads to employment or unemployment. It may relate to an existing fact of unemployment or a contemplated unemployment. Four illustrations were cited by the Federal Court in *Western Indian Automobiles Association* v. *Industrial Tribunal* in support of the aforesaid explanations. Of them, two are in respect of 'employment and two are in respect of unemployment.' A dispute is as to 'employment' or connected with or arising out of employment if:

(*i*) An employer has already employed a person and a trade union says 'please do not employ him'.

(*ii*) An employer gives notice to a union saying that he wishes to employ two particular persons. The union says 'no'.

A matter raises a dispute as to unemployment or contemplated unemployment if:

(*i*) An employer may dismiss a man, or decline to employ him.

(*ii*) An employer contemplates turning out those who are already in his employment.

The failure to employ or the refusal to employ are actions on the part of employer which would be covered by the expression 'employment or unemployment'. Accordingly, the expression 'unemployment' is sufficiently elastic to include all cases of (*i*) termination of service either voluntary or by act of parties (as employer or

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workmen). The instances of this kind are dismissal, discharge, retrenchment, compulsory retirement, etc. It also includes temporary unemployment, *e.g.*, suspension, layoff, compulsory leave, lockout, strike, etc. Further, it would include within its scope the words arising out of unemployment, *e.g.*, reinstatement, re-employment, compensation and back wages for wrongful termination of service.

The expression 'terms of employment' and 'conditions of labour' indicate the kind of conflict between those engaged in industry on the opposite but cooperative sides. These words connote dispute to be the share in which the receipts in a commercial venture shall be divided.

The expression 'terms of employment' generally covers basic wages, dearness allowance and other allowances, wages on promotion, wages on demotion, wages on transfer out of town, wages for over-time work, wages for work on holiday, payment of wages, recovery of wages, bonus, retiral benefits, *e.g.*, pension, provident fund, gratuity, pension, etc.

The expression 'conditions of labour' is much wider in scope and refers to the conditions of service under which they work and the amenities provided or to be provided to them. This expression may include hours of work, holidays, leave, health, safety and welfare of labour.

Quite apart from those matters which have been said to be covered in the subject-matter of industrial dispute, an analysis of decided cases reveals that following matters have also been included in the definitions: (i) alteration of conditions of service of employees (ii) demand for modification of standing orders (iii) disputes regarding contract labour (iv) dispute on lockout in disguise of closure (v) dispute of workmen whose cases are left unsettled (vi) transfer of workman from one place to another.

In *Workmen of Hindustan Levers Ltd* v. *Hindustan Levers Ltd*, a question arose whether a demand for confirmation in the promoted post would be a dispute connected with the terms of employment or the conditions of labour within the meaning of Section 2 (k). The Supreme Court answered the question in the affirmative and observed:

> In respect of the classification, a dispute can conceivably arise between the employer and the workman because failure of the employer to carry out the statutory obligation would enable the workman to question his action which will bring into existence a dispute. It would become an industrial dispute because it would be connected with the conditions of employment. It becomes a condition of employment because necessary conditions of service have to be statutorily prescribed, one such being classification of the workmen was to confirm employees employed in an acting capacity in a grade, it would unquestionably be an industrial dispute.

However, dispute between two unions regarding membership of the union is not an 'industrial dispute.'

In *Cipla Limited* v. *Maharashtra General Kamgar Union*, the Supreme Court held that, if the employees are working under a contract covered by the Contract Labour (Regulation and Abolition) Act, then the labour court or the industrial tribunals have no jurisdiction to decide the question of abolition of contract labour as it falls within the province of an appropriate government to abolish the same. But if the workmen

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claim that they have been directly employed by the company but the contract itself is a camouflage and, therefore, needs to be adjudicated, is a matter which can be adjudicated by the appropriate industrial tribunal or labour court under the Industrial Disputes Act, 1947.

4. Origin of industrial dispute

The scope of the expression 'any person' occurring in the last part of the definition of 'industrial dispute' has been a subject matter of controversy. The question has arisen in several cases before the high courts and also before the Supreme Court as to what exactly is the scope of the expression 'any person' as contemplated in Section 2 (k). If construed literally, it may mean and include both natural as well as artificial persons. On the contrary, if interpreted narrowly, the expression 'of any person' may be equated with 'workman'. How and where to draw a line is not easy to answer.

An analysis of the decided cases of tribunals and courts reveals that prior to the Supreme Court decision in *Dimakuchi Tea Estate (supra)*, there was no unanimity of opinion with regards to the scope of the expression 'any person'. Three views were discernible.

(*i*) The first view emphasized the literal meaning and held that employment or non-employment or terms of employment or conditions of labour of any person whether that person is a workman or not and whether that person was a sweeper in a director's bungalow could form the subject matter of industrial dispute. According to them, if 'the intention of the Legislature was to restrict the scope of the expression of industrial dispute as a dispute between employers and workmen relating to the terms of employment of workmen alone, there was no need to use the wider expression of 'any person'.

(*ii*) The second view equated the word 'person' with that of 'workman'. According to the supporters of this line of view, unless the 'person' was a 'workman' within the meaning of Section 2(s) of the Industrial Disputes Act, 1947, a dispute concerning him could not be an 'industrial dispute' under Section 2(k).

(*iii*) The third view adopted a middle course, namely that 'concerned person' need not necessarily be a 'workman' within the meaning of the Act; it was enough if the present workmen of the employer were interested in such a person and the employer had the capacity to grant the requested demand. The supporters of this view emphasized that merely because such a dispute would become an 'industrial dispute', it did not follow that the demand would be accepted.

The construction of the word 'any person' came up for consideration before the Supreme Court in *Assam Chah Karamchari Sangha* v. *Dimakuchi Tea Estate*. There, Mr Banerjee was appointed by the tea estate as an assistant medical officer, on three months' probation. After 3 months, his services were terminated by the management after paying him one month's salary in lieu of notice. The legality of the termination of service was questioned and the cause of the assistant medical officer was espoused by the workers' union of tea estate. The government of Assam referred the dispute to the industrial tribunal about his reinstatement. The management raised a

preliminary objection that the assistant medical officer was not a 'workman' and hence the industrial tribunal had no jurisdiction to adjudicate the question of reinstatement. The tribunal upheld the management's plea. On appeal before the Supreme Court, a question arose whether the workmen of the tea estate can raise an industrial dispute regarding the termination of service of an assistant medical officer (who was not a workman of the Tea Estate. Justice S K Das, who wrote the majority judgement for the Court, while explaining the expression 'any person' in the definition clause held that it cannot mean anybody and everybody in this world. The expression according to his Lordship means:

> ... a person in whose employment, or non-employment, or terms of employment or conditions of labour the workmen as a class have a direct or substantial interest with whom they have under the scheme of the Act, a community of interest. Our reason for so holding is not merely that the Act makes a distinction between workmen and non-workmen, but because a dispute to be a real dispute must be one in which the parties to the dispute have a direct or substantial interest. Can it be said that workmen as a class are directly or substantially interested in the employment, non-employment, terms of employment or conditions of labour of persons who belong to the supervisory staff and are, under the provisions of the Act, non-workmen and for whose representation the Act makes no particular provision? We venture to think that the answer must be in the negative.

He further pointed out that though a dispute concerning a person who is not a 'workman' may be an 'industrial dispute' within the meaning of Section 2(k), having regard to the scheme, object and the provisions of the Industrial Disputes Act, 1947 the expression 'any person' in the definition clause must be read subject to two crucial limitations and qualification, namely:

(i) the dispute must be a real dispute between the parties to the dispute (as indicated in the first two parts of the definition clause) so as to be capable of settlement or adjudication by one party to the dispute giving necessary relief to the other, and (ii) the persons regarding whom the dispute is raised must be one in whose employment, non-employment, terms of employment or conditions of labour (as the case may be) the parties to the dispute have direct or substantial interest.

He then observed:

> In the absence of such interest, the dispute cannot be said to be a real dispute between the parties. Where the workmen raise a dispute as against their employer, the person regarding whose employment, non-employment, terms of employment or conditions of labour the dispute is raised need not be the 'workmen' but workmen as a class have a direct or substantial interest.

The Court in its majority judgement accordingly held that the medical officer was not a 'workman' because he could not be held to have any community of interest with the other members of the union to justify the industrial dispute being raised with regard to his unemployment.

The aforesaid majority view was reaffirmed by the larger bench of the Supreme Court in *Workmen of Dahingeapar Tea Estate* v. *Dahingeapar Tea Estate* and was reiterated in *Kays Construction Co. Ltd* v. *Its Workmen*. In the former case, a tea estate was sold as a going concern and the purchaser continued to employ the labour and some other members of the staff of the vendor. Under the agreement of

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sale, an option was given to the purchaser to continue to employ the members of the staff. It also made the vendor liable for the claims made by the members of the staff not retained in service by the purchaser. The claims of the members of the staff not retained in service by the vendee tea estate was raised by the workmen of the vendee tea estate. A question arose whether the dispute raised by such workmen regarding the employment of rest of the staff was an 'industrial dispute.' Justice S K Das (who wrote the majority view in *Dimakuchi Tea Estate supra*) delivering the judgement for the Court applied the test laid down in *Dimakuchi* case and held that such a dispute was an 'industrial dispute'. In the latter case, the business of M/s Kays Construction Co. was taken over by a private company called M/s Kays Construction Co. (Pvt) Ltd. The successor company had the proprietor, his wife and manager of the vendor company as its directors. The transferee employer refused to employ certain workmen of the transferrer employer. The workmen of the transferee employer raised a dispute regarding the erstwhile co-employees of the transferrer employer. It was held that a dispute which validly gave rise to a reference under the Industrial Disputes Act need not necessarily be a dispute directly between an employer and his workmen. The Court further held that the definition of the expression 'industrial dispute' was wide enough to cover a dispute raised by the workmen in regard to the non-employment of others who may not be the workmen at the material time.

The application and interpretation of 'any person' again came up for consideration of the Supreme Court in *Standard Vacuum Refining Co. of India Ltd* v. *Their Workmen.* In this case, regular workmen of the company raised an industrial dispute relating to contract labour. The dispute was that the workers of the contractor (who in effect were doing the work of the company) unlike regular workmen of the company, were getting low wages and were not provided any security of tenure. The regular workmen who raised their dispute, therefore, wanted that the contract system should be abolished and the contractors be considered as workmen of the company. Following *Dimakuchi Tea Estate (supra),* the Supreme Court held that the dispute was an 'industrial dispute' because: (i) the regular workmen of the company had a community of interest with the contractor's workers (who were, in effect, working for the same employer), (ii) the workmen had substantial interest in the subject-matter of the dispute of contractor's workers in the sense that the class to which they belong (namely workmen) was substantially affected thereby and (iii) the company could give relief in the matter.

Again in *Bombay Union of Journalists* v. *The Hindu*, the cause of a working journalist was taken up by a trade union of his profession, but not by other journalists under the employment of that particular branch office of the *Hindu,* in which he was employed. The Supreme Court, while determining the scope of 'any person' demonstrated how the test of 'direct and substantial control' could be applied. Justice Shah observed:

> The principle that the persons who seek to support the cause of a workman must themselves be directly and substantially interested in the dispute in our view applied to this class of cases also; persons who are not employees of the same employer cannot be regarded as so interested that by their support they may convert an individual dispute into an industrial dispute.

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This application of the test only confirms the fears expressed by Justice Sarkar of the Supreme Court in his dissenting judgement in *Dimakuchi Tea Estate* case. Adverting later to the fact that the Act is dealing with a new concept, that of relations between employer and employee or between capital and labour—he sounded a warning to bear in mind that the concept is undergoing a 'fast change' from day-to-day. He observed:

> The numerous and radical amendments made in the Act since it came on the statute book not so long ago, testify to the fast-changing nature of the concept. Bearing all these things in mind, I find it almost impossible to define adequately or with any usefulness an interest which will serve the purposes of the Act. I feel that an attempt to do so will introduce a rigidity which will work harm and no good. Nor does it, to my mind, in any manner help to define such interest by calling it direct and substantial.

He added:

> It is enough to assume that as normal men, workmen would not raise a dispute or threaten industrial peace on account of it unless they are interested in it ... It is not a condition of an industrial dispute that workmen must be interested in it and no question of interest falls for decision by a court if it can be called upon to decide whether a dispute is an industrial dispute or not.

In *All India Reserve Bank Employees' Association* v. *Reserve Bank of India* the Court coined a new phrase 'vitally interested' to determine the scope of 'any person' in Section 2(k). In this case, a question arose whether the 'workmen' belonging to class III (who drew less than ₹ 500 per month) of the Reserve Bank of India were entitled to raise the dispute in respect of Class II employees who were doing supervisory nature of duties and drawing more than ₹ 500 per month and were excluded from the ambit of 'workmen'. The Supreme Court, after referring to the first excerpt (cited earlier by the author) in *Diniakuchi Tea Estate supra*, added:

> It may, however, be said that if the dispute regarding employment, non-employment, terms of employment or conditions of labour of non-workmen in which workmen are themselves vitally interested, the workmen may be able to raise an industrial dispute. Workmen can, for example, raise a dispute that a class of employees not within the definition of workmen should be recruited by promotion from workmen. The workmen can also raise a dispute about the terms of the their own employment though incidentally the terms of employment of those who are not workmen is involved. But workmen cannot take up a dispute in respect of a class of employees who are not workmen and (in whom workmen) have no direct interest of their own. What direct interest suffices, is a question of fact but it must be a real and positive interest and not fanciful or remote.

The Court also rejected the management's contention that the tribunal had no jurisdiction to adjudicate in respect of the dispute between it and those of its employees who fell within the purview of 'workmen'. Observed Justice Hidayatullah:

> It follows, therefore, that the national tribunal was in error is not considering the claims of Class II employees whether at the instance of members drawing less than ₹ 500 as wages or at the instance of those lower down in the scale of wages in excess of ₹ 500 per month at any stage were not within the jurisdiction of tribunal or that government could not make a reference in such a contingency.

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The aforesaid issue once again came up for consideration in *Workmen* v. *Greaves Cotton Ltd* in which it was held :

> It would, therefore, appear that the consistent view of this court is that non-workmen as well as workmen can raise a dispute in respect of matter affecting their employment, conditions of service, etc., where they have a community of interest, provided they are direct and not remote.

It is submitted that the aforesaid observation does not correctly reflect the law stated in earlier decisions of the Supreme Court. In none of the aforesaid decisions of the Supreme Court, is it stated that non-workmen can raise a dispute in respect of matters affecting their employment, unemployment, terms of employment or conditions of labour where they have community of interest.

Greaves Cotton Ltd, poses a question as to what would happen if none at all or all the 'workmen' have become non-workmen either during the pendency or at the time or adjudication. Does the dispute survive? The Court answered it in negative. Observed Justice Jagamohan Reddy:

> ... if there are no workmen of the category with respect to whom the dispute has been referred, the tribunal cannot be called upon to prescribe a wage structure for non-existing workmen, nor does it have the jurisdiction to do so.

We are inclined to agree with the aforesaid view. It may, however, be added that the 'direct or substantial interest' test to limit the horizons of the expression 'any person', has not been uniformly applied. While the workman has been said to be substantially interested in the subject matter of contractor's employees, he is not held to be so interested in case of 'doctors' or 'supervisors' who were not 'workmen' but employees of the same employer. Again the 'workmen of the transferee company are said to have a direct or substantial interest in the dispute of unemployment by the transferee employer of the erstwhile co-employees of the transferor employer. Quite apart from this, the application of the aforesaid test is not in conformity with the statement that 'persons who are not employees of the same employer cannot be regarded as so interested, that by their support they may convert an individual dispute into an industrial dispute'.

In *Bongaigaon Refinery & Petrochemicals Ltd* v. *Samijuddin Ahmed*, a question arose whether a person who had been issued an offer of appointment which was withdrawn before he could join on knowing that he had suppressed material facts and who raised a dispute about his non-employment could fall within the meaning of 'any person' under Section 2(k) of the Industrial Disputes Act. The Court answered the question in negative and held that the reference of the dispute under Section 10 of the Act was wholly unwarranted and uncalled for. The present case did not satisfy the test laid down in *Dimakuchi Tea Estate* so as to warrant the validity of the reference being upheld. It rejected the contention of the respondent that his case fell within the meaning of 'any person' even if he was not a 'workman' *stricto sensu* and held that 'any person' cannot be read without limitation. In a case where employer-employee relationship never existed and can never possibly exist cannot be the subject matter of dispute between employer and workmen. Accordingly, the Court set aside the judgement of the division bench of the High Court and restored the judgement of the single judge of the High Court.

3.2.1 Causes of Industrial Disputes

Industrial disputes arise due to variety of causes, which may be broadly be termed as: (i) Economic, (ii) Non-Economic.

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1. Economic causes

Economic causes may be briefly summed up as those relating to wages, payment of bonus, dearness allowance, conditions of work and employment, working hours, ill-treatment by the supervisory staff, ill-behaviour of the jobbers, unjust dismissals and demand for re-instatement of one or more workers, leave and holidays with pay, delay in the implementation or non-implementation of awards, enactments, agreements, etc. The causes may also be termed as internal causes, that is, those which are connected with the industry, the employer and the employee. Victimization of workers, and the refusal of the employers to recognize workers' unions have also been such causes of disputes. The introduction of schemes of rationalization or automation leading to or threatening retrenchment of workers has also resulted in many strikes. Development in technology not only disturbs the existing employment patterns but also determines the size of the work force to be employed. These have a direct impact on labour–management relations especially in a developing country where surplus labour is available. Most of the strikes in India, we find have been on the problems of wages, dearness allowances, bonus, termination of service, hours of work, rationalization schemes, and so on.

2. Non-economic causes

Among the non-economic causes, or the causes which are not directly connected with the industry, political causes have been the most important. Till 1947, India had been a dependency of the British and the labour movement in the country was intimately connected with the national movement for independence. As early as 1908, there was a mass strike in Bombay against the sentence of six years imprisonment on Tilak. A number of such strike were also during the Khilafat and Non-cooperation and Civil Disobedience Movements. Strikes also took place on account of dismissals or disciplinary actions against the workers for attending trials of political leaders, for refusing to handle foreign goods, for taking part in political demonstrations, for assaulting European managers, or for serving as Congress volunteers. After independence also, we find that many strikes and stoppages of work have taken place due to agitations of political parties and on questions like reorganization of states, national language, and so on. Strikes have also occurred on account of victimization of workers having communist sympathies. Sometimes, strikes have also been encourage by speculators whose interest has been to raise prices by stoppage of work and production, and with that end in view, many speculators have spread false rumours, and supported the workers with money and have, thus, encouraged many disputes.

Thus, we find that both economic and non-economic causes have been responsible for industrial disputes. In recent years, we find that the gulf between the employers and the workers had been greatly widened and acute discontenment prevails. There had been a great change in the psychology of the workers, who are demanding a greater and greater share in the profits of the industry. Political changes, world forces, spread of communist ideas, uncertain economic conditions and high cost of living,

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have been the factors responsible for this attitude. Combined with it is the political propaganda of various parties which, in order to create trouble for the government in power, have organized many strikes by capturing the trade unions of the workers. However, the economic causes have been the most powerful factors for industrial unrest in the country. The words of the Royal Commission on Labour, which hold good even to this day, are very significant in this respect. The Commission remarked: Although workers may have been influenced by persons with nationalist, communist or commercial ends to serve, we believe that there has rarely been a strike of any importance which had not been due entirely or largely to economic reasons. 'We may add that the breeding ground for communism is the poverty of the labourers. The workers also feel insecure as they are not able to understand the economic system which permits co-existence of the capitalist and the socialist forms of institutions to go side by side.'

One of the important reasons for the gulf between the employers and the workers in India had also been the absence of close touch and understanding between the employers and the employees due to differences of race and language. A large portion of the industrial establishments in the early stages of industrialization in India, was managed by foreigners who had a very poor knowledge of the Indian language and depended mostly on the reports of the intermediaries who often misrepresented the workers. Even now when the managers are Indian, they and the workers in most cases belong to different states or castes and have different traditions. The lack of strong trade unions among the workers is another difficulty in this respect. The outside leaders are yet another difficulty in this respect. They are sometimes responsible for many strikes. An enquiry conducted in to the strike of Premier Automobiles Ltd, Bombay (by Shri R. L. Mehta) in 1958, showed that the strike was on a 'Personal issue (of the leader) and not over any industrial question of wages or bonus or similar claims.'

It may also be noted that, sometimes, there are stoppages known as hartals or bandhs which are often meant as protests against acts in which, the employer may have had no share, e.g., action by the government or by the police. In times of political forment they tend to become frequent and, though they may be short-lived, they cause in the aggregate appreciable dislocation of industry.

3.2.2 Forms of Industrial Disputes

There may be several types of industrial disputes. Unsatisfactory working conditions, wages not at par with peers in other organizations, unfair dismissal, poor staff and boss relations, discrimination and introduction to new technology without specific training, limited growth opportunities. These conditions give rise to dissatisfaction among staff and may lead to demonstration and revolt. The Industrial Dispute can arise in any of the following forms:

- Strike
- Lockout
- Gherao

Strikes, lockouts and gherao are the most common forms of industrial disputes. You will learn about them in the next section.

Check Your Progress

1. List the heads under which the definition of industrial dispute may be analysed.
2. What do you understand by economic causes of industrial disputes?
3. What are the most important non-economic causes of industrial disputes?

3.3 INDUSTRIAL RELATIONS MACHINERY

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This section introduces the settlement machinery for various industrial and labour disputes. You will learn about different statutory measures aimed at curtailing industrial disputes along with different measures of bipartite and tripartite negotiations.

3.3.1 Statutory Measures

Central laws relating to labour relations are currently present in the Industrial Disputes Act 1947, the Trade Unions Act 1926 and the Industrial Employment (Standing Orders) Act, 1946. Mention must also be made of the Sales Promotion Employees (Conditions of Service) Act, 1976, and other specific Acts governing industrial relations in particular trades or employments.

Industrial Disputes Act, 1947

> Section 2(k) of the Industrial Disputes Act, 1947, defines 'industrial dispute'to mean: any dispute or difference between employers and employers or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person.

The dimensions of the aforesaid definition determine the permissible area of both community intervention in industrial relations as well as labour activity.

Stated broadly, the definition of 'industrial dispute' contains two limitations, (*i*) The adjective 'Industrial' relates to the dispute of an industry as defined in the Act, and (*ii*) it expressly states that not all sorts of disputes and differences but only those which bear upon the relationship of employers and workmen regarding employment, non-employment, terms of employment and conditions of labour are contemplated.

Legislative Response: Insertion of Section 2A

Before the introduction of Section 2A, as a result of judicial legislation, an individual workman who was discharged, dismissed, retrenched or whose service was otherwise terminated or who had been transferred, suspended or was subject to any other punishment had no remedy under the Industrial Disputes Act, unless his case was sponsored by his fellow workmen or by a trade union. In such a situation, he had been left with no alternative but to approach the civil court and involve himself in lengthy and expensive civil remedy. Section 2A of the Industrial Disputes (Amendment) Act, 1965 attempts to mitigate some of the hardships caused as a result of judicial pronouncements. Section 2A came into force on 1 December 1965. By this section it is provided that a dispute or difference between an individual workman and his employer connected with or arising out of (*i*) discharge. (*ii*) dismissal, (*iii*) retrenchment, (*iv*) or otherwise termination of service of an individual workman, shall be deemed to be an 'industrial dispute' even though no fellow workmen or any union of workmen is a party to the said dispute. The net effect of Section 2A is that by legislative action such a dispute is deemed to be an industrial dispute even where it is not espoused by a trade union or by an appreciable number of workmen. Thus, the result of the insertion of Section 2A was that, what was not an 'industrial dispute' as per the interpretation of the Supreme Court would be deemed to be an 'industrial dispute' in the stated circumstances.

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Industry

Section 2(j) of the Industrial Disputes Act, 1947 defines 'industry' to mean any business, trade, undertaking, manufacture or calling of employers. It also specifically states that the expression 'industry' includes any calling, service, employment, handicraft or industrial occupation or avocation of workmen.

The aforesaid words are of wide import and transgress the popular meaning of the word.

Bangalore Water Supply and Sewerage Board Case: An Epoch-Making Judgement

These conflicting opinions of the Supreme Court during the last 25 years left the coverage of the expression 'industry' more uncertain and vague. This state of affairs led to the constitution of a seven-member bench of the Supreme Court in *Bangalore Water Supply and Sewerage Board* vs *Rajappa* to enter into a detailed examination of earlier decisions with a view of find out a rationale basis for determining whether activities like clubs, educational institutions, research institutes, cooperatives, charitable projects and other adventures including domestic servants and governmental functions falls within or outside the scope of the statutory expression of industry. The majority opinion not only answered it in affirmative but exploded the judicial myth. The Court while restoring its ruling in *Budge Budge Municipality Corporation of City of Nagpur* and *Hospital Mazdoor Sabha (supra)* overruled its decisions in *Safdarjang Hospital, National Union of Commercial Employees, Delhi University, Gymkhana Club* and *Dhanarajgiri Hospital (supra).* However, in a partially dissenting opinion Justices Jaswant Singh and Tulzapurkar (though they agreed in the conclusion) were not in favour of giving such a wide coverage to the term 'industry'. Indeed both majority and minority decisions expressed the view that the matter should be clarified by the legislature by a suitable amendment.

1. ***Area of Conflict.*** The Supreme Court itself itemized the area of conflict namely:
   - (*a*) (*i*) Are establishments, run without profit motive, industries?
   - (*ii*) Are charitable institutions industries?
   - (*iii*) Do undertakings governed by a no-profit-no-loss rule, statutorily or otherwise fastened, fall within the definition in Section 2(j)?
   - (*iv*) Do clubs or other organizations (like the YMCA). whose general emphasis is not on profit-making but fellowship and self-service fit into the definitional circle?
   - (*v*) To go to the core of the matter, it is an inalienable ingredient of 'industry' that it should be plied with a commercial object?
   - (*b*) (*i*) Should cooperation between employer and employee be direct in so far as it related to the basic service or essential manufacture which is the output of the undertaking?
   - (*ii*) Could a lawyer's chamber or chartered accountant's office, a doctor's clinic or other liberal professional' occupation or calling be designated an industry?

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(*iii*) Would a university or college or school or research institute be called an industry?

(*c*) (*i*) Is the inclusive part of the definition in Section 2(j) relevant to the determination of an industry? If so, what impact does it make on the categories?

(*ii*) Do domestic service drudges — who slave without respite — become 'industries' by this extended sense?

(*d*) Are governmental functions, *stricto sensu,* industrial and if not, what is the extent of the immunity of instrumentalities of government?

(*e*) What rational criterion exists for a cut-back on the dynamic potential and semantic sweep of the definition, implicit in the industrial law of a progressive society geared to greater industrialization and consequent concern for regulating relations and investigating disputes between employers and employees as industrial processes and relations become more complex and sophisticated and workmen become more right-conscious?

(*f*) As the provision now stands, it is scientific to define 'industry' based on the nature—the dominant nature of the activity, i.e. on the terms of the work, remuneration and conditions of service which bond the two wings together into an employer-employee complex?

Did these issues figure in the judgement?

2. ***Interpretation of the Word 'Industry'***. In order to answer these issues Justice Krishna Iyer considered the word 'industry' in the light of historical perspective, objects and reasons, international thought ways, popular undertaking, contextual connotation and suggestive subject-matters, dictionary meaning and social perspective in Part IV of the Constitution. In this perspective Justice Krishna Iyer interpreted the word 'undertaking' as follows:

The expression 'undertaking' cannot be torn off the words whose company it keeps. If birds of a feather flock together and *nositur a sociis* is commonsense guide to construction, 'undertaking', must be read down to confirm to the restrictive characteristic shared by the society of words before and after. Nobody will torture 'undertaking' in Section 2(j) to mean meditation or *mushaira* which are spiritual and aesthetic undertaking. Wide meanings must fall in line and discordance must be excluded from a sound system.

The aforesaid principle was also applied in interpreting the expressions 'service', 'calling' and the 'like'. Further, the word 'trade' according to Justice Iyer, embraced the 'functions of local authorities and even profession'.

The term 'manufacture' received the attention of Chief Justice Beg who explained it to mean: a process of manufacture in which the employers may be engaged.

He, however, pointed out that the term employer necessarily postulated employees, without whom there could he no employer. Chief Justice Beg also emphasized the inclusive character of second part of the definition which: makes the concept more nebulous as it obviously extends the definition to any calling, service, employment, handicraft or industrial occupation or avocation of workmen.

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The aforesaid interpretation given by Chief Justice Beg is in conformity with the legislative intent of Section 2(j) of the Industrial Disputes Act.

3. ***Formulation of Test.*** Justice Krishna Iyer after review of Supreme Court decisions, laid down the following tests for determining the scope of the term 'industry':

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

   (b) Absence of profit motive or gainful objective is irrelevant be the venture in the public, joint, private or other sector.

   (*c*) The true focus is functional and the decisive test is the nature of the activity with special emphasis on the employer-employee relations.

   (d) If the organization is a trade or business it does not cease to be one because of philanthropy animating the undertaking although Section 2(j) uses the words of the widest amplitude in its two limbs, their meaning cannot be magnified to over reach itself.

Nevertheless, Justice Krishna Iyer pointed out that although Section 2(j) used words of widest amplitude in its two limbs, their meaning could not be magnified to overreach itself and observed:

Undertaking must suffer a contextual and associational shrinkage as explained in Banerji *(supra)* and in this judgement, so also, service, calling and the like. This yields the inference that all organized activities possessing the triple elements in 3 *(a) (supra),* although not trade or business, may still be 'industry' provided the *nature of the activity,* viz., the employer-employees basis bears resemblance to what we find in trade or business. This takes into the fold 'industry' undertaking, calling and services adventures 'analogous to the carrying on the business'. All features, other than the methodology of carrying on the activities, viz., in organizing the cooperation between employer and employees, may be dissimilar. It does not matter, if on the employment terms there is analogy.

However, where a complex of activities were involved, he adopted the 'dominant nature test' enunciated in *Corporation of City of Nagpur* and explained:

> Where a complex of activities, some of which qualify for exemption, others not involves employees of the total undertaking, some of whom are not 'workmen' as in the *University of Delhi case (supra)* or some departments are not productive of goods and services if isolated, even then, the predominant nature of the services in the integrated nature of the departments as explained in the *Corporation of Nagpur (supra),* will be the true test. The whole undertaking will be 'industry' although those who are not 'workmen' by definition may not be benefit by the status.

Applying the aforesaid tests in specific cases, the Court held that activities such as clubs, educational institutions, research institutes, charitable institutions, cooperative societies' hospitals, local bodies kindred adventures (which fulfilled the triple test laid down in this case) fell within the purview of 'industry'.

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Workmen

Section 2(s) of the Industrial Disputes Act, 1947, defines 'workman' to mean:

> any person (including an apprentice) employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be express or implied, and for the purposes of any proceeding under this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of, that dispute, or whose dismissal, discharge or retrenchment has led to that dispute, but does not include any such person:
>
> (i) who is subject to the Air Force Act. 1950, or the Army Act. 1950, or the Navy Act. 1957; or
>
> (ii) who is employed in the police service or as an officer or other employee of a prison; or
>
> (iii) who is employed mainly in a managerial or administrative capacity; or
>
> (iv) who being employed in a supervisory capacity, draws wages exceeding one thousand ₹ 600 *per mensem* or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature.

Broadly speaking the definition requires that a 'workman' must be;

(a) person, *(b)* employed, (c) in any industry, *(d)* to do the specified type of work, *(e)* for hire or reward, but excludes certain specified categories of persons.

Strikes: Statutory Definition

Strikes Section 2(q) of the IDA defines 'strike' to mean a cessation of work by a body of persons employed in any industry acting in combination, or a conceited 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.

Judicial delineation of the aforesaid expression of 'strike' is confusing, inadequate and inapt. While some of these may be the result of imprecise legislative definition, ignorance of the facts of industrial life and lack of policy-oriented approach have also contributed to the prevailing confusion.

The shortcoming of the definition became a matter of concern. It raised several issues: *(i)* Who goes on strike? *(ii)* Against whom do they go on strike? *(iii)* What are the acts which constitute strike? *(iv)* Why do they go on strike?

Lockouts: Statutory Definition

Section 2(1) of the Industrial Disputes Act, 1947, defines '**lockout**' to mean:

> The temporary closing of a place of, employment or the suspension of work, or the refusal by an employer to continue to employ any number of persons employed by him.

Lockout: The temporary closing of a place of, employment or the suspension of work, or the refusal by an employer to continue to employ any number of persons employed by him

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A delineation of the nature of this weapon of industrial warfare requires description of: (i) the acts which constitute it; (ii) the party who uses it; (iii) the party against whom it is directed: and (iv) the motive which prompt resorts to it.

Illegal Strikes and Lockouts

Section 24 of the Industrial Disputes Act, 1947 defines 'illegal strikes and lockouts'. Sub-section (1) provides that a strike or a lockout shall be illegal if:

(i) it is commenced or declared in contravention of Section 22 or Section 23: or

(ii) it is continued in contravention of an order made under Section 10(3) or Section 10A(4A).

Further, sub-section (2) says that where a strike or lockout in pursuance of an industrial dispute lias already commenced and is in existence at the time of the reference of the dispute to a Board, an Arbitrator, Labour Court, Tribunal or National Tribunal, the continuance of such strike or lockout 'shall not be deemed to be illegal, if:

(i) such strike or lockout was not at its commencement in contravention of the provision of the Industrial Disputes Act, 1947.

(ii) the continuance of such strike or lockout was not prohibited under sub-section (3) of Section 10 or sub-section 4A of Section 10A of the Act.

Under sub-section (3) of Section 24 a lockout is not illegal, if it is declared in consequence of an illegal strike. Similarly, a strike is not illegal if declared in consequence of an illegal lockout.

Sanctions and Criminal Proceedings

Sanctions

1. ***Penalty for Illegal Strikes and Lockouts.*** Section 26(1) prescribes punishment to a workman for commencing, continuing or otherwise acting in furtherance of a strike which is 'illegal' under Section 24 of the IDA. The penalty in case of participation in an illegal strike may extend with imprisonment for a term which may extend to one month, or with a fine which may extend up to ₹ 50, or with both. Thus, in order to convict a person under the Act, it is necessary to prove that:

   (i) the accused is a 'workman';

   (ii) the accused commenced, continued or otherwise acted in furtherance of a strike; and

   (iii) the accused had the knowledge that the strike in question was illegal.

   Likewise Section 26(2) prescribes punishment to employers for commencing, continuing or otherwise acting in furtherance of a lockout which is illegal under Section 24. The employer is punishable for imprisonment for a term which may extend upto one month, or with fine up to ₹ 1,000 or with both for commencing, continuing or otherwise acting in furtherance of an lockout.

   A perusal of the aforesaid provision reveal that (i) the correlation between imprisonment and fine is missing. Whereas Section 26(1) prescribes the ratio of one month imprisonment and/or fifty rupees fine. Section 26(2) provides one

month imprisonment and/or one thousand rupees; (ii) the penalties under the section are different from penalties mentioned in Section 31 for contravention of Section 33; and *(iii)* the duties imposed by Section 26 are statutory duties owed by the workmen or employers to the public, which could solely be enforced by criminal procedure.

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2. ***Penalty for Instigating or Inciting Illegal Strikes or Lockouts***. Section 27. unlike Section 26 (which is limited to workmen and employers), is wide enough to cover all persons. Section 27 provides for imprisonment for a term which may extend to six months, or with a fine which may extend to one thousand rupees, or with both for instigation and incitement of any strike or lockout which is illegal under the IDA. In order to bring the activities of a person within the provisions of Section 27, two conditions must be satisfied: (i) the particular strike complained of is itself illegal, and (ii) the strike for which he incited the workers to take part in is to his knowledge illegal.

   The *vires* of this provisions was challenged in *Raja Kulkarni and Others* vs *State of Bombay.* The Supreme Court upheld the validity of the section and observed that the Industrial Disputes (Appellate Tribunal) Act, 1950, imposed no restriction either upon the freedom of speech and expression of the textile workers or their right to form associations or unions. Hence, Section 27 of the Act was not void as being opposed to the fundamental rights under Article 19(1) (a) and (c) of the Constitution.

   Deshpande vs. *Ferro Alloy Corporation* the management and workmen (represented by the officebearers of the union) entered into a settlement on 30 September 1959. Such a settlement was arrived at in the course of conciliation proceedings. Two persons (non-workmen and officer of trade union) who were fully aware of the settlement incited the workmen to go on strike in breach of settlement with effect from 24 September to 2 October 1960. A prosecution was launched against these two officers (non-workmen) of trade unions. The magistrate convicted the accused under Section 27 of the IDA. The decision was upheld by the session judge. Then the concerned accused filed a petition before the Andhra Pradesh High Court. Justice Kumarayya observed:

   In fact the workers have a fundamental right to launch a strike, and, any instigation or incitement to stage a strike would not therefore be illegal, unless the particular strike complained of itself is illegal under the Act. The person instigating would be guilty only when it is established that the strike which he incited the workers to take part in is to his knowledge illegal.

   The court accordingly upheld the order of conviction of the lower court and held that non-workmen inciting workmen bound by settlement to go on illegal strike were liable under Section 27.

3. ***Penalty for Giving Financial Aid to Illegal Strikes or Lockouts.*** Whereas Section 25 prohibits financial aid to illegal strikes and lockouts Section 28 provides penalty therefor. The latter section reads:

   (Any) person who knowingly expends or applies any money in direct furtherance or support of any illegal strike or lockout shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to one thousand or rupees both.

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It is clear from the aforesaid provisions that the person spending or applying money must know that the strike or lockout is illegal. Thus, *metis rea* is a necessary element of an offence under this Section. The provisions of this section are attracted if the strike or lockout is held to be illegal and not otherwise.

Criminal Proceedings

Permission of the Government. *(a) Legislative response.* Sub-section (1) of Section 34 of the IDA provides:

No court shall take cognizance of any offence punishable under this Act or of the abetment of any such offence save on complaint made by or under the authority of the appropriate government.

It follows that Section 34(1) empowers the appropriate government (i) to make a complaint or *(it)* to authorize someone else to file a complaint. The object of the section is to prevent a frivolous, vexatious or otherwise patently untenable complaint being filed.

Prohibition on Lay-off

Till 1976 there was no provision for preventing lay-off in the Industrial Disputes Act. 1947. In 1970, a number of cases of large-scale lay-off were reported.

This resulted in all-round demoralizing effect on the workmen. In order to prevent avoidable hardship and to maintain higher tempo of production and productivity, the Industrial Disputes Act, 1947, was amended in 1976 whereby restrictions were imposed on the employers' right to lay-off by Section 25M. However, following the decision of the Supreme Court in the Excel Wear case, some high courts declared invalid the provisions contained in Section 25M. In order to remove the anomaly Section 25M was re-drafted and substituted by the Industrial Disputes (Amendment) Act, 1984 which came into force on 18 August 1984. Section 25M applies to every industrial establishment (not of seasonal character) in which not less than 100 workmen are employed on the average per working day for the preceding 12 months. Thus, Section 25M, which imposes prohibition on lay-off, provides:

1. No workman (other than a *badli* workman or a casual workman) whose name is borne on the muster rolls of an industrial establishment to which this chapter applies shall be laid-off by his employer except with the prior permission of the appropriate government or such authority as may be specified by that government by notification in the Official Gazette (hereinafter in this section referred to as the specified authority), obtained on an application made in this behalf, unless such lay-off is due to shortage of power or to natural calamity, and in the case of a mine, such lay-off is due also to fire, flood, excess of inflammable gas or explosion.
2. An application for permission under sub-section (1) shall be made by the employer in the prescribed manner stating clearly the reasons for the intended lay-off and a copy of such application shall also be served simultaneously on the workmen concerned in the prescribed manner.
3. Where the workmen (other than *badli* workmen or casual workmen) of an industrial establishment being a mine, have been laid-off under sub-section (1) for reasons of fire, flood or excess of inflammable gas or

explosion, the employer, in relation to such establishment, shall, within a period of 30 days from the date of commencement of such lay-off, apply, in the prescribed manner, to the appropriate government or the specified authority for permission to continue the lay-off.

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4. Where an application for permission under sub-section (1) or sub-section (3) has been made, the appropriate government or the specified authority, after making such enquiry as it thinks fit and after giving a reasonable opportunity of being heard to the employer, the workmen concerned and the persons interested in such lay-off, may, having regard to the genuineness and adequacy of the reasons for such lay-off, the interest of the workmen and all other relevant factors, by order and for reasons to be recorded in writing, grant or refuse to grant such permission and a copy of such order shall be communicated to the employer and the workmen.
5. Where an application for permission under sub-section (1) or sub-section (3) has been made and appropriate government or the specified authority does not communicate the order granting or refusing to grant permission to the employer within a period of 60 days from the date on which such application is made, the permission applied for shall be deemed to have been granted on the expiration of the said period of 60 days.
6. An order of the appropriate government or the specified authority granting or refusing to grant permission shall, subject to the provisions of sub-section (7), be final and binding on all the parties concerned and shall remain in force for one year from the date of such order.
7. The appropriate government or the specified authority may, either on its own motion or on the application made by the employer or any workman, review its order granting or refusing to grant permission under sub-section (4) or refer the matter or, as the case may be, cause it to be referred to a Tribunal for adjudication:

   Provided that where a reference has been made to a Tribunal under this sub-section, it shall pass an award within a period of 30 days from the date of such reference.
8. Where no application for permission under sub-section (1) is made, or where no application for permission under sub-section (3) is made within the period specified therein, or where the permission for any lay-off has been refused, such lay-off shall be deemed to be illegal from the date on which the workmen had been laid-off and the workmen shall be entitled to all the benefits under any law for the time being in force as if they had not been laid-off.
9. Notwithstanding anything contained in the foregoing provisions of this section, the appropriate government may, if it is satisfied that owing to such exceptional circumstances as accident in the establishment or death of the employer or the like, it is necessary so to do, by order, direct that the provisions of sub-section (1), or, as the case may be, sub-section (3) shall not apply in relation to such establishment for such period as may be specified in the order.

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

Explanation. For the purposes of this section, a workman shall not be deemed to be laid-off by an employer if such employer offers any alternative employment (which in the opinion of the employer does not call for any special skill or previous experience and can be done by the workmen) in the same establishment from which he has been laid-off or in any other establishment belonging to the same employer, situated in the same town or village, or situated within such distance from the establishment to which he belongs that the transfer will not involve undue hardship to the workman having regard to the facts and circumstances of his case, provided that the wages which would normally have been paid to the workman are offered for the alternative appointment also.

Penalty for Lay-off without Previous Permission

Section 25 Q prescribes penalty for the employer contravening the provisions of Section 25 M. Thus, the employer who contravenes the provisions of Section 25 M is punishable with imprisonment for a term which may extend to one month or with fine which may extend to one thousand rupees or with both.

Procedure for Lay-off

The Industrial Disputes Act 1947, does not provide for the procedure to be adopted before declaring a lay-off. The procedure is, however, provided in the Industrial Disputes (Central Rules) 1957. Rule 75 A makes it obligatory upon the employer of an industrial establishment (as defined in the Explanation to Section 25) A to give notice of the period of lay-off in the forms 0-1 and 0-2 within seven days of the commencement or termination of such lay-off as the case may be to the affected workmen. This notice should be given by the employer to the affected workmen irrespective of the fact whether they are or are not entitled to any compensation under Section 25 C of the Act.

Compensation for the Period of Lay-off

- ***Under the Standing Orders.*** Most of the standing orders contain a clause providing for lay-off. It also generally provides for the manner in which lay-off compensation should be paid. Where the relevant clauses of the standing orders provide for lay-off and the compensation therefor, the question of compensation will be determined by such standing orders. But in case of conflict between the provisions of standing orders and the statutory provisions for lay-off compensation the latter will override the former. If the standing orders of establishment merely provide for the reasons for which lay-off may be declared by the employer and does not provide the manner in which the compensation shall be paid to the laid-off workmen, the compensation shall be paid to them in accordance with Section 25 C provided, of course, the lay-off is covered under Section 2 (kkk).
- ***Under Section 25 C of the Industrial Disputes Act.*** To ensure a minimum of earning during forced unemployment when workmen's name is borne on muster rolls, the Industrial Disputes Act, 1947, provides for payment of

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compensation equal to 50 per cent of the total of the basic wage and dearness allowance, for all days during which he is laid-off, provided he has completed continuous service of one year or more. However, under proviso Section 25 C(l) if during any period of 12 months, a workman is laid-off for more than 45 days, no compensation shall be payable in respect of any period of lay-off after the expiry of 45 days if there is an agreement to that effect between the workman and the employer. Alternatively, the employer may retrench the workmen at any time after the expiry of 45 days. If the workmen are retrenched under such circumstances, compensation paid to them for having been laid-off during the preceding 12 months may be set-off against compensation payable for retrenchment.

Workmen Not Entitled to Compensation in Certain Cases

(*i*) *If the workmen refuses to accept any alternative employment.* Another limitation on the scope of statutory requirement of lay-off compensation is that a laid-off workman shall not be entitled to statutory lay-off compensation if he refuses to accept any alternative employment in the same establishment from which he has been laid off, or in any other establishment belonging to the same employer situated in the same town or village or situated within a radius of five miles from the establishment to which he belongs. Whether or not laid-off workmen are entitled to compensation depends on the meaning of the expression 'any alternative employment'. In a broad sense, it may be used as a synonym of 'any'. According to this, the employer is free to offer 'any employment' (including a lower post) to laid-off workers without loss of wages provided in the opinion of the employer the post does not require any special skill or previous experience and can be done by workmen. In the literal sense it means employment of equal status. The latter view has been taken in *Industrial Employees' Union* vs. *J.K. Cotton Spinning and Weaving Mills Co.* Construing the expression 'alternative employment' the Labour Appellate held that it means 'like, similar or substitute of original job.' This view is in conformity with fair play and justice.

(*ii*) *Another part of the establishment.* The expression 'another part of the establishment' occurring in clause (iii) is, however, not free from ambiguity. The real difficulty arises when one attempts to delineate the aforesaid expression in order to decide whether a laid-off workman is entitled to compensation. Reported decisions, however, reveal that even in the identical facts-situation the Supreme Court has held differently. For instance in *Associated Cement Companies Ltd.* vs *Their Workmen,* the Associated Cement Factory and a lime-stone quarry had a common manager and common accountant and other features of functional integrity. A lay-off was declared in Associated Cement Factory due to strike by the workmen of lime-stone quarry. On these fact-situation the limestone quarry was held to be 'another part of the establishment' under Section 25 E(iii) so as to disentitle the workmen in the factory to claim lay-off compensation. Observed the Supreme Court:

> The Act not having prescribed any specific tests for determining what is 'one establishment', we must fall back on such considerations as in the ordinary industrial or business sense determine the unity of an industrial establishment, having regard no doubt to the scheme and object of the Act

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and other relevant provisions of the Mines Act. 1952, or the Factories Act. 1948. What then is one establishment' in the ordinary industrial or business sense? The question of unity or oneness presents difficulties when the industrial establishment consists of parts, units, departments, branches, etc. It is strictly unitary in the sense of having one location and one unit only, there is little difficulty in saying that it is one establishment.

Where, however, the industrial undertaking has parts, branches, departments, units, etc., with different locations, near or distant, the question arises what test should be applied for determining what constitutes one establishment.

The Court then observed that the relations between various units depend on the facts proved having regard to the scheme and object of the statute. However, *in Alloy Steel Project Company* vs *Their Workmen* under similar situation and circumstances the Court declared them two different establishments. This anomaly is due to the absence of an explanation clause clarifying the meaning of the expression 'another part of the establishment'. Further, there is not a single criterion by which itself and standing alone, either establishes or negatives the determination of question as to what constitutes an establishment. The issue is to be decided on number of considerations such as (*i*) unity of ownership. (*ii*) contract and supervision by same employer, *(iii)* finance, (*iv*) management and employment, (*v*) geographical proximity and (*vi*) general unity of purpose and functional integrity with particular reference to the industrial process.

(iii) Badli or casual workmen. A *badli* or a casual workman is not entitled to lay-off compensation. For the purposes 'badli workman' means:

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

The Act does not. however, define the term 'casual workman'. The absence of any such definition several problems arise (1) Whether a workman can be said to be a 'casual workman' *(a)* when he has completed one year of service, or *(b)* when he has not completed one year of service? (2) Is a 'casual workman' entitled to lay-off compensation in case he is employed in an establishment employing 50 or more workmen? (3) Can the employer avoid taking a casual workman to the muster roll even after he has completed one year of service? It is not easy to answer these questions. Had Parliament defined the term 'casual workman' like *badli* workman the problem would not have arisen. Under the circumstances it is suggested that Parliament may amend the Industrial Disputes Act. 1947, and define the term 'casual' workmen.

(iv) If he does not present himself for work. Clause (ii) of Section 25E provides that a workman would not be entitled to any compensation if he refuses to present himself for work as mentioned in clause (ii). This clause raises a significant question as to what is the effect of absence from work after the lay-off has been declared? This question was answered in *Nutan Mills* vs *Employees' Stale Insurance Corporation.*

During the period of the lay-off the employee would be entitled to go and serve another master. The only result of his doing so would be that he would

be disentitled to receive compensation. But it is entirely a matter of his option whether he should present himself at the office of his employer and thus claim compensation or earn wages under a different employer and even though he may serve a different employer he would still have the right to be reinstated when the proper occasion arises.

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(v) *If the laying-off is due to a strike or go-slow on the part of a workman in another part of the establishment.* Section 25 E (iii) provides that the workman would not be entitled to lay-off compensation if the lay-off was declared due to strike or go-slow on the part of workmen in another part of the establishment.

Continuous Service

Section 25C of the Act requires that two conditions must complied with. *First,* the workmen must have been in 'continuous service' of the employer. *Second,* such service should not be less than one year. Section 25B defines 'continuous service', *inter alia,* for the claim of lay-off compensation. This definition consists of two parts. The first part deals with the meaning of expression 'continuous service' and the second part is inclusive of definition. In the first part in order that the service may be continuous, it must be uninterrupted. The second part says that notwithstanding any interruption in the continuity of service, it will be uninterrupted on account of sickness, or on account of authorized leave or accident or strike which is not illegal or lockout or a cessation of work which is not due to any fault of workmen. Section 25B(2) provides a legal fiction by virtue of which a workmen not in continuous service shall be deemed to be in continuous service provided the conditions laid down in the section are complied with.

Retrenchment

Section 25F provides a safeguard to retrenched workers:

1. ***Legislature response.*** Parliament has laid down two standards in respect of retrenchment compensation to industrial employees: (i) Section 25F shall be applicable to those industrial establishments in which less than 50 workmen have been employed in a preceding calendar month, *(if)* Section 25N, which was inserted in 1976 and later amended in 1984, lays down conditions for retrenching workmen in industrial establishments in which 100 or more workmen have been employed in 12 months.
2. ***Requirement of notice or wages in lieu thereof.*** Section 25F requires that a workman employed in any industry should not be retrenched until he has been given either (i) one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired; or (ii) the workmen had been paid in lieu of such notice wages for the period of notice. However, where retrenchment notices state that most of projects were complete and there was no other job available For the employees it is not a valid notice as there is no complete closure. The latter provision permits the employer to retrench the workman on paying him wages in lieu of one month's notice prescribed in the earlier part of the clause and that, if the employer decides to retrench a workman, he is not required to give one month's notice in writing and wait for the expiration of the said period before he retrenches him. He can proceed to retrench him straightway on paying him his wages in lieu of the said notice.

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3. ***Compensation under Section 25 F (b).*** Clause (b) of Section 25F provides another safeguard in the interest of the workmen. It provides that no workman employed in any industry, who has been in continuous service for not less than one year under an employer, shall be retrenched until he has been paid at the time of retrenchment, compensation, which 'shall be equivalent to 15 days' average pay for every completed year of service or any part thereof in excess of six month's. The Supreme Court has held the compliance of this provision mandatory and failure to do so would render the retrenchment invalid and inoperative in law.
4. ***Industrial Disputes (Amendment) Act, 1984.*** The redrafted provisions of Section 25N relating to closure which were inserted by the Industrial Disputes (Amendment) Act. 1984. This Section lays down conditions precedent upon the power of the employer employing 100 or more workmen in the industrial establishment in retrenching his workmen.

Procedure for Retrenchment

Section 25G of the Industrial Disputes Act, 1947, lays down the procedure for retrenchment:

> Where any workman in an industrial establishment, who is a citizen of India, is to be retrenched, and he belongs to particular category of workmen in that establishment, in the absence of any agreement between the employer and the workman in this behalf, the employer shall ordinarily retrench the workman who was the last person to be employed in that category, unless for reasons to be recorded the employer retrenches any other workman.

Re-employment of Retrenched Workmen

Section 25H which provides for re-employment of retrenched workmen in preference to newcomers prescribes several conditions, viz., (i) The workman is 'retrenched' within the meaning of Section 2(oo) of the Industrial Disputes Act before the re-employment; (ii) the workman should be a citizen of India; (iii) the workman should offer himself for re-employment in response to the notice by the management; (iv) the workman should be from the same category in which the employment is proposed.

Transfer Compensation

Section 25FF provides that where the ownership or management of an undertaking is transferred, whether by agreement or by operation of law, from the employer in relation to that undertaking to a new employer, every workman who satisfies the test prescribed in that Section shall be entitled to notice and compensation in accordance with Section 25FF. However, the provision will not be applicable where, as a result of the transfer, three conditions are satisfied, namely, *(a)* the services of the workmen have not been interrupted, *(b)* the terms and conditions of service under the new employer are not less favourable than what they were before the transfer, and (c) the transferee binds himself under the terms of the transfer to pay to the workmen, in the event of their future retrenchment, compensation on the basis that there had been continuous service and had not been interrupted by such transfer. It may be noted that all the three conditions are used conjuctively. The employer cannot escape from its liability by providing any one of these conditions.

Restrictions on Industrial Establishments Employing on Hundred or More Workmen

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In 1976, the legislature imposed further restrictions on the power of the management employing 300 or more workmen to close down undertakings. However, the Supreme Court declared the then Section 25O *ultra vires.* This led to the amendment of Section 25O by Industrial Disputes (Amendment) Act. 1982, which lays down the following procedure for closing an industrial establishment (not of seasonal character) employing not less than 100 workmen.

1. An employer who intends to close down an undertaking of an industrial establishment to which this Chapter applies shall, in the prescribed manner, apply, for prior permission at least 90 days before the date on which the intended closure is to become effective, to the appropriate Government, stating clearly the reasons for the intended closure of the undertaking and a copy of such application shall also be served simultaneously on the representatives of the workmen in the prescribed manner:

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

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

3. Where an application has been made under sub-section (1) and the appropriate government does not communicate the order granting or refusing to grant permission to the employer within a period of 60 days from the date on which such application is made, the permission applied for shall be deemed to have been granted on the expiration of the said period of 60 days.

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

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

   Provided that where a reference has been made to a Tribunal under this sub-section it shall pass an award within a period of 30 days from the date of such reference.

6. Where no application for permission under sub-section (1) is made within the period specified therein, or where the permission for closure has been refused, the closure of the undertaking shall be deemed to be illegal from the date of

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closure and the workmen shall be entitled to all the benefits under any law for the time being in force as if the undertaking had not been closed down.

7. Notwithstanding anything contained in the foregoing provisions of this section, the appropriate government may, if it is satisfied that owing to such exceptional circumstances as accident in the undertaking or death of the employer or the like it is necessary so to do, by order, direct that the provisions of sub-section (1) shall not apply in relation to such undertaking for such period as may be specified in the order.
8. Where an undertaking is permitted to be closed down under sub-section (2) or where permission for closure is deemed to be granted under sub-section (3), every workman who is employed in that undertaking immediately before the date of application for permission under this Section, shall be entitled to receive compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months.

Special Provisions as to Restarting of Undertaking Closed Down before Commencement of the Industrial Disputes (Amendment) Act, 1976

Section 25P lays down special provisions as to the restarting of undertaking closed down before commencement of the Industrial Disputes Amendment Act, 1976. It provides:

> If the appropriate government is of opinion in respect of any undertaking of an industrial establishment to which Chapter V-B applies and which closed down before the commencement of the Industrial Disputes (Amendment) Act, 1976

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

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

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

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

Penalty for Closure

Section 25 R provides penalty for violation of Sections 25O and 25P. It reads:

1. Any employer who closes down an undertaking without complying with the provisions of subsection (1) of Section 250 shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to ₹ 5,000, or with both.
2. Any employer who contravenes an order refusing to grant permission to close down an undertaking under sub-section (2) of Section 250 or a direction given under Section 25P shall be punishable with imprisonment for a term which may

extend to one year, or with fine which may extend to ₹ 5,000, or with both and where the contravention is a continuing one, with a further fine which my extend to ₹ 2,000 for every day during which the contravention continues after the conviction.

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Thus, notwithstanding the qualified nature of the ban introduced by the 1950 Amendment, Section 33 severally curtailed management's prerogative, and thereby prevented employers from taking timely action and leading to stultification of business. The 1956 Amendment seeks to provide greater freedom to management and, at the same time protect to a great extent, concerned workmen and union leaders against victimization and high handed action of the employer. The present section runs:

1. During the pendency of any conciliation proceedings before a Conciliation Officer or a Board or of any proceeding before an arbitrator or a Labour Court or Tribunal or National Tribunal in respect of an industrial dispute no employer shall:
   (a) in regard to any matter connected with the dispute, alter, to the prejudice of the workmen concerned in such dispute, the conditions of service applicable to them immediately before the commencement of such proceeding or
   (b) for any misconduct connected with the dispute, discharge or punish, whether by dismissal or otherwise, any workmen concerned in such dispute, save with the express permission in writing of the authority before which the proceeding is pending.
2. During the pendency of any such proceeding in respect of an industrial dispute, the employer may, in accordance with standing orders applicable to a workman concerned in such dispute, or, where there are no such standing orders, in accordance with the terms of the contract, whether express or implied, between him and the workman:
   (a) alter, in regard to any matter not connected with the dispute, the conditions of service applicable to that workman immediately before the commencement of such proceeding; or,
   (b) for any misconduct not connected with the dispute, discharge or punish, whether by dismissal or otherwise that workman:

   Provided that no such workman shall be discharged or dismissed, unless he has been paid wages for one month and an application has been made by the employer to the authority before which the proceeding is pending for approval of the action taken by the employer.
3. Notwithstanding anything contained in sub-section (2), no employer shall, during the pendency of any such proceeding in respect of an industrial dispute, take any action against any protected workman concerned in such dispute:
   (a) by altering to the prejudice of such protected workman, the conditions of service applicable to him immediately before the commencement of such proceedings; or
   (b) by discharging or punishing, whether by dismissal or otherwise, such protected workman, save with the express permission in writing of the authority before which the proceeding is pending.

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

4. In every establishment, the number of workmen to be recognized as protected workmen for the purposes of sub-section (3) shall be one per cent of the total number of workmen employed therein subject to a minimum number of five, protected workmen and a maximum number of 100 protected workmen and for the aforesaid purpose, the appropriate government may make rules providing for the distribution of such protected workmen among various trade unions, if any, connected with the establishment and the manner in which the workmen may be chosen and recognized as protected workmen.
5. Where an employer makes an application to a Conciliation Officer, Board, an Arbitrator, a Labour Court. Tribunal or National Tribunal under the proviso to sub-section (2) for approval of the action taken by him, the authority concerned shall, without delay, hear such application and pass, within a period of three months from the date of receipt of such application, such order in relation thereto as it deems fit.

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

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

Remedy to Aggrieved Workmen

Section 33A confers on industrial employees the right to seek the protection of industrial tribunals in cases where their rights are violated contrary to the provisions of Section 33. It confers dual protection to an employee aggrieved by the contravention of Section 33 namely, (i) by imposing penalty under Section 31 (1): and (ii) by conferring right to make an application under Section 33 A. The section runs as follows:

> Where an employer contravenes the provisions of Section 33 during the pendency of proceedings before a Conciliation Officer, Board, an Arbitrator, a Labour Court. Tribunal or National Tribunal, any employee aggrieved by such contravention, may make a complaint in writing, in the prescribed manner:
>
> (*a*) to such Conciliation Officer or Board, and the Conciliation Officer or Board shall take such complaint into account in mediating in, and promoting the settlement of, such Industrial Dispute; and
>
> (*b*) to such Arbitrator. Labour Court. Tribunal or National Tribunal and on receipt of such complaint, the Arbitrator, Labour Court, Tribunal or National Tribunal, as the case may be, shall adjudicate upon the complaint as if it, were a dispute referred to or pending before it, in accordance with the provisions of this Act and shall submit his or its award to the appropriate government and the provisions of this Act shall apply accordingly.

Change in Conditions of Services

Section 9A of the Industrial Disputes Act, 1947 requires:

> No employer, who proposes to effect any change in the conditions of service applicable to any workman in respect of any matter specified in the Fourth Schedule, shall effect such change:
>
> (*a*) without giving to the workmen likely to be affected by such change a notice in the prescribed manner of the nature of the change proposed to be effected; or
>
> (*b*) within 21 days of giving such notice.

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An analysis of the aforesaid provisions reveal that Section 9A comes into operation the moment the employer proposes to change any condition of service applicable to any workman, and once this is done twenty-one days notice has to be given to the workmen.

The purpose of enacting Section 9A is to afford an opportunity to the workmen to consider the effect of the proposed change and, if necessary, to present their point of view on the proposal. Such consultation further serves to stimulate a feeling of common/joint interest in the management and the workmen in the industrial progress and thereby increases productivity. This approach on the part of the industrial employer would reflect his harmonious and sympathetic cooperation in improving the status and dignity of the industrial employee in accordance with the egalitarian and progressive trend of our industrial jurisprudence, which strives to treat the capital and labour as co-sharers and to break away from the tradition of labour's subservience to capital. Section 9A contemplates three stages: the first stage is the proposal by the employer to effect a change, the next stage is when he gives a notice and the last stage is when he effects a change in the conditions of service on the expiry of 21 days from the date of the notice. The conditions of service do not stand changed, either when the proposal is made or the notice is given but only when the change is actually effected. That actual change takes place when the new conditions of 69 service are actually introduced. If there is no such change Section 9A does not come into operation. Section 9A comes into operation the moment the employer proposes to change the conditions of services applicable to any workman, and once this is done 21 day's notice has to be given to the workman.

3.3.2 Joint Consultation

Labour management relations in a dynamic social process. In this process both parties try to argument their resources. In this process the interest of one party may come in conflict with the other party. Many a time the conflict avoidable syndrome may not work. Whatever may be the reason for conflict in order to maintain peace and avoid loss of production negotiation plays an important role. Such negotiations may be either:

(i) Bipartite or

(ii) Tripartite

(i) Bipartite Settlement/Negotiations: In this process both labour and management try to resolve their differences by mutual discussion and continuous meetings. In this process various measures have been suggested.

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Section 2 (b) of the Industrial Disputes Act defines settlement to include a written agreement between employers and workmen arrived at otherwise than in the course of conciliation proceedings.

(ii) Tripartite Negotiation/Settlement: If both the parties are unable to resolve the dispute mutually, the third party, namely the conciliation officer intervenes. He tries to persuade both the parties to arrive at a settlement. He acts as a facilitator and not a decision-maker. A conciliation officer is a Government servant.

When negotiation/settlement is required

1. If one party makes a demand and the other party refuses to accept the demand.
2. When there is a deadlock and one or both parties feel a need to break the deadlock and enter into negotiation.
3. When negotiation is crucial to one or all the parties.

Approaches to Negotiation/Settlement

Following are various alternative approaches for negotiations:

1. Controlling: It is the best style when (i) quick decisive action is vital and (ii) you know you are right
2. Collaborating: It is best when the objective is to integrate different points of view.
3. Avoiding: It is best when (i) issues are not important (ii) there are more pressing issues (iii) to gain time to collect more information.
4. Accommodating: It is best when (i) one party finds that he is wrong (ii) one wishes is be seen reasonable (iii) the issues are more important to one party (iv) Harmony is desired.
5. Compromising

Tripartite Settlement and the Law

(*a*) *Concept of settlement.* Section 2 (p) defines "settlement" to mean, a settlement arrived at in the course of conciliation proceeding and includes a written agreement between the employer and workmen arrived at otherwise than in the course of conciliation proceeding, where such agreement has been signed by the parties thereto in such manner as may be prescribed and a copy thereof has been sent to an officer authorised in this behalf by the appropriate Government and the Conciliation Officer.

An analysis of the aforesaid definition reveals that there are two modes of settlement of industrial disputes: (i) settlement arrived at in the course of conciliation proceedings, *i.e.*, one which is arrived at with the assistance and concurrence of the Conciliation Officer, who is duty bound to promote a settlement and to do everything to induce the parties to come to a fair and amicable settlement of the dispute, and *(if)* a written agreement between employer and workmen arrived at otherwise than in the course of conciliation proceedings.

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It also appears from the above definition that "unless an agreement arrived at between the parties is a settlement in its grammatical or ordinary signification, such an arrangement although arrived at in a conciliation proceedings will not be a **settlement within the meaning of Section** 2 **(p)."** Further, the expression **"in** the **course of conciliation proceedings" refers** to the duration when the conciliation proceedings are pending. Moreover, for the validity of this kind of settlement **"it** is **essential that the parties thereto** should have subscribed to **it in the prescribed manner and a copy thereof** should have been sent to an officer **authorised in this behalf by the appropriate** Government and the Conciliation Officer."

(*b*) *Nature of settlement.* The nature of proceedings before the Conciliation Officer is not judicial or quasi judicial but administrative. Let us examine the requirements, in order to examine its nature.

(i) Settlement must be "in writing". The industrial Disputes Act, 1947, requires the settlement arrived at in the course of conciliation proceedings by the Conciliation Officer and Board of Conciliation to be "in writing". The purpose is to minimise area of disputes over the contents thereof and to have permanent record in matters affecting labour management relations.

(ii) Writing must be signed by the parties. The Industrial Disputes Act 1947, requires the "settlement arrived at in the, course of conciliation proceedings by the Conciliation Officer or by the Board to be signed by the parties to the dispute. Thus, clause (2) of Rule 58 of the Industrial Disputes (Central) Rules provides:

> the settlement shall be signed by (a) in the case of employer, by the employer himself, or by his authorised agent, or when the employer is an incorporated company or other body corporate, by the agent, manager or other principal officer of the corporation; (b) in the case of workmen by an officer of a trade union of the workmen or by five representatives of the workmen duly authorised in this behalf at a meeting of the workmen held for the purpose.

The provision raises several problems. First, what if the parties do not sign it? Second, what is the position of an individual workman who is not a member of any union whatsoever and his erstwhile co-workers are not prepared to help him? Third, what is the position of individual workman who is made a scapegoat by his own union?

As to the first it is significant to note that Sections 12 (3) and 13 (3) make it obligatory upon the Conciliation Officer and the Board of Conciliation to submit the report with a "memorandum of the settlement signed by the parties to the dispute".

The second and third problems are not easy to answer. It would be observed that Rule 59(2) (b) does not at all recognise an individual workman. This is all the more so in view of the fact that his erstwhile co-workers are not prepared to help him. Under the circumstances he will be helpless, and will be bound by the settlement arrived at by the union. This view is fortified by the provisions of Section 18.

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(*c*) *Settlement must be in the prescribed form.* Should the settlement be one document signed by both the parties, or can it be gathered from documents which have been separately signed by the parties, e.g. correspondence? Gause (i) of Rule 58 provides that "settlement arrived at in the course of conciliation proceedings or otherwise, shall be in form 4". Further the prescribed form 4 is as follows :

"Name of Parties

Representative employer(s)

Representative workmen

Short recital of the case,

Terms of settlement

Signature of parties

Witness :

(1)

(2)

Signature of Conciliation Officer
Board of Conciliation.
Copy to : (1)
(2) Regional Labour Commissioner (Central).
(3) Chief Labour Commissioner (Central)
(4) The Secretary to the Government of India, Ministry of Labour, New Delhi".

From the above it is evident that the written agreement must be embodied in one document.

(d) Publication of the settlement by Board of Conciliation. Section 17(1) which deals with the publication of award by the appropriate Government provides:

> Every report of a Board... together with any minute of dissent recorded there with .... shall, within a period of thirty days from the date of its receipt by the appropriate Government, be published in such manner as the appropriate Government thinks fit.

The aforesaid provision raises several issues: the key question is whether the aforesaid provision is mandatory or directory? Second, what will be the effect of withholding the publication of the report? Third, whether the publication of the report after the expiry of statutory period of thirty days will make the settlement invalid or unenforceable? Fourth, whether the report will be taken to have been published on the date of the Government's notification or the date on which such notification appeared in the gazette?

(e) Settlement must be fair, just and bonafide. The Apex Court in The *K.C.P. Ltd.* v. *The Presiding Officer & Ors.J* held that a Court or Tribunal must satisfy itself that a settlement was not *ex facie* unfair, unjust or *mala fide.*

(f) Period of Operation of Settlement. (i) *Commencement,* Sub-section (1) of Section 19 provides:

> A settlement shall come into operation on such date as is agreed upon by the parties to the dispute and if no date is agreed upon, on the date on which the memorandum of the settlement is signed by the parties to the dispute.

Thus, the settlement shall come into operation on the date agreed upon by the parties or, if none, the date on which the memorandum of settlement is signed by them.

(ii) ***Termination.*** Sub-section (2) of Section 19 provides for other terminus of the settlement.

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> Such settlement shall be binding for such period as is agreed upon by the parties, and if no such period is agreed upon, for a period of six months from the date on which the memorandum of settlement is signed by the parties to the dispute, and shall continue to be binding on the parties after the expiry of the period aforesaid, until the expiry of two months from the date on which a notice in writing, of an intention to terminate the settlement is given by one of the parties to the other party or parties to the settlement.

The object of the provision under sub-sections 1 and 2 is to ensure that once a settlement is arrived at there prevails peace, accord and cordiality between the parties during the period agreed upon and if the settlement does not require to be altered for some reasons or the other the same climate prevails by extension of the settlement by operation of law. Section 19 is not dead and freezing (in) all manner... There is an option given to either party to terminate the settlement by a written intimation after the expiry of two months from the date of such notice. This is in accord with the policy of settlement of industrial disputes which is the principal object underlying the provisions of the Act.

(d) where a party referred to in clause (a) or clause (b) is composed of workmen, all persons who were employed in the establishment or part of the establishment, as the case may be, to which the dispute relates on the date of the dispute and all persons who subsequently become employed in that establishment or part.

It is evident from above that the settlement arrived at in the course of conciliation proceedings shall be binding on all categories of persons mentioned above. In extending the operation of such a settlement beyond the parties thereto, Section 18 (3) of the Industrial Disputes Act makes a departure from the ordinary law of contract which leads towards collective bargaining. The object of this section is to promote industrial peace and harmony between the parties. It is with this object that wide coverage has been given to Section 18 (3) and this can be done possibly when settlement would bind all the parties. In *Virudhachalam P. & Ors.* v. *Mgmt. Of Lotus Mills & Anr* The Supreme Court ruled that once a written settlement is arrived at during the conciliation proceedings such settlement under Section 12 (3) has a binding effect not only on the signatories to the settlement but also on all parties to the industrial dispute which would cover the entire body of workmen, not only existing workmen but also future workmen. Such a settlement during conciliation proceedings has the same legal effect as an award of Labour Court, or Tribunal or rational Tribunal or an Arbitration award. They all stand on par. It is easy to visualise that settlement contemplated by Section 12(3) necessarily means a written settlement which would be based on a written agreement where signatories to such settlement sign the agreement. Therefore, settlement under Section 12(3) during conciliation proceedings and all other settlements contemplated by Section 2(p) outside conciliation proceedings must be based on written agreements. Written agreements would

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become settlements contemplated by Section 2(p) read with Section 12(3) of the Act when arrived at during conciliation proceedings or even outside conciliation proceedings. Thus, written agreements would become settlements after relevant procedural provisions for arriving at such settlements are followed. Thus, all settlements necessarily are based written agreements between the parties.

(f) Persons on whom settlement is binding. The Industrial Disputes Act, 1947 draws a distinction between a settlement arrived at by agreement between the parties and settlement arrived at in the course of conciliation proceedings. Whereas the first category of settlement 'shall be binding only on the parties to the agreement", the second one is binding not only on "all parties to the industrial dispute" but also on:

(b) all other parties summoned to appear in the proceedings as parties to the dispute unless the Board Arbitrator, Labour Court, Tribunal or National Tribunal as the case may be, records the opinion that they were so summoned without proper clause;

(c) where a party referred to in clause (a) or clause (b) is a employer, his heirs, successors or assigns in respect of the establishment to which the dispute relates.

3.3.3 Mediation

Mediation: A method of settling industrial disputes with the help of an outsider who plays a more positive role by assessing the views and interest of the parties in dispute and by advancing suggestions for compromise for their consideration

Mediation is a method of settling industrial disputes with the help of an outsider who plays a more positive role by assessing the views and interest of the parties in dispute and by advancing suggestions for compromise for their consideration. As a matter of fact, the term mediation and conciliation are interchangeable for the role of an outsider in both often overlaps. Both conciliation and mediation grew from an understanding of the parties involved in a dispute and adjusting their interests to their mutual satisfaction. These methods are not judicial but rather advisory in nature. Hence, the proceedings have to be conducted in the most informal and objective manner. The role of the conciliator or mediator lies in dispelling the atmosphere of suspicion and discard by exploring those areas of agreement between the two parties which they themselves could not discover. It lies in strategically building up proper attitudes between the two parties with a view to inducing them to reach an agreement. The functions of conciliation and mediation may be performed by the machinery set up by the government for this purpose or by individuals from a panel of persons influential in public life.

3.3.4 Conciliation

Conciliation: A process by which a third party persuades disputants to come to an equitable adjustment of claims

Conciliation is a persuasive process of settling industrial disputes. It is a process by which a third party persuades disputants to come to an equitable adjustment of claims. The third party, however, is not himself a decision-maker: he is merely a person who helps the disputants through persuasion to amicably adjust their claims. The ultimate decision is of the disputants themselves. For this purpose, the Industrial Disputes Act, 1947, provides for the appointment of conciliation officers and constitution of the Board of Conciliation by the appropriate government for promoting settlement of industrial disputes. For the successful functioning of the conciliation machinery, the Act confers wide powers and imposes certain duties upon them.

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The conciliation as a mode of settling industrial disputes has shown remarkable success in many industrialized countries. It is said that it has proved to be a great success in Sweden.

In India, it has generally been reported that the conciliation machinery has played an important role in resolving industrial disputes. Statistics no doubt, support this claim. During 1959–66 the percentage of disputes settled by the conciliation machinery varied from 57 to 83 in the central sphere. About 10,106 disputes were referred to a conciliation officer during 1988s, out of which the number of failure reports received was 3,183 in the central sphere. The failure report of conciliation was 2,691 out of 4,685 cases referred to conciliation in Haryana, 336 out of 2,126 referred in Karnataka, 4,471 out of 9,918 referred in Punjab, 4,430 out of 4,530 in Delhi and 22 out of 230 cases referred to conciliation in Goa. During 1997, Central Industrial Relations Machinery (CIRM), intervened in 783 cases of threatened strikes and its conciliatory efforts succeeded in averting 696 strikes which represents a success rate of 88.88 per cent.

The statistics of the working of the conciliation machinery, however, reveals that the conciliation machinery on the whole is satisfactory in many states. It has, however, made no remarkable success in India. Several factors may be accounted for the same. *First*, failure of conciliation proceedings may lead to the reference to adjudicating authorities under the Industrial Disputes Act, 1947. *Second*, lack of proper personnel, inadequate training and low status enjoyed by conciliation officers and too frequent transfer of conciliation officers result in the failure of conciliation. *Third*, undue emphasis on legal and formal requirements also lead to the failure of conciliation. *Fourth*, considerable delay in the conclusion of conciliation proceedings also makes the conciliation machinery ineffective. *Fifth*, failure of conciliation machinery has been attributed to the lack of adequate powers of the conciliation authorities.

Conciliation Authorities

1. Constitution of Conciliation Authorities

(*a*) *Appointment of Conciliation Officer*. Under Section 4, the appropriate government is empowered to appoint conciliation officers for promoting the settlement of industrial disputes. These officers are appointed for a specified area or for specified industries in a specified area or for one or more specified industries, either permanently or for a limited period.

(*b*) *Constitution of Board of Conciliation*. Where the dispute is of a complicated nature and requires special handling, the appropriate government is empowered to constitute a Board of Conciliation. The Boards are preferred to conciliation officers. However, in actual practice, it is found that Boards are rarely constituted. According to Section 10(1) (a) the appropriate government is empowered to refer the existing or apprehended dispute to a Board. The Board is constituted on an ad hoc basis. It shall consist of an independent person as Chairman and one or two nominees respectively of employers and workmen. The Chairman must be an independent person. A quorum is also provided for conducting the proceedings.

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2. ***Qualifications and Experiences.*** Unlike the adjudicating authorities, the Act does not prescribe any qualification and/or experience for a conciliation officer or member of a board of conciliation. A report of the study committee of the [First] National Commission on Labour, however, reveals that one of the causes of failure of the conciliation machinery is lack of proper personnel in handling the dispute. The conciliation officer is sometimes criticized on the ground of his being unaware of industrial life and not having received the requisite training. It is, therefore, suggested that the Act should prescribe qualification and experience for conciliation officer which may include proper and adequate training and adequate knowledge of handling labour problems.

3. ***Filling of Vacancies.*** The proviso to Section 5(4) requires that where the services of the chairman or any other member have ceased to be available, the Board shall not function until the appointment of a Chairman or member, as the case may be, is made. Section 8 deals with the manner in which the vacancy in the office of chairman or other member of a Board will be filled.

4. ***Jurisdiction.*** Conciliation Officers are appointed by the Central and State Governments for industries which fall within their respective jurisdiction.

5. ***Powers of Conciliation Authorities.*** (a) *Powers of a Conciliation Officer:* The Act confers certain powers upon the Conciliation Officer to conciliate and mediate between the parties. The Conciliation Officer is deemed to be a public servant within the meaning of Section 21 of the Indian Penal Code. He is empowered to enforce the attendance of any person for the purpose of examination of such a person or call for and inspect the documents which he has ground for considering (*i*) to be relevant to the industrial dispute or (*ii*) to be necessary for the purpose of verifying the implementation of any award or carrying out any other duty imposed on him under the Act. For this purpose, he enjoys the same powers as are vested in the Civil Court under the Code of Civil Procedure, 1908. The Conciliation Officer is also empowered for the purposes of enquiry into any existing or apprehended industrial dispute to enter the premises occupied by any establishment to which the disputes related, after giving reasonable notice. Failure to give any such notice does not, however, affect the legality of conciliation proceedings.

   (*b*) *Powers of the Board of Conciliation.* The Board of Conciliation acts in a judicial capacity and enjoys more powers than conciliation officers. Under the Act every Board of Conciliation enjoys the same powers as are vested in a civil court under the Code of Civil Procedure, 1908, when trying a suit. It can enforce the attendance of any person and examine him on oath, compel the production of documents and material objects, issue commission for examination of witnesses, make discovery and inspection, grant adjournment and receive evidence taken on affidavit. Every enquiry by a Board is deemed to be a judicial proceeding within the meaning of Sections 193 and 228 of the Indian Penal Code and Sections 345, 346 and 348 of the Code of Criminal Procedure, 1973. The proceedings are normally held in public but the Board may at any stage direct that any witness be examined or proceedings be held in camera.

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The Board is empowered, subject to the rules in this behalf to follow such procedure as it may think fit. The rules provide for the place and time of hearing of the industrial dispute by the adjudication or arbitration authorities as the case may be, administration of oath by the adjudication or arbitration authorities, citation or description of the parties in certain cases, the issuance of notices to the parties, the circumstances when the Board can proceed *ex parte* and correction of clerical mistakes or errors arising from accidental slip or omission in any award. The Board also has to keep certain matters confidential in the award. The Board can accept, admit or call for evidence at any stage of the proceedings before it in such manner as it thinks fit. The representatives of the parties have the right too examine, cross-examine, and address the Board when any evidence has been called. The witnesses who appear before a Board are entitled for expenses in the same way as witnesses in the civil court.

6. ***Duties of Conciliation Authorities.*** The Industrial Disputes Act provides for the appointment of Conciliation Officer, 'charged with the duty of mediating in and promoting the settlement of industrial disputes'. Where an industrial dispute exists or is apprehended, the conciliation officer may, or where the dispute relates to a public utility service and a notice under Section 22 has been given, he shall hold conciliation proceedings in the prescribed manner. He may do all such things which he thinks fit for the purpose of inducing the parties to come to a fair and amicable settlement of the disputes.' Further, Section 12 (2) directs the Conciliation Officer to investigate 'without delay' the dispute and all matters affecting merits and right settlement thereof. If the settlement is arrived at, the Conciliation Officer shall send a report together with a memorandum of settlement signed by the parties to the dispute, to the appropriate government or an officer authorized on his behalf. If no settlement is arrived at, the Conciliation Officer is required to send a report to the appropriate government containing (*i*) a full report setting forth the steps taken by him for ascertaining the facts and circumstances of the dispute and for bringing about a settlement thereof, (*ii*) a full statement of facts and circumstances leading to the dispute, and (*iii*) the reasons why a settlement could not be arrived at. It is a mandatory duty on the part of a Conciliation Officer to submit the failure report. His omission to do so is culpable, if not motivated. Be that as it may, it is for the appropriate Government to consider whether on the basis of the failure report and other relevant materials, it should refer the dispute for adjudication or not. If on a consideration of the report, the appropriate government is satisfied that there is a case for reference to the Board or Adjudicating Authority it may make a reference. Where it does not make a reference it shall record and communicate to the parties concerned its reasons thereof. Sub-section 6 of Section 12 provides that the report 'shall be submitted' either within 14 days of the commencement of the conciliation proceedings or earlier if required by the appropriate government, or later if all the parties to the dispute agree in writing.

The Industrial Disputes Act, 1947, draws a distinction between public utility services and non-public utility services. Thus, while in a public utility service the Conciliation Officer is bound to hold conciliation, he is not bound to do so in a non-public utility service.

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The power of the Conciliation Officer is not adjudicatory but is intended to promote a settlement of dispute. However, a special responsibility has been vested in the conciliation officer to see that the settlement arrived at is fair and reasonable and he should then give his concurrence. This is so because the settlement arrived at, in the course of conciliation proceedings, is binding not only on all parties to the industrial dispute but all other parties summoned to appear in the proceedings and where a party is an employer, his heirs, successors or assigns in respect of the establishment to which the dispute relates, and where a party is composed of workmen, all persons who were employed in the establishment or part of the establishment, as the case may be to which the dispute relates on the date of the dispute and all persons who subsequently become employed in that establishment or part.

Duties of Board of Conciliation

A Board to which a dispute is referred must investigate the dispute and all matters affecting the merits and the right settlement thereof and do all things for the purpose of inducing the parties to come to a fair and amicable settlement of the dispute without delay.

If a settlement is arrived at, the Board should send a report to the appropriate government together with a memorandum of the settlement signed by the parties to the dispute. If no settlement is reached, the Board must send a full report together with its recommendation for the determination of the dispute.

In case of failure of settlement by a Board, the 'appropriate government' may refer the dispute to a Labour Court, Tribunal or National Tribunal. The government is, however, not bound to make a reference. However, where the government does not make a reference in a public utility service after receiving a report from a Board, it must record and communicate to the parties concerned its reasons for not doing so.

A Board is required to submit its report within two months of the date on which the dispute was referred to it or within such shorter period as may be fixed by the appropriate government. The time limit for the submission of a report can be extended by the appropriate government or by agreement in writing by all the parties to the dispute.

3.3.5 Voluntary Arbitration

Voluntary arbitration is one of the effective modes of settlement of industrial dispute, it supplements collective bargaining. When negotiation fails, arbitration may prove to be a satisfactory and most enlightened method for resolving industrial dispute. It provides 'a new focus for set-up animosities'. It has been found that in 'many arbitration cases, in which the parties start out angry at each other, they end up less so. The winning party is satisfied, and the losing party is likely to feel aggrieved, not at the other party, but at the arbitrator'. Further, informal arbitration offers an opportunity to dissipate hard feelings which the industrial dispute may have aroused.

It is important because it is (*i*) expected to take into consideration the realities of the situation; (*ii*) expected to meet the aspiration office parties: (*iii*) based on voluntarism; (*iv*) is not compromising the fundamental position of the parties, and finally; (*v*) expected to promotes mutual trust. However, it is unfortunate that despite the government's stated policy to encourage collective bargaining and voluntary

arbitration, India adopted only a compulsory adjudication system ever since independence and did not give legal sanctity to voluntary arbitration till 1956. The severe criticism of conciliation and adjudication led to the introduction of Section 10 A relating to voluntary arbitration through the Industrial Disputes (Amendment) Act, 1956. The 1956 Amendment to some extent has tried to give legal force to voluntary arbitration but still it stands on a lower footing than the adjudication as it permits the parties to adopt recourse to arbitration prior to reference to adjudication. Further, the 1956 Amendment also did not place an arbitrator on the same footing as that of adjudicators. The 1964 Amendment did try to bridge the gap but still the disparity lies in several respects.

Processes involved in Reference of Dispute to a Voluntary Labour Arbitrator

Choice of Dispute Settlement

Section 10A (1) of the Industrial Disputes Act, 1947, authorizes the parties to make reference to the voluntary arbitrator. However, before the reference may be made to the arbitrator, four conditions must be satisfied:

1. The industrial dispute must exist or is apprehended.
2. The agreement must be in writing.
3. The reference must be made before a dispute has been referred under Section 10 to a Labour Court, Tribunal or National Tribunal.
4. The name of arbitrator/arbitrators must be specified.

The Conditions Precedent

A perusal of the aforesaid provisions may conveniently be delineated with reference to:

1. ***Parties to Arbitration.*** Under the Industrial Disputes Act, 1947, a reference to the voluntary arbitrator under Section 10 A can only be made if a dispute arises between employers and employers, or between employers and workmen, or between workmen and workmen.
2. ***Subject Matter of Reference.*** The Industrial Disputes Act, 1947, seeks to resolve the industrial disputes. The parties can only make a reference of an 'industry dispute' to an arbitrator. If, for instance, parties refer a dispute which is not an 'industrial dispute', the arbitrator will have no jurisdiction to make a valid award.
3. ***Time for Making the Agreement.*** Section 10A of the Industrial Disputes Act, *inter alia*, provides that the reference to the arbitrator should be made at any time before the dispute has been referred under Section 10 to a Labour Court, Tribunal or National Tribunal.

Selection of Arbitrator

The next phase is the selection of the arbitrator. The parties acting under Section 10A are required to select any person or persons including the presiding officer of a Labour Court, Tribunal or National Tribunal to arbitrate in a dispute. Further, the parties may select or appoint as many arbitrators as they wish. However, where a reference is

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made to an even number of arbitrators, the parties by agreement should provide for appointment of an umpire who shall enter upon the reference and if the arbitrators are equally divided in their opinion, the award of umpire shall prevail and be deemed to be the 'award'. However, Section 10A unlike the 'procedure for voluntary arbitration of labour disputes' as approved by the National Arbitration Promotion Board or Section 7 (1) of the Industrial Relations Bills, 1978, does not provide for any agreement if the parties on their own fail to agree to an arbitrator or arbitrators.

Arbitration Agreement

1. ***Agreement must be in writing.*** Once the parties agree to refer the dispute to arbitration, it is required to make such arbitration agreement in writing.
2. ***Form of the Agreement.*** The other requirement of Section 10A (2)(d) is that the arbitration agreement should be in the prescribed form and Rule 7 of the Industrial Disputes (Central) Rules, 1957, provides that it should be in Form C. How far and to what extent the aforesaid requirement should be complied which formed the subject-matter of dispute in the *North Orissa Workers' Union* vs *State of Orissa*. The Court held that it is not necessary that the agreement must be made in the prescribed Form 'C'. It would be enough if the requirements of that form are substantially complied with.
3. ***Signature of the Parties.*** Section 10A (2) further requires that an arbitration agreement shall be signed by the parties thereto in such a manner as may be prescribed in the rules framed by the appropriate government. However, decided cases reveal that the validity of the award or arbitration agreement has often been questioned on the basis of non-compliance of signature of all parties on the arbitration agreement. This has been a ground for not issuing the notification by the appropriate government and enabling the government to refer such dispute to labour tribunals. This tendency of appropriate government has, however, been scrutinized by the judiciary.
4. ***Consent of Arbitrator(s).*** Even though the Act does not expressly require that the arbitration agreement must be accompanied by the consent of arbitrator, the Industrial Disputes (Central) Rule, 1957, provides that the arbitration agreement must be accompanied by consent, in writing, of the arbitrator or arbitrators. However, for the purposes, it is enough if there is a substantial compliance to this rule.
5. ***Submission of the Copy of Arbitration Agreement.*** Once an arbitration agreement has been entered into and executed in the prescribed form under Section 10A, a copy of the arbitration agreement shall be forwarded to the appropriate government and the Conciliation Officer. Non-submission of a copy of the arbitration agreement to the appropriate government would make the award made thereon outside the purview of Section 10A of the Industrial Disputes Act, 1947, because Section 10A (4) is interlinked with Section 10A (3) and only on satisfaction of the mandates of Section 10A will there would be an investigation into the dispute and the award would be made by the Arbitrator and then forwarded to the appropriate government.

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6. ***Publication of Arbitration Agreement.*** The appropriate government comes into picture in the process of reference to arbitrator only after the receipt of a copy of a valid arbitration agreement. If this is done:

> .... the appropriate government shall, within one month from the date of the receipt of such copy publish the same in the Official Gazette.

The aforesaid provision raises a question whether the publication of the agreement is mandatory or directory. A corollary of this issue is: whether the appropriate government can override the wishes of the parties to refer the matter to the arbitration by making a reference to the Labour Court, Tribunal or National Tribunal. This issue may be discussed under two heads: (*i*) Publication of arbitration agreement, and (*ii*) time of publication.

(*a*) *Publication of Arbitration Agreement.* In *Karnal Leather Karamchari Sangathan* vs *Liberty Footwear Co.*, the Supreme Court was invited to consider whether the publication of arbitration agreement under Section 10A(3) is obligatory. The Supreme Court answered the question in the affirmative and observed:

> 'The voluntary arbitration is a part of the infrastructure of dispensation of justice in the industrial adjudication. The arbitrator thus falls within the rainbow of statutory tribunals. When a dispute is referred to arbitration, it is therefore, necessary that the workers must be made aware of the dispute as well as the arbitrator whose award ultimately will bind them. They must know what is referred for arbitration, who is their arbitrator and what is in store for them. They must have an opportunity to share their views with each other and if necessary, place the same before the arbitrator.'

The Court held that the arbitration agreement must be published before an arbitrator considers the merits of the disputes. Non-compliance of this requirement will be fatal to the arbitration award.

(*b*) *Time for Publication.* The high courts are divided on the issue: whether the requirement of publication of agreement within one month is mandatory or directory. While the Division Bench of the Madhya Pradesh High Court in *K.P. Singh* vs *S.K. Gokhale* and the Orissa High Court in *North Orissa Workers' Union* vs *State of Orissa* has taken the view that the requirement is mandatory, the High Court of the Punjab and Haryana in *Landra Engineering and Foundary Workers* vs *Punjab State*, the Delhi High Court in *Mineral Industrial Association* vs *Union of India*, Madhya Pradesh High Court in *Modern Stores Cigarettes* vs *Krishnadas Shah* and *Aftab-e-Jadid, Urdu Daily Newspapers* vs *Bhopal Shramjivi Patrakar Sangh* has taken the opposite view and held that the requirement is only directory. The decisions of these three high courts which held that provisions to be directory said:

> ... on the true construction of ... Section 10A(3) that the other requirement namely, its notification within one month from its receipt is only directory and not imperative.

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Voluntary Labour Arbitrator

1. ***Nature of Voluntary Arbitrator.*** It is exceedingly difficult to maintain a distinction between statutory and private arbitrator on the basis of nomenclature because both are the product of statute: the former is made under the Industrial Disputes Act, 1947, while the latter under the Arbitration Act, 1940. However, such distinction has not come to stay through a series of judicial decisions. Thus, in *R.V. National Joint Council for the Craft of Dental Technicians*, Chief Justice Goodard drew such a distinction when he said:

   There is no instance of which I know in the books, where *certiorari* or prohibition has gone to any arbitrator, except a statutory arbitrator, and a statutory arbitrator is a person to whom by statute, the parties must resort.

   The aforesaid distinction was adopted by the Supreme Court in *Engineering Mazdoor Sabha* vs *Hind Cycles Ltd* wherein Justice Gajenderagadkar introduced the concept of 'statutory arbitrator' in India by holding that:

   Having regard for several provisions contained in the Act and rules framed thereunder, an arbitrator appointed under Section 10A cannot be treated to be exactly similar to a private arbitrator to whom a dispute has been referred under an arbitration agreement under the Arbitration Act. The arbitrator under Section 10A is clothed with certain powers. His procedure is regulated by certain rules and the award pronounced by him is given by statutory provisions a certain validity and a binding character for a specified period. Having regard to these provisions, it may perhaps be possible to describe such an arbitrator in a loose sense, a statutory arbitrator.

2. ***Conduct of the Arbitrator.*** The Industrial Disputes Act, 1947, does not prescribe how the conduct of the arbitrator is to be regulated. However, the decided cases of the Supreme Court and High Courts reveal that an arbitrator should be impartial and he must build up a relationship of confidence with both the parties. Thus, he or any of his near relatives should not accept any hospitality or favour from any party to the disputes before him, because justice should not only be done but it must be seen to be done. If he does so that would be an act of misconduct. Similarly, if he does not hear the party or exceeds his jurisdiction or fails to determine an important question referred to him, his decision is liable to be interfered.

3. ***Jurisdiction of the Voluntary Arbitrator.*** An arbitrator under Section 10A comes into existence when appointed by the parties, and he derives his jurisdiction from the agreement of the parties. If the arbitrator decides matters not referred to him by the parties, he acts beyond his jurisdiction. For instance, in *Raza Textile Labour Union* vs *Mohan*, three disputes upon which the arbitrator gave the award were not covered by 167 matters of disputes which were referred to him. The Court quashed the award as these matters were beyond the jurisdiction of the arbitrator. Similarly, in *Rohtas Industries Ltd* vs *Workmen*, the Patna High Court held that the award regarding dearness allowance was vitiated by the fact that it was not in accordance with the terms of agreement. Likewise, the Madras High Court in *Vaikuntam Estate* vs *Arbitrator* quashed the interim award of arbitrator where he exceeded the terms of reference. Further,

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unlike the jurisdiction of adjudicatory bodies, the arbitrator cannot arbitrate upon matters 'incidental to' or 'any matter appearing to be connected or relevant' to the dispute. However, unlike adjudicatory authorities under the Act, the arbitrator has a wider power to decide upon all 'industrial dispute' referred to him under an arbitration agreement irrespective of the fact whether it falls either under Schedule II or III of the Industrial Disputes Act, 1947.

4. ***Powers of Arbitrator.*** Section 11A merely provides: Where an industrial dispute relating to the discharge or dismissal of a workman has been referred to a Labour Court, Tribunal or National Tribunal for adjudication and, in the course of the adjudication proceedings, the Labour Court, Tribunal or National Tribunal, as the case may be, is satisfied that the order of discharge or dismissal was not justified, it may, by its award, set aside the order of discharge or dismissal and direct reinstatement of the workman on such terms and conditions, if any, as it thinks fit, or give such other relief to the workman including the award of any lesser punishment in lieu of discharge of dismissal as the circumstances of the case may require.

It does not specifically mention 'arbitrator'. It, therefore, raises a question whether the arbitrator has the power to interfere with the punishment awarded by the management under Section 11A. Justice Krishna Iyer in *Gujarat Steel Tubes Ltd* vs *Gujarat Steel Tubes Mazdoor Sabha* answered the question in the affirmative. He stated:

Section 11 did clothe the arbitrator with similar powers as tribunals, despite the doubt created by the abstruse absence of specific mention of 'arbitrator' in Section 11 A.

In *Rajinder Kumar* vs *Delhi Adminisration*, the Supreme Court explained the powers of the Arbitrator and the Supreme Court:

'In exercise of the jurisdiction conferred by Section 11A of the Industrial Disputes Act, 1947, both arbitrator and ... (the Supreme Court) can reappraise the evidence led in the domestic enquiry and satisfy themselves whether the evidence led by the employer established misconduct against the workman. It is too late in the day to contend that the arbitrator has only the power to decide whether the conclusions reached by the enquiry officer were plausible one deducible from the evidence led in the enquiry and not to re-appraise the evidence itself and to reach the conclusion whether the conduct alleged against the workman has been established or not.'

The Court added:

'Where the findings of misconduct are based on no legal evidence and the conclusion is one to which no reasonable man would come, the arbitrator appointed under Section 10A or this court in appeal under Art 136 can reject such findings as perverse. The industrial tribunal or the arbitrator or a quasi-judicial authority can reject not only such findings but also the conclusion based on no legal evidence or if it is merely based on surmises and conjectures unrelated to evidence on the ground that they disclose total non-application of mind.'

Signing of an Award

Sub-Section (4) of Section 10A requires that the arbitration award shall be signed by the arbitrator or all the arbitrators, as the case may be. The provisions of the section

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are mandatory. The award of arbitrator shall be void and inoperative in the absence of signature in view of mandatory term of the section.

Submission of an Award

Section 10A (4A) of the Act enjoins upon the arbitrator to investigate the dispute and submit its award to the appropriate government. The non-submission would render the award in-operative.

Publication

Sub-section (3) of Section 10A requires that a copy of the arbitration agreement shall be forwarded to the appropriate government and the Conciliation Officer and the appropriate government shall within one month from the date of receipt of such copy, publish the same in the Official Gazette.

Can the award of the arbitrator under Section 10A be set aside on its non-publication in the Official Gazette? The Supreme Court in *Karnal Leather Karmchari Sanghatan* vs *Liberty Footwear Company* answered the question in the negative and observed:

Now look at the provisions of sub-section (3). It is with respect to the time for publication of the agreement. But publication appears to be not necessary for validity of the agreement. The agreement becomes binding and enforceable as soon as it is entered into by the parties. Publication is also not an indispensable foundation of jurisdiction of the arbitrator. The jurisdiction of the arbitrator stems from the agreement and not by its publication in the official Gazette. Why publication is then necessary? Is it an idle formality? Far from it, it would be wrong to construe sub-section (3) in the manner suggested by counsel for the appellant. The Act seeks to achieve social justice on the basis of collective bargaining. Collective bargaining is a technique by which dispute related to conditions of employment resolved amicably by agreement rather than coercion. The dispute is settled peacefully and voluntarily although reluctantly between labour and management. The voluntary arbitration is a part of infrastructure of dispensation of justice in the industrial adjudication. The arbitrator thus falls within the rainbow of statutory tribunals. When a dispute is referred to arbitration, it is, necessary that the workers must be made aware of the dispute as well as the arbitrator whose award ultimately would bind them. They must know what is referred to arbitration, who is their arbitrator and what is in store for them. They must have an opportunity to share their views with each other and if necessary to place the same before the arbitrator. There the need for collective bargaining and there cannot be collective bargaining without involving the workers. The union only helps the workers in resolving disputes with their management but ultimately it would be for the workers to take decision and suggest remedies. It seems to us therefore, that the arbitration agreement must be published before the arbitrator considers the merits of the dispute. Non-compliance of this requirement would be fatal to the arbitral award.'

The aforesaid view was followed in *S.K.M. Sangh* vs *General Manager, W.C. Ltd.*

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Power of Superintendence of the High Court Article 227 of the Constitution over Voluntary Arbitrators

In addition to Article 226, Article 227 confers upon the high court a power of superintendence over all lower courts and tribunals within its jurisdiction. A question, therefore, arises whether a high court can interfere under Article 227 with an award of an arbitrator (under Section 10A). The Supreme Court in *Engineering Mazdoor Sabha* vs *Hind Cycles Ltd*., answered it in the negative and placed Article 227 at a par with Article 136. It held that:

> Like Article 136, Article 227 refers to Courts and Tribunals and what we have referred to the requirements of Article 136 may *prima facie* apply to the requirements of Article 227.

The net effect of the aforesaid statement is that the high court is not competent to have power of superintendence over voluntary arbitrators under Section 10A because the 'arbitrator' was not a 'Tribunal'.

However, in *Rohtas Industries Ltd* vs *Rohtas Industries Staff Union,* even though Justice Krishna Iyer conceded that the position of arbitrator under Section 10A (as it then stood) vis-a-vis Article 227 might have been different but in view of the changed situation after the amendment in the Industrial Disputes Act by XXXVI of 1964 observed:

> Today, however, such an arbitrator has the power to bind even those who are not parties to the reference or agreement and the whole exercise under Section 10A as well as the source of the force of the award on publication derive from the statute. It is legitimate to regard such an arbitrator now as part of the methodology of the sovereign's dispensation of justice, thus falling within the rainbow of statutory Tribunals amenable to judicial review.

The aforesaid view was reiterated in the majority judgement in *Gujarat Steel Tubes* case.

However, one is tempted to ask if the Court's decision would have been different if the Government does not issue a notification under sub-section 3A of Section 10A on the ground that persons making a reference do not represent the majority of each party. An answer in the affirmative would revive the view stated in *Engineering Mazdoor Sabha (supra)*. Under the circumstances, it is suggested that Parliament may clarify the position by legislative amendment.

In *Association of Chemical Workers* vs *B.D. Borude*, the Bombay High Court ruled:

> 'If the findings of an arbitrator are perverse and not based on the evidence available on record or contrary thereto or no reasonable person would come to such a conclusion, while interpreting and applying the provisions of Section 11A of the Industrial Disputes Act, this Court can always interfere, with the Award passed by an Arbitrator appointed under Section 10A of the ID Act.'

Relief under Article 136 of the Constitution from Arbitration Award

The question that arose before the Supreme Court was whether an appeal would lie to it under Article 136 of the Constitution from an arbitration award under Section 10A

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of the Industrial Disputes Act. The Supreme Court in *Engineering Mazdoor Sabha* vs *Hind Cycles* answered the question in the negative. It stated:

> ... the arbitrator is not a tribunal because the State has not invested him with its inherent judicial power and the power of adjudication which he exercises is derived by him from the agreement of the parties. His position thus, may be said to be higher than that of a private arbitrator and lower than that of a tribunal.

Accordingly, the Court held that the decision of arbitrator would not amount to 'determination' or 'order' for the purposes of Article 136. However, this position appears to have been changed through *Rohtas Industries* vs *Rohtas Industries Staff Union*. The Court in view of the amendment in 1964 of the Industrial Disputes Act appears to have extended the application of Article 136 to an award of an arbitrator under Section 10A. This view was reiterated in *Gujarat Steel Tubes Ltd* vs *Gujarat Steel Tubes Mazdoor Sabha*.

The aforesaid view removes one of the stated hurdles in the progress of arbitration, namely that in law no appeal is maintainable against the award of the arbitrator.

The (Second) National Commission on Labour considers an arbitration as a dispute settlement machinery better than adjudication.

3.3.6 Adjudication

The final stage in the settlement of industrial disputes (which the parties are unable to settle either through bipartite negotiations or through the good offices of the conciliation machinery or through voluntary arbitration) is compulsory arbitration that envisages governmental reference to statutory bodies such as Labour Court, Industrial Tribunal or National Tribunal. Disputes are generally referred to adjudication on the recommendation of the Conciliation Officer who had dealt with it earlier. However, the appropriate government has discretion either to accept or not accept his recommendation and accordingly to refer or not to refer the case for adjudication. The percentage of disputes referred to adjudication varied from State to State.

The system of adjudication by Labour Court, Tribunal and National Tribunal has perhaps been one of the most important instruments of regulating the rights of the parties in general and wages, allowances, bonus, working conditions, leave, holidays and social security provisions in particular. The setting of such norms, in advanced countries is done through the process of collective bargaining between the employers and the trade unions, while in India it had to be done by adjudication system because the trade union movement was weak and is in no position to negotiate with the employer on an equal footing. However, this system has been criticized for its unfavourable effects on the trade union movement. Further, undue dependence on compulsory adjudication has deprived the trade unions of the incentive to organize themselves on a strong and efficient basis and has rendered the unions mere petitioning and litigant organizations arguing their cases before tribunals. The system of adjudication has also been criticized because of long delays involved in the final settlement of disputes, particularly where one or the other party chooses to go in appeal against an award. Such delays, it is argued, are themselves responsible for much industrial strife. Be that as it may, it is beyond doubt that the labour judges occupy a very important position in a judicating the disputes between management and labour. The disputes that are brought

before the labour judiciary involve huge stakes, both for the management as well as the workers.

Origin and Growth of Adjudication System

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In the era of laissez faire, employers enjoyed the unfettered right to 'hire and fire'. They had vastly supervisor bargaining powers and were in a position to dominate workmen in every conceivable way. They preferred to settle the terms and conditions of employment of workmen and abhorred statutory regulations thereof, unless, of course, it was to their advantage. However, this tendency coupled with a rise in the incidence of the strikes and lockouts made it necessary for the government to intervene in labour management relations. While voluntary and persuasive processes had been playing their role in settling industrial disputes since 1929, World War II marked the beginning of compulsory adjudication. Rule 81A of the Defence of India Rules, 1942 empowered the government *inter alia*, to refer any trade dispute to adjudicators and to enforce the awards. After the end of hostilities these measures with a number of innovations and modifications were incorporated in the Industrial Disputes Act, 1947. The Act 'substitutes for free bargaining between the parties a binding award by an impartial Tribunal'. The Tribunal is not bound by contractual terms between the parties but can make a suitable award for bringing about harmonious relations between the employer and the workmen. 'The Industrial Tribunal is not lettered by any limitation on its power. The only limitation on its power is to bring about harmonious relationship between the employer and the workmen.' In the original Act, only one constituting body, namely the Industrial Tribunal was designated for the compulsory settlement of industrial dispute. Within a short span of nine years of its working, it was found that a large number of cases were referred to it. This led to the introduction of the three-tier system, viz., the Labour Court, Tribunal and National Tribunal in 1956.

Composition of the Labour Court, Tribunal and National Tribunal

The issue of composition of the Labour Courts and Tribunals has an important bearing on their working. The present system of reference to adjudication is, however, open to criticism. *First*, from 'the workers' side, it is often urged that with various restrictions placed on strikes, the recourse to judicial determination of disputes should not be barred by the Government.' *Second*, the decision to refer disputes or to withhold reference is sometimes not made on any strict principle and the system is open to pressurization.

The Industrial Disputes (Amendment and Miscellaneous Provisions) Act, 1956, introduces a three-tier system for industrial adjudication. The machinery provided under the Act consists of Labour Courts, Industrial Tribunals and National Tribunals. The appropriate government is empowered under Section 7 and 7A to constitute one or more Labour Courts and Industrial Tribunal with limited jurisdiction, to adjudicate 'industrial disputes', and the Central Government is authorized under Section 7B to constitute the National Tribunal. The Labour Courts, Industrial Tribunals and National Tribunals are ad hoc bodies and consist of a single member called presiding officer. The appointment of the tribunal may, however, be for a limited duration.

Appointment of Assessors. There is no provision for the appointment of assessors in Labour Courts, but in case of Industrial Tribunal or National Tribunal, the

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appropriate government may appoint two persons as assessors to advise the Tribunal in the proceedings before it. The assessors are supposed to be experts having special knowledge of the matter under consideration and can be appointed only when the dispute involves technical matters and requires expert knowledge for its settlement. This provision has never been used and for all practical purposes is defunct.

Appointment, Qualifications and Disqualifications of the Presiding Officer of the Labour Court, Tribunal and National Tribunal

Industrial peace, prosperity and progress depend upon the efficiency of the labour Judiciary. The Labour Judiciary is thus the centre of the system of industrial adjudication in India. These appointments of the presiding officers of the Labour Judiciary are made by the appropriate Central Government. However, at the same time, in a large number of industries, the state is one of the parties playing the part of the employer. In this context, the method of appointment of the Labour Judiciary assumes great importance. It is absolutely necessary that the Labour Judges should be highly qualified, experienced, independent and committed to the Constitution of India. In other words, Labour Judiciary should be independent of the Executive Government as is the case of the Judiciary under the Constitution. It is, therefore, desirable that the Labour Judiciary must be taken out of the control of the Executive Government.

The Supreme Court in *State of Maharashtra* vs *Labour Law Practitioner's Association and others* considered the relevant provisions of the Industrial Disputes Act and the Bombay Industrial Relations Act and came to the conclusion that the Labour Court Judges and Judges of the Industrial Court belong to 'Judicial Service', as that expression is understood in Charter VI of the Constitution of India.

According to the Court, the expression 'District Judge' covers a Judge of any principal Civil Court of original jurisdiction and includes the hierarchy of specialized Civil Courts, such as Labour Courts and Industrial Courts. The term 'Courts' will cover all Tribunals, which are basically Courts performing judicial functions, giving judgements, which are binding, they are exercising sovereign judicial power transferred to them by the State. Men, who could be described as 'independent' and having sufficient judicial experience, must alone according to their lordships, be selected as Labour Court Judges. The Court accordingly held that persons presiding over Industrial and Labour Courts constitute a judicial service and their recruitment should be in accordance with Article 234 of the Constitution.

In case of Labour Courts, there is a wider range of alternatives in the qualifications for appointment. They are as follows: (*a*) he is, or has been, a Judge of a High Court; or (*b*) he has, for a period of not less than three years, been a District Judge or an Additional District Judge; or (*c*) he has held any judicial office in India for not less than seven years; (*d*) he has been the Presiding Officer of a Labour Court constituted under any Provincial Act or State Act for not less than five years.

Recommendations of the (Second) National Commission on Labour

The (Second) National Commission on Labour has recommended that officials of labour departments at the Centre and the state who are of and above the rank of Deputy Labour Commissioners/Regional Labour Commissioners with 10 years experience in the labour department and a degree in law should be made eligible for being appointed as presiding officers of Labour Courts.

Qualifications for appointment to Tribunals are the same as prescribed for Labour Courts in Section 7, clauses (a) and (b). Thus, the range of alternatives is narrower.

For National Tribunals, the range of alternative qualifications for appointment is further narrower. One qualification that the person is or has been a judge of a High Court is common to all the Tribunals.

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The requirements of Section 7C are applicable to all the three bodies, i.e., Labour Courts, Tribunals and National Tribunals. Section 7C lays down disqualifications with regard to age and independence of persons appointed. It requires that the person to be appointed must be (*a*) an independent person and (*b*) has not attained the age of 65 years.

In actual practice however, it is found that insistence is made on judicial qualification in the appointment of the Presiding Officer of the Labour Court and Industrial Tribunals. Further, generally retired personnel are chosen to serve as Presiding Officers. It is submitted that the appointment should be made in consultation with the Chief Justice of a High Court. This will ensure the appointment of independent persons by the appropriate government as Presiding Officer of Labour Courts and Industrial Tribunals. Further, the appointment should be made on a permanent basis with promotional avenues open to them.

Jurisdiction of Labour Court, Tribunal and National Tribunal

The Labour Court has jurisdiction to adjudicate industrial disputes which may be referred to it under Section 10 of the Act by the appropriate government and which relates to: (1) The propriety or legality of an order passed by an employer under the standing orders; (2) the application and interpretation of standing order; (3) discharge or dismissal of workmen including reinstatement of, or grant of relief to, workmen wrongfully dismissed; (4) withdrawal of any customary concession or privilege; (5) illegality or otherwise of strike or lock-out; and (6) all matters other than those specified in the Third Schedule.

The Industrial Tribunals have jurisdiction to adjudicate industrial disputes referred under Section 10 which relates to: (1) wages, including the period and mode of payment; (2) compensatory and other allowances; (3) hours of work and rest intervals; (4) leave with wages and holidays; (5) bonus, profit-sharing, provident fund and gratuity; (6) shift working otherwise than in accordance with standing orders: (7) classification by grades; (8) rules of discipline; (9) rationalization; (10) retrenchment of workmen and closure of establishment; and (11) any other matter that may be prescribed.

The National Tribunals have jurisdiction to adjudicate industrial disputes which, in the opinion of the Central Government, involves questions of national importance or are of such a nature that industrial establishments situated in more than one State are likely to be interested in, or affected by, such disputes and which may be referred to them by the Central Government.

Under the Industrial Disputes Act, 1947, the Labour Court, Tribunal and National Tribunal can acquire jurisdiction only when there is in existence an apprehension of an industrial dispute and a reference of such dispute has been made by the appropriate Government under Section 10. The Labour Courts, Tribunals and National Tribunals are also required to deal with complaints. The Labour Courts are also required to

decide the question of amount of money due under Section 33 C (2) of the Industrial Disputes Act, 1947.

Powers and Functions of the Labour Court, Tribunal and National Tribunal

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The Labour Court, Tribunal and National Tribunal have a statutory duty to hold the proceedings expeditiously and shall, as soon as it is practicable on the conclusion thereof submit its award to the appropriate government. They are empowered, subject to the rules in this behalf, to follow such procedure as they may think fit. The rules provide for place and time of hearing of the industrial dispute by adjudication or arbitration authorities as the case may be.

Power to Set Aside an Ex parte Award

Even though there is no provision either in the Industrial Disputes Act or in the rules framed thereunder to empower the Labour Tribunals to set aside an ex parte award, the Supreme Court through the process of judicial legislation has invested in them such powers. However, the Industrial Tribunal becomes *functus officio* if the application is not moved within 30 days of the publication of the award in the Official Gazette. Thereafter, the interim award stands vacated. The Tribunal may also cancel the promotion order passed by the management where it finds that person were superseded on account of *mala fide* or victimisation. In this regard, the Tribunal may also frame rules of promotion in consultation with the management and union and direct the management to give promotions or upgradation in accordance with those norms/rules. The Industrial Tribunals, while deciding upon the wage scales of the employees of an establishment have full liberty to propose an ad hoc increase of salaries as a part of the revision of wages. Further, increment is a part of revision of pay scales.

The Tribunal, however, under Section 36A has no power to determine the question about propriety, correctness or validity of any provision or the powers conferred under any statute. Further, the Tribunal has no power to amend or modify its award after it becomes final except to correct clerical mistakes and so that the powers under Section 11(3) could be exercised by the tribunal after the proceedings pending before it have been terminated.

Power to Grant Interim Relief

The Supreme Court in *Hotel Imperial* vs *Chief Commissioner* ruled that interim relief may be granted (*i*) if there is a prima facie case, (*ii*) Tribunal, interference is necessary to protect a party from irreparable loss or injury, and (*iii*) the balance and convenience. The Bombay High Court in *Bharat Petroleum Corporation Ltd* vs *R.J. Tiwari* held that even full wages may be granted by way of interim relief.

But 'where a quasi-judicial Tribunal or arbitrator records findings based on no legal evidence and the findings are either his *ipse dixit* or based on conjectures and surmises, the enquiry suffers from the additional infinity of non-application of mind and stands vitiated. The Industrial Tribunal or the arbitrator or a quasi-judicial authority can reject not only such findings but also the conclusion based on no legal evidence or... on surmises and conjectures unrelated to evidence on the ground that they disclose total non-application of mind.'

Powers of the Tribunal under Section 11A

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Quite apart from these, the Labour Court, Tribunal, National Tribunal and Voluntary Arbitrator are also empowered to go into the question of adequacy of the punishment. They are empowered under Section 11A to direct 'reinstatement of the workman on such terms and conditions, if any, as (they) think fit or give such relief to the workman including the award of any lesser punishment in lieu of discharge or dismissal as the circumstances of the case require.' The purpose for which Section 11A has been enacted is to enlarge the powers of the Labour Court, Tribunal or National Tribunal, as the case may be, so that in appropriate cases even if the Labour Court or the Tribunal finds that the enquiry had been held properly and the charge is borne out by the evidence, the Labour Court or the Tribunal may still give some relief to the worker if it finds the punishment to be disproportionate to the charges held.

1. **Jurisdiction to record evidence under S. 11A**
   - It is exercisable even in cases where the opportunity of hearing was given and principles of natural justice complied with before passing the order of dismissal but the Appellate Authority finds it necessary to record evidence in order to draw its own conclusion as to whether the person dismissed was or was not guilty of the charges framed against him.
   - Where the employer had filed an application to produce evidence in support of the charges and the Appellate Authority without disposing of that application, set aside the order of dismissal merely on omission of any enquiry, the Appellate Authority committed a grave error.
   - Omission of affording opportunity during domestic enquiry is curable by adducing evidence before the Appellate Authority.
2. **Scope of consideration of the Labour Court/Tribunal under S. 11A**
   - Where domestic enquiry conducted by management is found defective.
   - Where the Labour Court grants an opportunity to the management and workmen to adduce evidence.
   - Where, evidence, the Labour Court agrees with the management's conclusion that misconduct was proved and also declared the dismissal order to be justified.
3. **Production of additional evidence**

   The Supreme Court in *Bharat Forge Company Ltd* vs *A.B. Zodge* held that under Section 11A of the Industrial Disputes Act, 1947, the employer is entitled to adduce evidence for the first time, before the tribunal even if the employer had not conducted any enquiry or the enquiry conducted by him is found to be perverse. A domestic enquiry may be vitiated either for non-compliance of rules of natural justice or for perversity. Disciplinary action taken on the basis of a vitiated enquiry does not stand on a better footing than a disciplinary action with no enquiry. The right of the employer to adduce evidence in both the situations is well recognized.
4. **When can the Labour Court permit parties to adduce fresh evidence?**

   In *Rajendra Jha* vs *Labour Court*, the Supreme Court held that even when the application for permission to adduce further evidence is not made in the

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pleading the Labour Court is empowered to permit the management to adduce evidence before the court and therefore, it should allow the parties to adduce evidence to prove the misconduct. However, the court has observed that the request of the employer to adduce evidence should be made at the earliest opportunity or the delay be explained. However, such request must be made before the closure of the proceedings.

5. **Obligation of asking the parties to adduce evidence**

   The Tribunal is neither under a duty to give an opportunity to the parties to adduce evidence nor under an obligation to acquaint parties before it for their rights to adduce evidence under Section 11A.

6. **Recommendation of the (Second) National Commission on Labour**

   The Second National Commission on Labour has recommended that Section 11A of the ID Act, 1947, may be retained. However, the law may be amended to the effect that where a worker has been dismissed or removed from service after a proper and fair enquiry on charges of violence, sabotage, theft and/or assault, and if the labour court comes to the conclusion that the grave charges have been proved, then the court will not have the power to order reinstatement of the delinquent worker.

7. **Powers of the High Court under Article 226**

   The High Court in exercise of writ jurisdiction can exercise similar powers and discretion as exercised by the Labour Court under Section 11A.

Powers of the Labour Court to review the Award

It is restricted only to: (*i*) Typographical mistakes or (*ii*) Accidental slips or omission.

Discharge or dismissal of a workman: the date of its effect

When domestic enquiry is found defective, it relates back to the date on which the management passed the order and not from the date of judgement.

Disposal of preliminary or technical objections

It has been held in a catena of cases that all issues preliminary or otherwise should be decided together so as to rule out the possibility of any litigation at the interlocutory stage.

Discretion of the Labour Court to deny relief to workmen when the claim was made after a long time

In *Haryana State Co-operative Land Development Bank* vs *Neelam*, a typist was appointed on ad hoc basis in a bank. Her services were finally terminated after 17 months of service. She joined some other establishment and continued to work there. While this was so, some of the employees who were placed and terminated similarly to the said typist approached the Labour Court and got certain relief. After more than 7 years the said typist also raised an industrial dispute. On reference, the Labour Court refused to grant any relief, *inter alia*, on the ground that there was no justification for such delay. Thereafter, the appellant filed an appeal before the Supreme Court. The Court upheld the award of the Labour Court by observing that: (*i*) The

Industrial Disputes Act does not contain any provision which mandates the industrial court to grant relief in every case to the workman. The extent to which a relief can be moulded will inevitably depend upon the facts and circumstances in each case. In absence of any express provision contained in the statute in this behalf, it is not for the Court to lay down a law which will have a universal application. (*ii*) It is trite that the Courts and Tribunals having plenary jurisdiction have discretionary power to grant an appropriate relief to the parties. The aim and object of the Industrial Disputes Act may be to impart social justice to the workman but the same by itself would not mean that irrespective of his conduct a workman would automatically be entitled to relief. The procedural laws like *estoppel*, waiver and acquiescence are equally applicable to the industrial proceedings. A person in certain situation may even be held to be bound by the doctrine of acceptance *sub silentio*. The employee did not raise any industrial dispute questioning the termination of her services within a reasonable time. She even accepted an alternative employment and has been continuing therein. (*iii*) The conduct of the employee in approaching the Labour Court after more than seven years is a relevant factor refusing to grant any relief to her. Such a consideration on the part of the Labour Court cannot be said to be an irrelevant one.

Other Powers of Tribunals

Every Labour Court, Tribunal and National Tribunal enjoys the same powers as are vested in a civil court under the Code of Civil Procedure, 1908, when trying a suit. It can enforce the attendance of any person and examine him on oath; compel the production of documents and material objects; issue commission for examination of witness, make discovery and inspection grant adjournment; and receive evidence on affidavit.

The Tribunal is required to abide by the provisions of the Evidence Act in matters relating to the proof of a document and the claim for privilege. The Labour Court or the Industrial Tribunal while adjudicating industrial dispute referred to it by the appropriate government may summon a party other than the employer and employee whose presence would help the concerned Court in the adjudication of dispute finally, effectively and completely. Every enquiry by a Labour Court, Tribunal or National Tribunal is considered judicial proceedings within the meaning of Sections 193 and 228 of the Indian Penal Code and Sections 345, 346 and 348 of the Code of Criminal Procedure, 1973. But the legal practitioners are allowed from representing the parties before the adjudication authorities with the consent of the other parties to the proceedings and with the permission of the authorities. The proceedings are normally held in public, but the Labour Court, Tribunal or National Tribunal as the case may be can at any stage direct that any witness be examined or proceedings be held in camera. These provisions reveal that the 'Tribunal in discharging functions is very near to a Court, although, it is not a Court in the technical sense of the word.'

Other Duties of Tribunal

In addition to the above, the Labour Court, Tribunal and National Tribunal act in a judicial capacity in settling the industrial dispute. The functions and duties of the Industrial Tribunal are very much like those of a body discharging judicial functions, although it is not a Court. The duty of the Tribunal was best described by the Supreme Court in *Hindustan Lever Ltd* vs *The Management*. In this case, the Court held that it was

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the duty of the Tribunal that it 'cannot travel beyond the pleadings and are precluded or prohibited from raising to writ if the employer does not question the status of the workmen. It further added that the tribunal cannot *suo motu* raise the issue and proceed to adjudicate upon the same and throw out the reference on the sole ground that the concerned workman was not a workman within the meaning of the Act. In settling the industrial dispute, 'the functions of the Tribunal are not confined to administration in accordance with law. It can confer rights and privileges on either parties which it considers reasonable and proper though they may not be within the terms of the existing agreement. It is not merely to interpret or give effect to contractual rights or obligations of the parties but it can create new rights or obligations between them which it considers essential for them for keeping industrial peace.'

Filling of Vacancies

Section 8 authorizes the appropriate government to fill vacancies when the presiding officers of Labour Courts and Industrial Tribunals cease to be available. If for any reason a vacancy occurs, it is open to the government to fill the same whether the vacancy is permanent or temporary. In the case of a National Industry only the Central Government is empowered to fill the vacancy by appointing any person in accordance with the provisions of the Act. The High Court cannot examine whether the services of a Tribunal have ceased to be available. It is for the appropriate Government to say so. Section 8 does not apply to such Tribunals which are constituted for a limited period and so the proceedings could not be continued by the new Tribunal from the stage at which the same was left by the previous Tribunal.

Response of the [First] National Commission on Labour

The [First] National Commission on Labour set up by the government of India in 1966 found the working of the industrial relations machinery under the Industrial Disputes Act, 1947, unsatisfactory. It, therefore, emphasized the need for 'a formal arrangement which is independent in character, expeditious in its functioning and which is equipped to build up the necessary expertise.' The Commission, therefore, recommended: (*i*) the setting up of a National Industrial Relations Commission by the Central Government to deal with disputes which involve questions of national importance or which are likely to affect establishments situated in more than one State. (*ii*) The setting up of an Industrial Relations Commission at the state level for settlement of disputes for which the State Government is the appropriate government. (*iii*) The proposed National and State Industrial Relations Commission would be presided over by a person having prescribed judicial qualifications and experience appointed by the Union and State Government respectively in consultation with the Chief Justice of India or Chief Justice of the High Court concerned as the case may be, and the Union Public Service Commission or the State Public Service Commission as the case may be. The Commission shall also constitute two non-judicial members, who will be officers in the field of industry, labour or management. The main functions of the proposed machinery are three-fold: (*i*) adjudication of industrial disputes; (*ii*) conciliation; and (*iii*) certification of unions as representative unions. However, no step has yet been taken to implement these recommendations.

Court Fee

The [Second] National Commission on Labour has recommended levy of a *token court fee* in respect of all matters coming up before labour courts and Labour Relations Commissions.

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Representation of Parties

Section 36 of the Industrial Disputes Act deals with the representation of a party to a dispute. Under sub-section 1 of Section 36, a workman who is, a party to a dispute shall be entitled to be represented in any proceeding under the Act by (*a*) any member of the executive or other office-bearer of a registered trade union of which he is a member; or (*b*) any member of the executive or other office-bearer of a federation of trade unions to which the trade union referred to in clause (*a*) is affiliated; (*c*) where the worker is not a member of any trade union, by any member of the executive or other office bearer of any trade union it is connected with, or by any other workmen employed in the industry in which the worker is employed and authorized in the prescribed manner.

Similarly, under Section 36(2) an employer who is party to a dispute shall be entitled to be represented in any proceeding under this Act by (*a*) an officer of an association of employers of which he is a member; (*b*) an officer of a federation of associations of employers to which the association referred to in clause (a) is affiliated; (*c*) where the employer is not a member of any association of employers, by an officer of any association of employers connected with, or by any other employer engaged in the industry in which the employer is engaged and authorised in such a manner as may be prescribed.

Section 36 (3), however, imposes a total ban on representation of a party to the dispute by a legal practitioner in any conciliation proceeding or in any proceeding before a Court of Enquiry.

Section 36 (4) permits a party to dispute to be represented by a legal practitioner with the prior consent of the other party to the proceeding and with the leave of the Labour Court, Tribunals or National Tribunal as the case may be. Thus, a party to a dispute may be represented by a lawyer upon fulfilment of two conditions, viz. (1) consent of other party, (2) leave of the Tribunal. These two conditions are mandatory in nature. Consent of the other party is a requirement which cannot be given a go-by. Question of any inference with regard to the consent does not and cannot arise. The requirement is to be complied with in order to give effect to the provisions under Section 36 (4). However, the High Courts are divided on the issue whether the consent should be express or implied. While the Calcutta High Court held that the consent must be express and not implied, the Kerala High Court held that the consent may even be implied. Thus, in the latter case when *Vakalathnama* was accepted by the Court on the first posting date and no objection was raised by the opposite party, there was implied consent of the opposite party and leave of the Court.

In *Laxmi Engineering Industries* vs *State of Rajasthan and Others,* the validity of section 36 of the Industrial Disputes Act, 1947, was challenged. It was contended that (*i*) Section 36 which provides that a lawyer cannot appear before the Labour Court / Industrial Tribunal except with the consent of the opposite party and

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the leave of the Labour Court/Industrial Tribunal was violative of Article 14 of the Constitution of India and the principles of natural justice and (*ii*) Section 36 run against Section 14(1)(*b*) of the Bar Council Act. The Rajasthan High Court answered the questions in negative.

In *Prasar Bharati Boardcasting Corporation of India* vs *Shri Suraj Pal Sharma* the workman had not earlier objected to the appearance of the legal practitioner on behalf of the management. On these facts, the Delhi High Court held that since the workman had not objected under Section 36(4) to the representation of the management by the Additional Central Government standing counsel at the early stages, he cannot be prevented from raising the objection at a later stage.

In *Britannia Engineering Products & Services Ltd* vs *Second Labour Court & Ors.* the company after receiving notices of adjudication proceedings appeared before the labour court and filed letters of authority authorizing G.S. Sengupta, advocate, along with A. Dasgupta, Manager (Personnel and Administration) of the company to represent it. At no stage of the proceedings did the workmen raise any objection disputing such representation by the company through the said advocate. Later, the company obtained no objections from their erstwhile advocate and filed a fresh authorisation in favour of D.K. Ghosh. At that stage, the workmen raised an objection and refused to give consent for representation of the company through this advocate. The labour court, accordingly, refused to accept the authorities of representation by the present advocate of the company.

Aggrieved by this order, the company filed a writ petition before the Calcutta High Court, the court observed that there was implied consent of workmen for representation of the company through its advocate. Once consent is given, it is not open to the workmen to withdraw such consent nor can the court or tribunal recall the lease granted to a party. Thus, at the time of change of the lawyer, a party need not obtain fresh leave nor does it require consent to be obtained from the other party; the choice of the legal practitioner lies with the party concerned and it is not open to the other side to object to change of lawyer.

It need not be in a particular manner or in a particular form as there is no form prescribed either under the Act or the Rules. If that be so, the consent of a party which is the basis for the grant of leave to the other party for being represented by a lawyer in a proceeding under the Industrial Disputes Act can be inferred from the surrounding circumstances as also the conduct of the consenting party. Section 36(4) does not insist upon a written consent. Consent once given cannot be withdrawn or revoked at a later stage because there is no provision in the Industrial Disputes Act enabling such withdrawal or revocation. To be represented in the proceeding by a lawyer would ensure his benefit till the proceeding is finally disposed of. Thus, if sub-section (1), (2) and (3) of Section 36 foreclose the possibility of judicial discretion being exercised against granting audience to persons mentioned in clauses (a), (b), (c) of sub-sections (1), (2) and (3), sub-section (4) regulates the right of parties to authorize advocates to plead their cause and, thereby without coming in conflict with the provisions of Section 30 of the Advocates Act, sought to keep the arena of labour–management relations free from lawyers.

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The scope of the aforesaid section has been delineated by the Supreme Court as well as the High Courts. In particular, three issues have arisen: (*i*) Can there be representation by worker himself (*ii*) Can there be representation of workman by trade unions for the purpose of Section 36? (*iii*) Whether an employee's right to be represented by any office-bearer in sub-section (1) is qualified or restricted on the ground that such an officer is a legal practitioner (*iv*) Can the Indian Chamber of Commerce be entitled to appear on behalf of an employer?

Ameteep Machine Tools vs *Labour Court* the Supreme Court decided the first of the two issues. The court has ruled that Section 36 does not impose any obligation upon a workman who is a party to the dispute to be represented by someone else. He may participate in the conciliation proceedings and if a settlement is arrived at, it is a valid settlement and binding on the parties even if the workmen who were parties to the dispute presumably participated in the proceedings and were not represented by any persons mentioned in Section 36 (1).

Modella Textile Workers Union vs *Union of India* decided the second issue, namely whether the trade unions have the *locus standi* to file a writ petition to challenge the government's order refusing to make a reference to adjudication pertaining to the termination of employees. The Punjab and Haryana High Court held that not only a workman who is a member of a trade union but even in the absence of his membership of any trade union a workman is entitled to obtain assistance from any trade union connected with the industry and observed:

Thus, the trade union or any member of its executive or other office bearer is entitled to canvass the cause of the workman concerned for the purposes of pursuing conciliation proceedings, issuing a demand notice and making a demand on the government to refer a dispute to the Industrial Tribunal or the Labour Court. If in pursuance of a demand notice, a dispute is referred to the Tribunal or the Court, as the case may be, under the Act, the trade union concerned is also empowered to represent the case of the workman on whose behalf the demand notice had been issued to the government by the union before the Tribunal. In these circumstances, if a trade union has been given the power by the legislature to represent a workman and espouse his cause before the Tribunal or the Court, there is no reason to deprive such a union of the right to challenge the order of the government declining a reference by way of writ petition under Art. 226 of the Constitution.

The Court added:

> The power of representation of the cause of another person is intended to be given its full scope at all stages. Thus, it cannot be held that the trade union, the present petitioner, was not interested in the industrial dispute which is the subject matter of adjudication in this writ petition and was not aggrieved by the decision of the government declining to make a reference. In view of the wide scope of Section 36 of the Act, the Trade Union petitioner was widely interested in the dispute and there is no reason or warrant to deprive it of the *locus standi* to file the writ petition under Art. 226.

From the aforesaid decision, it is evident that Courts are inclined to permit the workman himself to represent his case in any proceedings under the Industrial Disputes Act or may be represented through trade unions (even if he is not a member of such a trade union) even in writ proceedings.

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The third issue was answered in the negative by the Supreme Court in *Paradip Port Trust* vs *Their Workmen*. Observed Justice Goswami:

> If, however, a legal practitioner is appointed as an officer of a company or corporation and is in their pay (roll) and under their control and is not a practising advocate the fact that he was earlier a legal practitioner or has a legal degree will not stand in the way of the company or the corporation being represented by him. Similarly, if a legal practitioner is an officer of an association of employers or of a federation of such association, there is nothing in Section 36(4) to prevent him from appearing before the Tribunal under the provisions of Section 36 (2) of the Act. Again, an office-bearer of the trade union or a member of its executive even though he is a legal practitioner will be entitled to represent the workman before the Tribunal under Section 36(1) in the former capacity. The legal practitioner in the above two cases will appear in the capacity of an officer of the association in the case of an employer and in the capacity of an office-bearer of the Union, in the case of workmen and not in the capacity of a legal practitioner.

He added:

It must be made clear that there is no scope for enquiry by the Tribunal into the motive for appointment of such legal practitioners as office-bearers of the trade unions or as officers of the employers association

The Court accordingly overruled the Full Bench decision of the Labour Appellate Tribunal in *Hosiery Workers' Union* vs *J.K. Hosiery Factory, Kanpur* and Rajasthan High Court in *Duduwala and Co.* vs *LT.* and affirmed the ruling of the Calcutta High Court in *Hall & Anderson Ltd* vs *S.K. Neogi* and Bombay High Court in *K.K. Khadilkar* vs *Indian Hume Pipe Co. Ltd.*

Quite apart from the aforesaid principles it may be observed that neither the Industrial Disputes Act, 1947, nor any of the rules made thereunder provide for the form or the manner in which the consent of the other party is to be given. Any leave granted by a Court or a Tribunal should ordinarily be in writing. Likewise, in ordinary cases, the consent of the other party should also be given in writing. This does not, however, mean that implied consent is negatived by Section 36 (4).

The last issue was decided in negative by the Madras High Court in *R.M. Duraiswamy* vs *Labour Court*. In this case, the court held that employers can be represented by an (*i*) executive or office-bearer of the Trade Union, (*ii*) Association of Employers or an executive of Association of employers. (*iii*) Officers like Deputy Manager (Law), Assistant Manager (Law), who are qualified law graduates. However, they cannot be represented by the Indian Chamber of Commerce.

3.3.7 Works Committees

The institution of works committee was introduced in 1947 under the Industrial Disputes Act 1947, to promote measures for securing and preserving amity and good relations between employers and workmen. It was meant to create a sense of partnership or comradeship between employers and workmen. It is concerned with problems arising in day-to-day working of the establishment and to ascertain grievances of the workmen.

A. Constitution of Works Committee

Industrial Disputes (Central) Rules

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The Industrial Disputes Act, 1947 empowers the appropriate government to require an employer having 100 or more workmen to constitute a works committee. Such a committee shall consist of representatives of employers and workmen engaged in the establishment. However, the number of representatives of the workmen shall not be less than the number of representatives of the employer.

The Industrial Disputes (Central) Rules, 1957, Rule 39 contemplates that the number of representatives of the workmen shall not be less than the number of representatives of the employer and further that the total number of members shall not exceed 20. Rule 40 contemplates that the representatives of the employer shall be nominated by the employer and shall, as far as possible, be officials in direct touch with or associated with the working of the establishment. Rule 41 envisages that the employer shall ask the registered trade union of the workmen in the concerned establishment to inform the employer in writing as to how many of the workmen are members of that union and how their membership is distributed among the sections, shops or departments of the establishment. In other words, the employer is required to ask the registered trade union to supply him the nominal roll of members of the trade union. The election held without consultation with the trade union is liable to be set aside. Rule 42 provides that on receipt of the said information from the registered trade union, the employer shall provide for the election of representatives of the workmen on the works committee in two groups: (i) those to be elected by the workmen who are members of the registered trade union and (ii) those to be elected by the workmen who are not members of the registered union. It is further provided that the number of two groups should bear same proportion to each other as the union members in the establishment bear to the non-members. The first proviso to this rule contemplates that where more than half the workmen are members of the union or any one of the unions, the above kind of division in two groups shall not be made. This shows that where in an industrial establishment the majority of workers are members of a registered trade union, the distribution of the elected representatives as provided in Rule 42 in two groups will not be necessary. In other words, in that situation, the representatives of the workmen will be elected in a single group without any kind of division. It is not provided that if the union has majority of the workers as its members, then nomination of the representatives of the workmen may be done by the employer in consultation with the trade union. Thus, there cannot be any nomination of representatives of workmen on the works committee. The scheme of these rules for constitution of works committee has been fully explained in *Union of India* v. *M T S S D Workers Union*, as follows:

(a) Where there is a registered trade union having more than 50 per cent membership of the workers in that establishment, the total number of members of the works committee will be elected without distribution of any constituencies,

(b) if in an industry no trade union registered under Trade Unions Act represents more than 50 per cent of the members, then only the election will be held in two constituencies, one from the members of the registered trade union

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or unions and the other from non-members of the trade unions and it is only in this contingency, it is further provided that if the employer thinks proper, (he) may further subdivide the constituency into department, section or shed.

In *B Chinna Rao* v. *Naval Civilian Employees Union*, Andhra Pradesh High Court was invited to interpret Rule 41 of the Industrial Disputes (Central) Rules, 1957 which reads as under:

Rule 41: Consultation with trade unions:

(i) Where any workmen of an establishment are members of a registered trade union; the employer shall ask the union to inform him in writing (a) how many workmen are members of the union, and (b) how their membership is distributed among the sections, shops or departments of the establishment.

(ii) Where an employer has reason to believe that the information furnished to him under sub-rule (i) by any trade union is false, he may, after informing the union, refer the matter to the assistant labour commissioner (central) concerned for his decision; and the assistant labour commissioner, after hearing the parties shall decide the matter and his decision shall be final.

While interpreting the aforesaid provisions, the Court held that reference to the commissioner has to be made when the employer has 'reason to believe that the information furnished to him by the trade union is false'. False doubt expressed by the employer need not necessarily entail a reference. If a mere perusal of the list furnished by a trade union enables an employer to form a definite opinion, he can certainly act accordingly. Since the reference to the commissioner would have the effect of postponing the election, recourse must be had only when it is otherwise necessary and mandatory.

B. Functions of Works Committee

The main function of the works committee is 'to promote measures for securing and preserving amity and good relations between the employers and workmen and, to that end, to comment upon matters of their common interest or concern and endeavour to compose any material difference of opinion in respect of such matters.' Thus, the works committees are normally concerned with problems of day-to-day working of the concern. They are 'not intended to supplant or supersede the union for the purpose of collective bargaining. They are also not entitled to consider real or substantial changes in the conditions of service. Their task is only to reduce friction that might arise between the workmen and the management in the day-to-day working. The decision of works committee is neither agreement nor compromise nor arbitrament. Further, it is neither binding on the parties nor enforceable under the Industrial Disputes Act. It is true that according to the Supreme Court the 'comments' of the works committee are not to be taken lightly but it is obvious that the observation has relevance only where a third party gets involved in the claim adjustment process. As between the disputants, these comments, have only added persuasive value. But, by no stretch of imagination can it be said that the duties and functions of the works committee include the decision on such an important matter as an alteration in conditions of service.'

C. Operation and Assessment

We shall now turn to discuss the functioning of the works committee and assess its working.

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A survey of the functioning of the works committee reveals that during 1997, 869 works committees were actually formed in the central sphere establishment involving 8,16,924 workers out of the 1,131 works committees to be formed involving 11,79,577 workers. Be that as it may, the works committees on the whole failed to deliver the goods. Several factors are responsible for the same. *First*, in the absence of strong industry-wise labour organization, the politically-oriented trade unions consider works committees to be just another rival. The elaborate provisions for securing representation of registered trade unions for proportional representation of union and non-union workmen and the possibility of further splitting of electoral constituencies into groups, sections, departments or shops not only accentuates the problem of rivalry but also weakens the strength of workmen in such committees. Second, notwithstanding the parity between workmen's and employers' representatives, the fact that the chairman of the committee is nominated by the employer from amongst his own representatives, has often helped the management to maintain an upper hand in the proceedings. Unwelcome items on the agenda are promptly declared to be out of order on one ground or the other. Absence of statutory provisions defining jurisdiction of these committees only helps the recalcitrant employer. *Lastly*, although tribunals and courts feel that 'agreed solution between the works committee and the management are always entitled to great weight and should not be readily disturbed', the fact remains that there is no machinery to enforce the decisions of these committees. Indeed, there is nothing to prevent by-passing of works committee. Perhaps it will be incorrect to say that most of the disputes that come up for adjudication have never been discussed in the works committee. Confronted with this situation, particularly in the absence of statutory provisions, the tribunals and courts have invariably held that non-discussion is no bar to reference by the government.

D. Remedial Measures

The [First] National Commission on Labour suggested the following measures for the successful functioning of a works committee:

(*a*) A more responsive attitude on the part of management

(*b*) Adequate support from unions

(*c*) Proper appreciation of the scope and functions of the works committee

(*d*) Whole-hearted implementation of the recommendations of the works committee

(*e*) Proper coordination of the functions of the multiple bipartite institutions at the plant level now in vogue

The Commission also added:

> It is the creation of an atmosphere of trust on both sides. Unions should feel that management is not sidetracking the effective union through a works committee. Management should equally realize that some of their known prerogatives are meant to be parted with. Basic to the success of such unit level committees is union recognition.

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It is submitted that for the success of a works committee, the following steps should be taken: (*i*) Trade unions should change their attitude towards the works committee. The unions should feel that management is not sidetracking the effective union through a works committee, (*ii*) The management should also realize that some of their known prerogatives are meant to be parted with, (*iii*) Recognition of trade unions should be made compulsory and the provisions therefore should be incorporated in the Trade Unions Act, 1926.

3.3.8 Court of Enquiry

A. Constitution

A procedure similar to the constitution of a board of conciliation is provided for bringing into existence a court of inquiry as well. While a board of conciliation may be constituted for promoting the settlement of an industrial dispute; the purpose for which a court of inquiry may be constituted is 'for enquiring into any matter appearing to be connected with or relevant to an industrial dispute.' The idea of a court of inquiry is borrowed from the British Industrial Courts Act, 1919. This Act enables the minister on his own motion and irrespective of the consent of the parties to a dispute, to set up a court of inquiry to enquire into the report on the causes and circumstances of any trade dispute, together with such recommendations as the court may make for the resolution of the dispute. Perhaps because of the extended field of operation of the court of inquiry, the legislature thought it fit to allow the parties to use instruments of economic coercion during pendency of proceeding before it.

B. Jurisdiction of the Court of Inquiry

The Act empowers the appropriate government to constitute a court of inquiry to inquire into any matter appearing to be connected with or relevant to an industrial dispute. The court of inquiry consists of one or more independent persons at the discretion of the appropriate government. Where a court consists of two or more members, one of them shall be appointed as a chairman. The court having the prescribed quorum, may act notwithstanding the absence of the chairman or any of its members or any vacancy in its number. However, if the appropriate government notifies that the services of the chairman have ceased to be available, the court shall not act until a new chairman has been appointed. Court can inquire into matters 'connected with or relevant to an industrial dispute' but not into the industrial dispute.

C. Duties of the Court

It is the duty of the court of inquiry to inquire into matters referred to it and submit its report to the appropriate government, ordinarily within 6 months from the commencement of its inquiry.

This period is, however, not mandatory and the report even after the said period would not be invalid.

D. Publication of the Report

The Act requires that the report of appropriate government shall be published within 30 days of its receipt.

Check Your Progress

4. List the Acts containing central laws relating to labour relations.
5. What are the conditions to be fulfilled by a service to be known as a continuous service?
6. What do you understand by bipartite settlement?
7. Why is voluntary arbitration important?
8. What is the final stage in the settlement of industrial disputes?
9. When was the institution of works committee introduced?

3.4 EMPLOYEE DISCIPLINE

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Discipline means systematically conducting the business by the organizational members who strictly adhere to the essential rules and regulations. It pertains to improving employee performance through a process of assisting the employee (at least at first) to learn so he or she can perform more effectively.

3.4.1 Aspects and Objectives of Discipline

There are two aspects of discipline. They are:

(a) Positive aspect

(b) Negative aspect

(a) Positive aspect: Employees comply with rules not out of fear of punishment but out of an inherent desire to cooperate and achieve goals. Where the organizational climate is marked by two-way communication, clear goals, effective leadership, and adequate compensation employees need not be disciplined in the traditional way. This type of approach is called positive approach or constructive discipline or self-discipline. According to Spriegel, 'positive discipline enables an employee to have a greater freedom in that he enjoys a greater degree of self-expression in striving to achieve the group objective, which he identifies as his own.'

(b) Negative aspect: Employees sometimes do not believe in and support discipline. As such, they do not adhere to rules, regulations and desired standards of behaviour. Hence, disciplinary programme forces and constraints the employees to obey orders and function in accordance with set rules and regulations through warnings, penalties and other forms of punishment. This approach to discipline is called negative approach or corrective approach or punitive approach. Negative or punitive discipline is one in which management has to exert pressure or hold out threat by imposing penalties on wrongdoers. When this pressure becomes increasingly severe each time a man is disciplined, it is called 'progressive' or 'corrective' discipline. The fear of punishment puts the employee back on rails. According to Spriegel, 'discipline is the force that prompts an individual or a group to observe the rules, regulations and procedures which are deemed to be necessary to the attainment of an objective.'

Negative discipline connotes that personnel are forced to observe rules and regulations on account of fear or reprimand, fine, demotion, or transfer. But these are helpful in extracting just minimum standards of work from the employees since they work on account of fear. In contrast, if the authority is exercised arbitrarily, or if rules of conduct are unreasonable or if employees do not have sense of adhering to the rules and regulations, discipline is threatened and if it is prolonged, it affects the organizational health. Any programme of discipline will be effective and successful only when it is used to supplement and strengthen self-discipline.

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V.S.P. Rao summarizes the differences between the two approaches as follows:

Table 3.1 *Differences between Positive and Negative Discipline*

Point	*Negative Discipline*	*Positive Discipline*
CONCEPT	It is adherence to established norms and regulations, out of fear of punishment.	It is the creation of a conducive climate in an organzation so that employees willingly conform to the established rules.
CONFLICT	Employees do not perceive the corporate goals as their own.	There is no conflict between individual and organizational goals.

Source: VSP, Rao. 2000. *Human Resource Management—Text and Cases.* New Delhi: Excel Books, p. 433.

Objectives of discipline

The objectives of discipline are:

(a) To gain willing acceptance of the rules, regulations, standards and procedures of the organization from the employees

(b) To develop the feeling of cooperation among the workers

(c) To create an atmosphere of respect for the human personality and human relations and to maintain good industrial relations in the organization

(d) To increase the working efficiency and morale of the employees so that their productivity is stepped up and the cost of production is decreased

(e) To develop a sense of tolerance and respect for human dignity

(f) To give and seek direction and responsibility

3.4.2 Causes of Indiscipline

The common causes of indiscipline in an organization may be stated as follows:

- **Lack of effective leadership:** Effective leadership is a must for maintaining the discipline, which means to seek cooperation of the followers (subordinates) to achieve the desired objectives. In India, effective leadership could not be provided either by the management or by the trade unions which caused indiscipline in the industries.
- **Defective supervision:** Supervisor is the immediate boss of the workers and many disciplinary problems have their in faulty supervision. The attitude and behavior of the supervisor may create many problems. As the maintenance of the discipline is the discipline is the core f supervisory responsibilities, indiscipline may spring from the want of the right type of supervision.
- **Varying disciplinary measures:** Consistent disciplinary actions must be there in the organization to provide equal justice to all concerned. At different times and for everyone, the same standard of disciplinary measures should be taken otherwise it may give rise to growing indiscipline in the industry in future i.e., the judicious function on the past of management must be free form may bias, privilege or favouritism.

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- **Divide and rule policy:** Many mangers in the business obtain secret information about other employees through their trusted assistants. The spying on employees is only productive of a vicious atmosphere and of undesirable in the organization. Henry Fayol has rightly pointed out that dividing enemy forces to weaken them is clever, but dividing one's own team is grave sin against the business. No amount of management skill is necessary for dividing personnel, but integrating personnel into a team is the challenging task of sound management.
- **Lack of well-defined Code of Conduct:** There must be a code of discipline in every organisation enlisting sufficient rules regulations or customary practices for the guidance and information of all employees. Such code should be communicated to all concerned in a clear and simple language so as to be followed by the concerned in a clear and simple language so as to be followed by the concerned parties in its true spirit. To be effective, the code should be adopted by the joint consultation of managers and the subordinates. In the absence of a well defined code of discipline, the disciplinary actions emanate form personal whims and temperaments which create indiscipline.
- **Deferring settlement of employee grievances:** The employee grievances cannot be put off by deferring or neglecting their solutions. The grievances should properly be inquired into and settled by the managers in a reasonable period. Neglect of grievances often results in reduced performance, low morale and indiscipline among the employees. Strikes and work stoppages stem in many cases form the utter neglect of employee grievances.
- **Inadequate attention to personal problems:** Actions or reactions of people are the direct out come of their attitudes. Attitudes influence human beings and their activities. Discipline is the by-product of these attitudes and the attitudes in turn, is determined by the personal problems of employees. In order to maintain the discipline, understanding of the personal problems and individual difficulties as well as counsellings with employees, is necessary. Inadequate attention to the personal problems, thus, gives rise to indiscipline.
- **Victimization and excessive pressures:** Sometimes the manager or the supervisor develops ill-feelings in him about some persons and victimises them in his own way. It contributes to indiscipline. Moreover, the supervisor puts excessive pressure of work on the employees under his strict control which they feel suffocative. It may result in indiscipline.
- **Misjudgment in promotion and placements:** Misjudgment in personnel matters like promotion and placements contribute to the growth of indiscipline in an enterprise. Cases of mis-judgment are carefully noted, widely circulated, and hotly debated by the employees. Expecting discipline from misruled people is not possible. Sometimes, undesired persons are placed on the jobs which makes the employees discontented, then giving rise to the problem of indiscipline.

3.4.3 Disciplinary Procedure

The following should be the steps for taking disciplinary action:

(a) Preliminary investigation: The first step should be to hold preliminary investigation in order to find out whether a prima facie case of misconduct

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exists. Only if a prima facie case of misconduct exists, the management should proceed further. Otherwise, the case should be dropped.

(b) Issue of a charge sheet: If a prima facie case of misconduct exists, the management should proceed to issue a charge-sheet to the worker. The following guidelines may be followed in framing the charges:

- Each charge must be very clear and precise.
- There should be a separate charge for each allegation.
- Charges must not relate to any matter which has already been decided upon.
- Proposed punishment should be avoided in the charge sheet.

(c) Suspension pending enquiry (if needed): If the nature of misconduct is grave and if it is in the interest of discipline and security in the establishment, the management may suspend a worker even before the chargesheet is issued. In case the worker is suspended he should be paid subsistence allowance at the following rates:

- For the first ninety days of suspension, half his wages
- For the remaining period of suspension, three-fourths of his wages

(d) Notice of enquiry: On receipt of reply to the chargesheet, either of the following two situations may arise:

(i) The worker may admit the charge. In such a case, the employer may award punishment without further enquiry.

(ii) The worker may deny the charge. In this case, the employer must hold the enquiry.

(e) Conduct the enquiry: The enquiry officer is a judge, so it is necessary that he must be impartial and qualified to act in that capacity. A fair opportunity should be given to the chargesheeted employee to examine the management witnesses.

(f) Recording of findings by the enquiry officer: At the conclusion of the enquiry proceedings the enquiry officer should decide as to whether the charges made are valid or not alongwith reasons for his findings.

(g) Awarding punishment: The punishment awarded to the accused employee should be communicated to him quickly. The letter should contain the following:

- Reference to (i) the chargesheet (ii) the enquiry and (iii) findings of the enquiry
- Decision
- Date from which the punishment is to be effective

The strict law of master and servant conferred upon the employer an unfettered right to hire and fire his employees. This traditional law of employer-workmen relationship was based purely on contract. Quite apart from the law of contract, it is obvious that in the day-to-day running of the industry, the management is required to take disciplinary action against erring workmen. Initial decisions as to maintenance of discipline rest with the employer. These decisions, when made *bona fide*, are related to, and dependant upon considerations of the overall needs of the industry. But the reports of committees and commissions on labour and reported decisions are full of instances that managements have victimized their workmen for their union activities,

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and in particular, for inciting other workers to go on strike or fomenting a strike. Instances are not lacking when assertive striking employees were discharged *en masse*. Further, instances of dismissal of workmen by the management without complying with the provisions of the standing orders of the company or rules of natural justice are not infrequent. Under the circumstances, the need to protect workmen against capricious and vindictive action of the management becomes obvious. It was realized in most industrially advanced countries that if the law of master and servant was given free play, workers would hardly have any security of tenure.

On the other hand, in day-to-day administration, management is called upon to take *bona fide* decisions against erring workmen. It is also called upon to take disciplinary action against a workman who is found guilty of serious misconduct where such misconduct consists of intentional damage to the property of the concern or serious personal injury to other employees of the concern or where there is reasonable apprehension of their committing acts of sabotage or instigation, abetment or incitement of workers of the concern to participate in the aforesaid activities. Under the circumstances, the mere fact that the management's order of dismissal of the workman is wrongful, disproportionate or *mala fide* and affects the workman cannot altogether deprive the management from taking disciplinary action against the workman. To do so is to encourage indiscipline and render day-to-day running of the concern impossible.

To meet this situation, courts have evolved various norms to regulate management's power to dismiss its workmen. They have tried to maintain a balance between the power of the management to discipline the workmen and security of tenure of workmen. Further, the courts have not only interpreted the existing law but made new laws to meet the needs of the industry and to avoid hardship and unfairness to workers.

Tribunals' intervention in management's right to take disciplinary action

The labour appellate tribunal in *Buckingham and Carnatic Mills Ltd* v. *Their Workmen* ruled that the decision of the management in relation to the charges against the employees will not prevail unless:

(a) there is a want of *bona fides*, or

(b) it is a case of victimization or unfair labour practice or violation of the principles of natural justice, or

(c) there is a basic error on facts, or

(d) there has been a perverse finding on the materials.

The aforesaid principles found the approval of the Supreme Court in *Chartered Bank Bombay* v. *Chartered Bank Employees' Union, Assam Oil Ltd* v. *Its Workmen* and *Indian Iron and Steel Co. Ltd* v. *Their Workmen*

In *Assam Oil Company Ltd* v. *Its Workmen*, the Supreme Court observed:

> Just as the employer's right to exercise his option in terms of the contract has to be recognized, so is the employee's right to expect security of tenure to be taken into account. These principles have been consistently followed by industrial tribunals and we think, rightly.

Again, in *Indian Iron and Steel Company Ltd* v. *Their Workmen*, the Supreme Court held:

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Undoubtedly, the management of a concern has the power to direct its own internal administration and discipline, but the power is not unlimited and, when a dispute arises, the industrial tribunals have been given the power to see whether the termination of service of a workman is justified and to give appropriate relief. In cases of dismissal on misconduct, the tribunal does not, however, act as a court of appeal and substitutes its own judgement for that of the management. It will interfere when:

(a) there is want of good faith

(b) there is victimization or unfair labour practice

(c) the management has been guilty of a basic error of violation of a principle of natural justice

(d) on the material, the finding is completely baseless or perverse

Again, in *Workmen of Motipur Sugar Factory Pvt. Ltd.* v. *Motipur Sugar Factory Pvt. Ltd.*, the Supreme Court while dealing with the evidence required to be adduced before tribunals in case of failure to hold domestic inquiry observed:

> It is now well settled that where an employer has failed to make an inquiry before dismissing or discharging a workman, it is open to him to justify the action before the tribunal by leading all relevant evidence before it. In such a case, the employer would not have the benefit which he had in case where domestic inquiries have been held. The entire matter would be open before the tribunal which will have jurisdiction not only to go into the limited questions open to tribunal where domestic inquiry has been properly held, but also to satisfy itself on the facts adduced before it by the employer whether the dismissal or discharge was justified.

In *State Bank of Bikaner and Jaipur* v. *Nemi Chand Nalwaya*, the Supreme Court held that it is now well settled that the labour tribunals or courts will not act as an appellate court and re-assess the evidence led in the domestic inquiry, nor interfere on the ground that another view is possible on the material on record. If the inquiry has been fairly and properly held and the findings are based on evidence, the question of the adequacy of the evidence or the reliable nature of the evidence will not be grounds for interfering with the findings in departmental inquiries. Therefore, courts will not interfere with finding of facts recorded in departmental inquiries, except where such findings are based on no evidence or where they are clearly perverse. The test to find out perversity is to see whether a tribunal acting reasonably could have arrived at such conclusion or finding on the material on record. Courts will however, interfere with the findings in disciplinary matters, if principles of natural justice or statutory regulation have been violated or if the order is found to be arbitrary, capricious, *mala fide* or based on extraneous considerations.

I. Meaning and Scope of Misconduct

Since 'misconduct' results in dismissal, it is necessary to know the concept of misconduct.

The expression 'misconduct' has not been defined in any industrial legislation. Under the Model Standing Order of the Industrial Employment (Standing Orders) Act, 1946, the following conducts shall be deemed to be misconduct:

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

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

(c) wilful damage to or loss of employer's goods or property;

(d) taking or giving bribes or any illegal gratification;

(e) habitual absence without leave or absence without leave for more than 10 days;

(f) habitual late attendance;

(g) habitual breach of any law applicable to the establishment

(h) riotous or disorderly behaviour during working hours at the establishment or any act subversive of discipline;

(i) habitual negligence or neglect of work;

(j) frequent repetition of any act of omission for which a fine may be imposed to a maximum of 2 per cent of the wages in a month;

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

In *Ravi Yashwant Bhoir* v. *District Collector, Raigad*, the Supreme Court observed that 'the word "misconduct" though not capable of precise definition, receives its connotation from the context of delinquency in its performance and its effect on the discipline and nature of the duty. It may involve moral turpitude, it must be improper or wrong behaviour, unlawful behaviour, wilful in character, a forbidden act, a transgression of established and definite rules of action or code of conduct but not mere error of judgement, carelessness or negligence in performance of the duty. The misconduct should bear forbidden quality or character. Its ambit has to be construed with reference to the subject matter and the context wherein the term occurs, regard being had to the scope of the statute and the public purpose it seeks to serve.' Explaining the concept of 'misconduct', the Court pointed out:

> The expression 'misconduct' has to be understood as a transgression of some established and definite rule of action, a forbidden act, unlawful behaviour, wilful in character. It may be synonymous with misdemeanour in propriety and mismanagement. In a particular case, negligence or carelessness may also be a misconduct, for example, when a watchman leaves his duty and goes to watch cinema, though there may be no theft or loss to the institution, but leaving the place of duty itself amounts to misconduct. It may be more serious in case of disciplinary forces. Further, the expression 'misconduct' has to be construed and understood in reference to the subject matter and context wherein the term occurs taking into consideration the scope and object of the statute. Misconduct is to be measured in terms of the nature of the misconduct and it should be viewed with the consequences of misconduct as to whether it has been detrimental to public interest.

A survey of decided cases indicates that acts such as absence without leave, go-slow, habitual neglect of work, misappropriation of fund or material, disobedience and subverting of discipline including disobedience that is likely to endanger life, threatening a co-worker within premises, insulting behaviour by employee towards customers.

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3.4.4 Code of Discipline

In the arena of industrial relations, most pressing ethical issues relate to (i) employer – employee relations (ii) sexual harassment of women at workplace (iii) equal pay for equal work (iv) discrimination in employment (v) minimum standards of employment (vi) social security for workers (vii) privacy of employees (vii) unfair labour practice on the part of trade unions and employers (viii) just and humane conditions of work (ix) protection of interest of consumers (x) voluntary code of conduct for recognition of trade union.

Code of Discipline

The need for Voluntary Code of Discipline was felt in 1957 in order to create awareness among the parties to industrial relations about their obligations under labour laws, as also to create in them an attitude of willing acceptance of their responsibilities and a readiness to discharge them. It was in this context that the Code of Discipline found approval at the sixteenth Indian Labour Conference, and was formally announced in June, 1958. The Code was ratified by the central organization of workers and employers. The Code has been accepted by a majority of private and public sectors. The Code, primarily as a result of the persuasive efforts of Central Implementation and Evaluation division, has been accepted by 166 trade unions and 180 employers affiliated to Central Workers' and Employers' Organisation.

The Code applies to all public sector undertakings run as companies and corporations except in defense, railways and ports and docks. Among those, where the Code of Discipline applies with certain modifications include Reserve Bank of India, State Bank of India and the Department of Defence Production. Under the Code, management and union(s) agree that:

(i) No unilateral action should be taken in connection with any industrial matter and that disputes should be settled at appropriate level.

(ii) The existing machinery for settlement of disputes should be utilized with the utmost expedition.

(iii) There should be no strike or lockout without notice.

(iv) They affirm their faith in democratic principles and they bind themselves to settle all future differences, disputes and grievances by mutual negotiation, conciliation and voluntary arbitration.

(v) Neither party will have recourse to (a) coercion (b) intimidation, (c) victimization, or (d) go-slow.

(vi) They will avoid (a) litigation, (b) sit-down and stay-in strikes, and (c) lockouts.

(vii) They will promote constructive cooperation between their representatives at all levels and as between workers themselves and abide by the spirit of agreements mutually entered into.

(viii) They will establish upon a mutually agreed basis, a grievance procedure which will ensure a speedy and full investigation leading to settlement.

(ix) They will abide by various stages in the grievance procedure and take no arbitrary action which would bypass this procedure.

(x) They will educate the management personnel and workers regarding their obligations to each other.

In order to ensure better discipline in industry, the Code provides for: (i) a just recognition by employers and workers of the rights and responsibilities of either party as defined by the laws and agreements, (including bipartite and tripartite agreements arrived at all levels from time to time) and (ii) proper and willing discharge by either party of its obligations consequent on such recognition.

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In the second set, the management agree (i) not to increase work-loads unless agreed upon or settled otherwise; (ii) not to support or encourage any unfair labour practice; (iii) to take prompt action for (a) settlement of grievances, and (b) implementation of settlements, awards, decisions and others; (iv) to display in conspicuous places in undertaking the provisions of this Code in local language(s); (v) to distinguish between actions justifying immediate discharge and those where discharge must be preceded by a warning, reprimand suspension or some other form of disciplinary action and to arrange that all such disciplinary actions should be subject to an appeal through normal grievance procedure; (vi) to take appropriate disciplinary action against its officers and members in cases where enquiries reveal that they were responsible for precipitating action by workers leading to indiscipline; (vii) to recognize the union in accordance with the prescribed criteria.

The third set imposes an obligation upon the unions:

(i) Not to engage in any form of physical duress.

(ii) Not to permit demonstrations which are not peaceful and not to permit rowdyism in demonstration.

(iii) That their members will not engage or cause other employees to engage in any union activity during working hours, unless as provided for by any law, agreement or practice.

(iv) To discourage unfair labour practices such as, (a) negligence of duty, (b) careless operation, (c) damage of property and (d) insubordination.

(v) To take prompt action to implement awards, agreements, settlements and decisions.

(vi) To display in conspicuous places in the union offices, the provisions of this code in the local language(s).

(vii) To express disapproval and to take appropriate action against office-bearers and members for indulging in actions against the spirit of this Code.

The Supreme Court in *General Secretary, Rourkela Shramik Sangh* vs *Rourkela Mazdoor Subha*, held that although Section 11 of the Code is headed 'implementation machinery', it consists of two separate organizations, viz. implementation units and tripartite implementation committees which is obvious from the language of Section 11 itself and also from the separate constitution and functions of the two organizations. The Court ruled that to hold that the implementation unit in the respective labour department together with the respective tripartite committee at Centre, state or local level would constitute the implementation machinery jointly and not each of them separately would run not only counter to the intention of the Code as is manifest from the language of Section 11 and their separate composition and functions,

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but would also be impracticable in working. Dealing with the composition of the implementation committees and their functions the Court observed:

> These committees consist of, at the Central level, an equal number of employers and workers' representatives—four each from the Central employers and workers' organization as nominated by the organizations themselves. At the state level, they are required to be constituted similarly and in consultation with the Central employers and workers' organization whenever they affiliates in the state concerned. The Committees are presided over as far as possible by respective Labour Ministers and even when it is not possible for Labour Ministers to preside over them, they have to associate themselves as much as possible with the deliberations of the committees. At the local level, the committees are similarly constituted of an equal number of representatives of the employers and workers in the area and are presided over by an officer of the Labour Department or by a prominent person in the region. In a given case, there may be more associations than one of employers and employees, and the committees would then consist of an unwieldly number. To expect such a committee to carry out the work mentioned in Appendix IV is unrealistic. This is why the code itself has entrusted to the implementation units and not to implementation committees the task of ensuring that recognition is granted to unions by managements. At the Centre, the implementation unit is kept in charge of joint secretary and at the state level, it is in charge of a whole-time officer of the State Labour Department.

However, the Code of Discipline has not been effectively implemented and it is respected more in breach than in observance. Several reasons may be accounted for the same: (i) the absence of a genuine desire for and limited support to self-imposed voluntary restraints on the part of employers' and workers' organizations, (ii) the worsening economic situation which eroded the real wage of workers, (iii) the liability of some employers to implement their obligations, (iv) a disarray among labour representatives due to rivalries, and (v) conflict between the Code and the Law. In view of this, the National Commission on Labour recommended that the part of the Code which enjoins stricter observance of obligations and responsibilities under the various labour laws may be left to the normal process of implementation and enforcement by the labour administration machinery, some others need to be formalized under law. These are: (a) recognition of a union as bargaining agents; (b) setting up of a grievance machinery in an undertaking: (c) prohibition of strike/lockout without notice; (d) penalities for unfair labour practices; and (e) provision of voluntary arbitration.

With the removal of these provisions from the Code and on giving them a legal form, the Code will have no useful function to perform.

3.4.5 Code of Conduct

To foster a partnership between management and unions/employees, harnessing the efforts of both to:

(i) develop a motivated and productive workforce to achieve business excellence;

(ii) realise employees' full potential to enable them to earn higher incomes and live a better life;

And to contribute towards a harmonious workplace environment, strengthen tripartite collaboration and enhance Singapore's overall competitiveness for economic growth.

Management and unions are committed to working together to meet new challenges, resolve differences and seize opportunities in a rapidly changing business environment.

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Characteristics of Code of Conduct

- **Collaboration, not confrontation:** An adversarial and confrontational attitude reinforces differences and creates distrust. Opportunities to leverage on each other's ideas and experience are lost, and solutions are reached only as last resort compromises. Conducting industrial relations with such attitude creates instability and industrial strife, leading to economic and social outcomes unfavourable to all.

  On the other hand, a consultative and partnership approach which takes into consideration each other's needs and concerns, promotes mutual understanding and win-win outcomes. At the same time, constructive interaction fosters a spirit of camaraderie and builds lasting relationships.

- **Mutual trust and respect, understanding and integrity:** Mutual trust, respect and understanding are key qualities which promote open and constructive dialogue, and strengthen bonds. They enable the parties to appreciate each other's constraints and concerns; and work together to meet challenges for mutual benefit. Integrity, honesty and good faith are the pillars of good inter-personal relationships, which are the building blocks of successful consultation and co-operation. While differences of view are inevitable, these moral principles will strengthen trust and bring about amicable resolution of differences.

- **Leadership and mandate:** Leaders should provide direction and guidance based on the collective interests of the stakeholders, bearing in mind the larger concerns of the company. Leaders should also lead by example, particularly in times of adversity. Voluntarily accepting greater responsibility and sacrifices enables leaders to have the moral authority to lead and cope with crises more effectively. Management and union representatives should have necessary mandate to negotiate and commit to agreements reached. They should also have the appropriate authority to resolve disputes and safeguard employees' interest.

- **Mutuality of purpose:** The viability and success of a company are not only concerns of management but also of employees. Both should have a shared vision of corporate interests and goals in the conduct of industrial relations. The shared vision unifies the interests of the parties and directs them to place long-term objectives above short-term gains, wider interests above sectional interests, and cocreates win-win solutions that fulfil the needs and purpose of management, trade unions and employees.

  Measures: Identify common objectives, build a shared vision and formulate win-win solutions. Meet challenges and seize opportunities together for mutual benefit. Place long-term goals above short-term gains and wider interests above sectional interests.

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- **Professionalism :** Professionalism requires technical competency and objectivity in dealing with issues. A professional takes into account the interests of all stakeholders and evaluates relevant facts before drawing conclusions. A professional is honest and fair. He is expeditious in resolving conflicts, provides appropriate solutions, and seeks mediation where necessary. He understands business and economic principles, including the close link between productivity and wages, as well as good human relations. He also establishes a fair and effective grievance procedure.

  Measures: Conduct industrial relations professionally and competently based on sound business and economic principles and understanding of human relations. Work together to resolve issues fairly, effectively and expeditiously. Seek mediation where necessary. Establish an effective procedure to resolve grievances.

- **Sharing of information:** Information is a catalyst which promotes open and constructive dialogue, and facilitates decision-making and dispute resolution. Constructive dialogue and informed decisions cannot happen unless relevant information is forthcoming, Negotiations will be bogged down and conflict will escalate. Disclosure of information demonstrates good faith and a sincerity to work together towards agreements and creative solutions.

  Measures: Share information and engage in dialogue with openness and transparency to promote trust, assist in decision-making and facilitate dispute resolution. Information sharing promotes transparency and eliminates suspicion and distrust.

3.5 GRIEVANCE HANDLING

Experience shows that in the day-to-day running of business, the disputes between the employer and workman are resolved by administrative processes referred to as grievance procedures. The Indian Labour Conference has also adopted a similar concept of a grievance in its following recommendations:[290]

3.5.1 Meaning and Concept of Labour Grievance

Complaints, affecting one or more individual workers in respect of their wage payments, overtime, leave, transfer, promotion, seniority, work assignment, working conditions and interpretation of service agreement, dismissal and discharges would constitute grievance. Where the points of dispute are of general applicability or of considerable magnitude, they will fall outside the scope of grievance procedure.

The aforesaid concept has also been adopted in the guiding principles for a grievance procedure appended to the Model Grievance Procedure in India. Further, clause 15 of the Model Standing Orders in Schedule I of the Industrial Employment (Standing Orders) Central Rules, 1946, specifies that 'all complaints arising out of employment including those relating to unfair treatment or wrongful exaction on the part of the employer or his agent, shall be submitted to the manager or the other person specified in this behalf with the right to appeal to the employers.' Moreover, the State Governments have framed rules under the Factories Act, 1948, requiring a welfare officer to ensure the settlement of grievances.

Check Your Progress

10. What are the most common forms of industrial disputes?
11. Define the term 'employee discipline'.
12. When was the need of the voluntary Code of Discipline felt for the first time?

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The Voluntary Code of Discipline adopted by the Sixteenth Session of the Indian Labour Conference in 1958 also provides that: (*a*) the management and unions will establish, upon a mutually agreed basis, a grievance procedure which will ensure a speedy and full investigation leading to settlement, and (*b*) they will abide by the various stages in the grievance procedures. However, there is no legislation in force which provides for a well-defined and adequate procedure for redressal of day-to-day grievances in industrial establishment. In order to meet the shortcoming, the Industrial Disputes (Amendment) Act, 1982, provides for setting up of Grievance Settlement Authorities and reference of certain individual disputes to such authorities. Section 9C of the amended Act provides:

(1) The employer in relation to every industrial establishment in which 50 or more workmen are employed or have been employed on any day in the preceding 12 months, shall provide for, in accordance with the rules made in that behalf under this Act, a Grievance Settlement Authority for the settlement of industrial disputes connected with an individual workman employed in the establishment.

(2) Where an industrial dispute connected with an individual workman arises in an establishment referred to in sub-section (1), a workman or any trade union of workmen of which such workman is a member, refer, in such manner as may be prescribed, such dispute to the Grievance Settlement Authority provided for by the employer under that sub-section for settlement.

(3) The Grievance Settlement Authority referred to in sub-section (1) shall follow such procedure and complete its proceedings within such period as may be prescribed.

(4) No reference shall be made under Chapter III with respect to any dispute referred to in this section unless such dispute has been referred to the Grievance Settlement Authority concerned and the decision of the Grievance Settlement Authority is not acceptable to any of the parties to the dispute.

The Industrial Disputes (Amendment) Act, 1982 excludes hospitals, educational institutions, institutions engaged in any charitable, social or philanthropic service, khadi or village industries and every institution performing sovereign functions. For these institutions, the Hospitals and other Institutions (Settlement of Disputes) Bill, 1982, enjoins upon an employer to constitute, within a specified period, a Grievance Settlement Committee for the resolution of individual disputes and Consultative Council and a Local Consultative Council for the resolution of industrial disputes of a collective nature. The Bill also provides for the arbitration of disputes not resolved by the Grievance Settlement Committee or the Local Consultative Council or Consultative Council. However, these provisions of the Industrial Disputes (Amendment) Act, 1982, have not yet been enforced presumably because the Hospitals and other Institutions (Settlement of Disputes) Bill, 1982, has not so far been passed. Further, no rules have been framed under the unenforced Section 9C. The (Second) National Commission on Labour has recommended that a Grievance Redressal Committee for organisation employing 20 or more workers be constituted.

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3.5.2 Grivance Redressal Procedures

In 2010, the Industrial Disputes (Amendment) Act, 2010 inserted new chapter IIB on grievance redressal machinery. Section 9C of the Amendment Act provides as follows:

1. Every industrial establishment employing 20 or more workmen shall have one or more grievance redressal committees for the resolution of disputes arising out of individual grievances.
2. The grievance redressal committee shall consist of equal number of members from the employer and the workmen.
3. The chairperson of the grievance redressal committee shall be selected from the employer and from among the workmen alternatively on rotation basis every year.
4. The total number of members of the grievance redressal committee shall not exceed six:

   Provided that there shall be, as far as practicable, one woman member if the grievance redressal committee has two members and in case the number of members are more than two, the number of women members may be increased proportionately.
5. Notwithstanding anything contained in this section, the setting up of grievance redressal committee shall not affect the right of the workman to raise industrial dispute on the same matter under the provisions of this Act.
6. The grievance redressal committee may complete its proceedings within 30 days on receipt of a written application by or on behalf of the aggrieved party.
7. The workman who is aggrieved of the decision of the grievance redressal committee may prefer an appeal to the employer against the decision of grievance redressal committee and the employer shall, within one month from the date of receipt of such appeal, dispose of the same and send a copy of his decision to the workman concerned.
8. Nothing contained in this section shall apply to the workmen for whom there is an established grievance redressal mechanism in the establishment concerned.

3.6 SUMMARY

Some of the important concepts discussed in this unit are:

- Industrial disputes arise due to variety of causes, which may be broadly be termed as: (i) Economic, (ii) Non-Economic.
- In recent years, we find that the gulf between the employers and the workers had been greatly widened and acute discontenment prevails. There had been a great change in the psychology of the workers, who are demanding a greater and greater share in the profits of the industry. Political changes, world forces, spread of communist ideas, uncertain economic conditions and high cost of living, have been the factors responsible for this attitude.

Check Your Progress

13. What does the clause 15 of the Model Standing Orders in Schedule I of the Industrial Employment (Standing Orders) Central Rules, 1946 specify?
14. List the sectors not covered by the Industrial Disputes (Amendment) Act, 1982.

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- The definition of 'industrial dispute' contains two limitations, (*i*) The adjective 'Industrial' relates to the dispute of an industry as defined in the Act, and (*ii*) it expressly states that not all sorts of disputes and differences but only those which bear upon the relationship of employers and workmen regarding employment, non-employment, terms of employment and conditions of labour are contemplated.
- Section 2A of the Industrial Disputes (Amendment) Act. 1965 attempts to mitigate some of the hardships caused as a result of judicial pronouncements. Section 2A came into force on 1 December 1965.
- By this section it is provided that a dispute or difference between an individual workman and his employer connected with or arising out of (*i*) discharge. (*ii*) dismissal, (*iii*) retrenchment, (*iv*) or otherwise termination of service of an individual workman, shall be deemed to be an 'industrial dispute' even though no fellow workmen or any union of workmen is a party to the said dispute.
- Strikes Section 2(q) of the IDA defines 'strike' to mean a cessation of work by a body of persons employed in any industry acting in combination, or a conceited 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.
- Section 24 of the Industrial Disputes Act, 1947 defines 'illegal strikes and lockouts'. Sub-section (1) provides that a strike or a lockout shall be illegal if:
  - (i) it is commenced or declared in contravention of Section 22 or Section 23: or
  - (ii) it is continued in contravention of an order made under Section 10(3) or Section 10A(4A).
- Section 34(1) empowers the appropriate government (i) to make a complaint or *(it)* to authorize someone else to file a complaint. The object of the section is to prevent a frivolous, vexatious or otherwise patently untenable complaint being filed.
- Section 33A confers on industrial employees the right to seek the protection of industrial tribunals in cases where their rights are violated contrary to the provisions of Section 33. It confers dual protection to an employee aggrieved by the contravention of Section 33 namely, (i) by imposing penalty under Section 31 (1): and (ii) by conferring right to make an application under Section 33 A.
- Conciliation is a persuasive process of settling industrial disputes. It is a process by which a third party persuades disputants to come to an equitable adjustment of claims. The third party, however, is not himself a decision-maker: he is merely a person who helps the disputants through persuasion to amicably adjust their claims.
- The study of conciliation proceedings requires the examination of: (*i*) when and how a conciliation machinery is set in motion and (*ii*) what is the duration of conciliation proceedings. The study is of great practical significance. It is important because the management is prohibited from exercising its prerogative during the pendency of conciliation proceedings before a Conciliation Officer and Board of Conciliation in respect of an industrial dispute.

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- Voluntary arbitration is one of the effective modes of settlement of industrial dispute, it supplements collective bargaining. When negotiation fails, arbitration may prove to be a satisfactory and most enlightened method for resolving industrial dispute.
- The final stage in the settlement of industrial disputes (which the parties are unable to settle either through bipartite negotiations or through the good offices of the conciliation machinery or through voluntary arbitration) is compulsory arbitration that envisages governmental reference to statutory bodies such as Labour Court, Industrial Tribunal or National Tribunal.
- There are two aspects of discipline: positive aspects and negative aspects. Employees comply with rules not out of fear of punishment but out of an inherent desire to cooperate and achieve goals. This is a positive aspect. Employees sometimes do not believe in and support discipline. As such, they do not adhere to rules, regulations and desired standards of behaviour. This highlights the negative aspect of discipline.
- The Industrial Disputes (Amendment) Act, 1982, provides for setting up of Grievance Settlement Authorities and reference of certain individual disputes to such authorities.

3.7 ANSWERS TO 'CHECK YOUR PROGRESS'

1. The definition of 'industrial dispute' may be analysed under four heads:
   (*i*) Factum of industrial dispute;
   (*ii*) Parties to the dispute;
   (*iii*) Subject matter of the dispute;
   (*iv*) Origin of the dispute
2. Economic causes may be briefly summed up as those relating to wages, payment of bonus, dearness allowance, conditions of work and employment, working hours, ill-treatment by the supervisory staff, ill-behaviour of the jobbers, unjust dismissals and demand for re-instatement of one or more workers, leave and holidays with pay, delay in the implementation or non-implementation of awards, enactments, agreements, etc.
3. Among the non-economic causes, or the causes which are not directly connected with the industry, political causes have been the most important.
4. Central laws relating to labour relations are currently present in the Industrial Disputes Act 1947, the Trade Unions Act 1926 and the Industrial Employment (Standing Orders) Act, 1946. Mention must also be made of the Sales Promotion Employees (Conditions of Service) Act, 1976, and other specific Acts governing industrial relations in particular trades or employments.
5. Section 25C of the Act requires that two conditions must complied with. *First*, the workmen must have been in 'continuous service' of the employer. *Second*, such service should not be less than one year.

6. In the bipartite settlement process, both labour and management try to resolve their differences by mutual discussion and continuous meetings.
7. Voluntary arbitration is important because it is (*i*) expected to take into consideration the realities of the situation; (*ii*) expected to meet the aspiration office parties: (*iii*) based on voluntarism; (*iv*) is not compromising the fundamental position of the parties, and finally; (*v*) expected to promotes mutual trust.
8. The final stage in the settlement of industrial disputes (which the parties are unable to settle either through bipartite negotiations or through the good offices of the conciliation machinery or through voluntary arbitration) is compulsory arbitration that envisages governmental reference to statutory bodies such as Labour Court, Industrial Tribunal or National Tribunal.
9. The institution of works committee was introduced in 1947 under the Industrial Disputes Act 1947, to promote measures for securing and preserving amity and good relations between employers and workmen.
10. Strikes, lockouts and gherao are the most common forms of industrial disputes.
11. Employee discipline means systematically conducting the business by the organizational members who strictly adhere to the essential rules and regulations.
12. The need for Voluntary Code of Discipline was felt in 1957 in order to create awareness among the parties to industrial relations about their obligations under labour laws, as also to create in them an attitude of willing acceptance of their responsibilities and a readiness to discharge them.
13. Clause 15 of the Model Standing Orders in Schedule I of the Industrial Employment (Standing Orders) Central Rules, 1946, specifies that 'all complaints arising out of employment including those relating to unfair treatment or wrongful exaction on the part of the employer or his agent, shall be submitted to the manager or the other person specified in this behalf with the right to appeal to the employers.'
14. The Industrial Disputes (Amendment) Act, 1982 excludes hospitals, educational institutions, institutions engaged in any charitable, social or philanthropic service, khadi or village industries and every institution performing sovereign functions.

3.8 QUESTIONS AND EXERCISES

Short-Answer Questions

1. Write a note on non-economic causes of industrial disputes.
2. How is the term 'workmen' defined in the Industrial Disputes Act, 1947?
3. State the provision regarding re-employment of retrenched workmen.
4. What is the penalty for closure as per the Industrial Disputes Act, 1947?
5. What is the process followed for the selection of arbitrator?
6. State the jurisdiction of the voluntary arbitrator.

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Long-Answer Questions

1. Discuss the process of bipartite and tripartite negotiations.
2. Explain the duties and powers of conciliation authorities.
3. Discuss the legislation related to voluntary arbitration.
4. Write a note on the system of adjudication in the settlement of industrial disputes.
5. Elaborate on the powers and functions of the Labour Court, Tribunal and National Tribunal.
6. Discuss the significance of Code of Discipline in resolving industrial disputes.
7. Explain the process of employee grievance redressal in India.

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UNIT 4 WORKER PARTICIPATION IN MANAGEMENT

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4.0 INTRODUCTION

In this unit, you will learn about worker participation in management. Worker participation is a broad concept. It varies from country to country and industry to industry. Being a dynamic subject, no rigid limits can be laid down for worker participation for all industries and for all times. It can be elastic enough to include worker representation even at the top level, namely Board of Directors. It can also be confined to the extremely limited domain of consultation at the lowest level such as 'to promote measure for securing and preserving amity and good relations between the employer and workmen and to that end, to comment upon matters of their interest or concern and endeavour to compose any material difference of opinion in respect of such matters.

This unit will also introduce you to the collective bargaining system. Collective bargaining is the foundation of industrial relations. The system of collective bargaining as a method of settlement of industrial disputes has been adopted in industrially advanced countries like the United States of America and United Kingdom and has also recently been adopted in some Asian and African countries. India, which has adopted the

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compulsory adjudication system, has also accepted in principle the system of collective bargaining but has hardly taken any step, legislative or otherwise, to apply it in practice.

The last measure topic of discussion in this unit is wage administration, which plays an important role in industrial relations. Compensation or wage is payment to an employee in return to the person's contribution to the organization. Wages and salaries are the most common forms of compensation. There are various methods to arrive at an equitable wage and salary, which you will study in this unit. Now-a-days many organizations pay fringe benefits to their employees. The Government of India has from time to time given policy guidelines for a minimum level of wages to raise the standard of living of the people. To achieve the above objectives under the National Wage Policy, the government has adopted regulations, such as prescribing minimum rates of wages, compulsory conciliation and arbitration and wage boards.

4.1 UNIT OBJECTIVES

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

- Understand the meaning, forms and significance of worker participation in management
- Discuss the situation of worker participation in management in India
- Elaborate on how the different levels of participation work
- Explain the meaning, principles, processes and significance of collective bargaining
- Discuss the various features of wage determination and its role in industrial relations

4.2 WORKER PARTICIPATION IN MANAGEMENT: MEANING AND SIGNIFICANCE

Worker participation:
A psychological process by which workers become self-involved in an establishment and see that it works successfully

The worker participation has been differently viewed by sociologists, psychologists, economists and lawyers. The sociologists view worker participation as an instrument of varying potentialities to improve industrial relations and promote industrial peace. The psychologists consider participation as a mental and emotional involvement of a person in a group situation which encourages workers to share managerial responsibility.[1] According to them, **worker participation** is a psychological process by which workers become self-involved in an establishment and see that it works successfully. The economists think that the real basis of worker participation is the higher productivity of labour and utilization of collective experience of workers in order to advance the qualitative and quantitative conditions of production. Lawyers, however, view workers participation as a legal obligation upon the management to permit and provide for involvement of workers of industrial establishment through proper representation of workers at all levels of management in the entire range of managerial action.

4.2.1 Modes of Worker Participation in Management

Within the broad range mentioned above, the scope of worker participation varies from country to country not only in form but also in the degree of participation. Worker

participation in management has been classified into five stages. These are informative, consultative, associative, administrative and decisive participations, the extent of each depending upon the quality of management and the character of the employee.[2] K.C. Alexander[3] has, however, suggested different modes of worker participation *viz.*,

(*i*) Collective bargaining
(*ii*) Joint administration
(*iii*) Joint decision-making
(*iv*) Consultation
(*v*) Information sharing.

Issues over which the interest of workers and management are conflicting such as wages, bonus, working hours, holidays and leave, etc. are amenable through collective bargaining. On the other hand, issues over which both parties are equally concerned, such as the efficient management of provident fund money, canteen, labour welfare facilities, would form subjects of joint administration, joint decision-making or consultation. The difference between joint administration, joint decision-making and consultation though narrow, is nevertheless significant. Whereas in joint administration, workers and management jointly share responsibility and power of execution, in joint decision-making even though the two groups participate in deciding the policies, execution is generally carried-out by the management. In the consultation form, the management merely invites worker opinion or suggestions on certain matters of common interest but retains itself the authority and responsibility of making decision and executing them. According to Kenneth F. Walker[4], various forms of worker participation in management are ascending participation, descending participation, disjunctive participation and informal participation. In ascending participation, workers may be given an opportunity to influence managerial decision at higher levels, through their elected representatives to Works Committee Shop or Joint Council or Board of the establishment. In descending participation, they may be given more powers to plan and make decisions about their own work. They may participate through collective bargaining. They may also participate informally when, for example, a manager adopts a participative style of supervision of workers. These and other forms of participations have played a significant role in transforming the scope and concept of worker participation.

4.2.2 Historical Development

Rapid industrial development and the attainment of economic self-reliance are the two major tasks which the country, among others, has set out to accomplish.[5] The key to achieving these objectives is increased production. Output cannot be increased unless there is effective co-operation between the labour and management at all levels. The way to ensure this is to satisfy their social and psychological need besides economic ones. Worker participation in management is one of the most significant modes of resolving industrial conflicts, and encouraging among the workers, a sense of belonging to the institution where they work. It affords due recognition to the workers and enables them to contribute their best in all round prosperity of the country in general and industrial prosperity in particular. Moreover, for India which has launched a vast programme of industrialization, the need for worker participation is all the more important. It is in recognition of these needs that under the Second, Third, Fifth and Seventh plans specific measures have been suggested for worker participation. The

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last five decades have witnessed a striking development in the arena of worker participation. Although the institution of a works committee consisting of the representatives of employers and workmen was provided as early as 1947 which seeks 'to promote measures for securing and preserving amity and good relations between the employer and the workmen and to discuss day-to-day problem of the industry', the scheme of Joint Management Council, popularly known as the Worker 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 the labour and management to increase efficiency in public service, the Government of India on October 30 1975, introduced a scheme of worker participation in management at shop floor and plant levels. In addition to these, there are voluntary schemes of making the worker shareholders and Directors in the Board of Management. The inclusion of the concept of Worker 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 participation in management.

Thus, Articles 43-A of the Constitution (42nd Amendment) Act, 1976 provides:

'The State shall take steps, by suitable legislation or in any other way, to secure the participation of workers in the management of undertakings, establishment or other organizations engaged in any industry.'

The principle underlying the inclusion of worker participation in the Directive Principles of State Policy is to give due recognition to the workers and to create among them a sense of partnership. It being a constitutional imperative, the State is under an obligation to take suitable measures, legislative or otherwise to secure effective worker 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.

Another scheme was introduced in December 1983. This scheme of workers participation in management was made applicable to central public sector undertakings (except those which are exempted from the operation of the scheme by the administrative ministry/department concerned in consulation with the Ministry of Labour). All undertakings of the central government, which are departmentally run, were excluded from the scheme as they were covered under the scheme of JCM.

The Government of India convened the 11th meeting of the Tripartite Committee on Employees Participation in Management on 3rd October 1997, with the object of revising the Employees' Participation in Management Scheme, 1983 which is currently operating in the Central Public Sector Undertakings. Earlier, in February 1996, under the Plan Scheme for Education and Training in order to promote Employees Participation in Management ₹ 45,000/- was released to the Central Board for Workers Education to conduct training programmes.

4.2.3 Forms of Worker Participation in Management

The forms of workers participation in management vary from industry to industry and country to country depending upon the political system, pattern of management relations

and subject or area of participation. The forms of worker participation may be as follows:

1. Joint Consultation Model
2. Joint Decision Model
3. Self Management, or Auto Management Scheme
4. Workers Representation on Board

1. Joint consultation model: In the joint consultation model the management consults with the workers before taking decisions. The workers represent their view through 'Joint consultative Committees'. This form is followed in United Kingdom, Sweden and Poland.
2. Joint decision model: In this form both the workers and management jointly decide and execute the decisions. This form of participation is followed in U.S.A. and West Germany.
3. Self management of auto management: In this model, the entire control is in the hands of workers. Yugoslavia is an example to this model. Where the state industrial units are run by the workers under a scheme called 'Self Management or Auto Management Scheme'.
4. Worker representation on board: Under this method, the workers elect their representative and send them to the Board to participate in the decision making process.

The worker participation in management may be informal or formal. In the formal form of workers participation in management takes the formal structures such as Works Committee, Shop Councils, Production Committee, Safety Committee, Joint Management Councils, Canteen Committee etc. The informal form of workers participation may be such as the supervisor consulting the workers for granting leave, overtime, and allotment of worked or transfer of workers from one department to another.

4.2.4 Schemes of Worker Participation in Management

1. The 1975 Scheme of Worker Participation in Industries

The introduction by the Government of India of the scheme of worker participation in industries at the shop and floor levels on October 30 1975, opened a new chapter in the history of the employer–employee relations in Indian industries. The other consultative machinery now existing are Works Committees and Joint Management Council. While the former one is statutory and has been set up under the Industrial Disputes Act, 1947, the latter scheme like the present one is non-statutory. This scheme has been formulated to make the worker realise that he is an active participant in the society's apparatus of production.[6]

A feature of the scheme is that there is no legal sanction. Further, it provides that the Shop Council should be set up at floor levels and Joint Council at plant level. Moreover, the scheme has been designed to be a flexible one so as to allow variations to suit local conditions and for the system to work properly. The scheme also provides for its implementation through executive action.

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Scope and coverage

The scheme applies in manufacturing and mining industries (whether in the public, private or co-operative sector, including departmentally run enterprises) employing 500 or more persons. In practice it is however found that though the scheme is confined to only manufacturing and mining industries, some other industries have also accepted the scheme.[7] Some States have extended the application of this scheme even in establishments employing less than 500 workers. For instance, Punjab has extended the scheme in establishment, employing 200 or more workers.

2. The 1983-Scheme of Worker Participation in Management

A new comprehensive scheme of worker participation in management was notified by the Government of India on 30th December 1983. The scheme is applicable to all public sector undertakings. The State Governments and Private Sector enterprises have also been asked to implement the scheme. A committee consisting of representatives of the employing Ministries, State Governments, Central Public Sector Enterprises, Central Worker Organizations and representatives of the private sector manufacturers' organizations was set up in August 1984, to monitor the progress in the implementation of the scheme. According to 1987-88 (Annual Report of the Ministry of Labour), as per the information available, 100 public sector enterprises have adopted the Scheme of December 1983 at shop floor and plant levels. Another 33 public sector enterprises have implemented their own scheme/variant of scheme notified by the Government. About 64 public sector enterprises have not been able to implement the scheme. Majority of large enterprises employing large number of persons and with larger investments, like SAIL, BHEL, IOL, HMT, Cement Corporation of India have implemented the scheme. No enterprise has implemented the scheme at Board level.

The scheme has no legislative backing. The workers and management have equal representative in the shop/plant forums.

4.2.5 Levels of Participation

1. Making workers shareholders

The other method of involvement of the workers in industries is to make them shareholders in the company. This may be done by allotting shares to workers and inducing them to buy equity shares. The management may promote the scheme by allowing the workers to make payments in instalments. The company may also advance loan or even give financial assistance to such workers to enable them to purchase shares. The idea underlying the scheme is that workers can take more interest in the Company for which they are working. This scheme was mooted in a background paper at one of the Indian Labour Conferences. According to official spokesmen, the scheme would create a sense of partnership among the workers and make them feel that they have certain interest in the concern to which they belong. It has also been asserted that by becoming shareholders, a sense of attachment will follow among workers and this will prompt them to work with dedication and sincerity for the prosperity of the establishment.

Working of the scheme in Indian industries

As an experimental measure the scheme of making workers shareholders was introduced in Sehgal Sanitary Fittings near Jalandhar and 40 per cent of shares were

allotted to the workers. It has been found that the concern was doing well and was exporting goods and earning good profits.[8] A similar experiment was also made in the Rajasthan Spinning & Weaving Mills Ltd. Another private sector, namely a heavy machinery manufacturing firm in Rourkela has introduced a scheme known as Employees' Share Participation Loan Scheme.[9] The Tamil Nadu Government also introduced a scheme of giving up to 24 per cent equity capital to the workers in the state-owned Gheran Transport Corporation and referred to it as a progressive step in the real socialist path.[10] It proposed to extend the scheme to other transport Corporations. Similarly, the State Trading Corporation, a public sector undertaking, offered equity shares to its employees in order to create a greater sense of involvement in the Corporation.

2. Representation of workers on board of directors

One of the effective methods of including among the workers a sense of partnership and belonging to the establishment is to involve them at the highest level of management, namely by giving them representation on the board of directors. It is claimed that this scheme will satisfy the ego of the workers and will give them greater opportunity to realise their responsibility towards the industry to which they are employed.

Working of the scheme

The Government of India on an experimental basis introduced a scheme for appointing worker representative on the Board of Management in two public sector undertakings, viz., Hindustan Antibiotics Ltd., Pimpri and the Hindustan Organic Chemicals Ltd., Kolaba. The scheme envisages that the Council will do their best to resolve problems at the shop floor level but in case no consensus or agreement has reached, the same will be referred to the Board of Management. The scheme provides for a worker representative in the Board of Management. The worker representative is to be nominated by the recognized Union in the undertaking who is required 'to submit a panel of name of three persons from whom one person is to be selected for nomination as Director. A person for being eligible for nomination should have attained the age of 25 years, should have a minimum of 5 years' service in the undertaking and should not attain the age of superannuation during his term of appointment as Director.'[11]

The working group of the Administrative Reforms Commission also considered the feasibility of statutory representation of workers on the Board of Management of the companies. The Commission observed:

'..... the time had not yet arrived for any such provision in our law. Nor did the demand for such representation on the Board of Management of companies appear to be particularly strong or insistent.'

'We are inclined to take the view that it is only after further improvements have been made in worker right and more systematic and comprehensive use has been made of a wide range of joint determination within an enterprise in its day-to-day activities that statutory representation of workers in management of companies whether at the top (Board), middle (Executive Management) or lower (Shop Floor) levels can be considered. Before any attempt is made to provide for the statutory representations of the workers at any desired levels in company management, efforts should be made to improve the education and training of workers for some of the elementary task of management.'

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'We do not consider that it is necessary at present to provide in the Companies Act for compulsory representation of workers at any level of management. But it is our hope that it may be possible for the management of companies increasingly to associate the worker representatives particularly at the shop floor level so that all managements' decisions that affect the interest of workers can be taken in the full light of the discussion with worker representation.'[12]

Conflict/confusion: The appointment of workers as Director on the Board of Management raises several issues:

(i) Selection of the workers to the Board of Directors would lead to many complications. Various pressure groups inside and outside the Union will also claim representation in the Board. Further, the political affiliation of Trade Union is likely to complicate the situation.

(ii) The role of worker directors will create difficult situations for the labour leader who will occupy such position. They would be misunderstood and misrepresented by both the labour and management. It may also broaden the gap between the workers and their director and ultimately the director will not have control over them whom they represent on the Board.

(iii) The workers will be primarily interested only in matters relating to or affecting employment, non-employment, terms of employment and conditions of service of any workman and they will hardly participate in other management functions of the concern as they will have neither knowledge nor interest in other activities. Matters relating to investment planning, production, sales, price policies, etc. will be hardly of any interest to the labour leader.

(iv) It is difficult to say how far the worker director will share the responsibility of the industry jointly with other members of the Board for the matters adversely affecting the working class.

(v) The nomination of one or two worker representatives in the Board of Management would place them in minority while the decision would be taken by majority.

(vi) Multiplicity and rivalry among trade unions would lead to difficulties in selection of trade union. Further, the absence of statutory provisions for recognition of trade union would also make the selection of worker representative difficult.

3. Worker participation in winding up operation

A milestone in the area of worker participation in winding up proceedings was reached with the pronouncement of a majority judgement of the Supreme Court in *National Textile Workers Union* v. *P.R. Ramakrishnan*. Here the Supreme Court, by a majority of 3 as against 2 ruled that merely because the right to apply for winding up a company is not given to the workers, it does not mean that they cannot appeal to support or oppose a winding up petition under Section 439 of the Companies Act. To deny the participation of the workers in the winding up proceedings would, according to the Court, violate the basic principle of fair procedure. Further, to hold that the workers, who have contributed to the building of enterprise, have no right to be heard in the winding up proceedings would lead to demolition of the centre of economic power. In view of this, the Court held that:

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(*i*) The workers are entitled to appear at the hearing of the winding up petition whether to support or to oppose it so long as no winding up order is made by the Court.

(*ii*) The workers have a locus to appear and be heard in the winding up petition both when the winding up petition is admitted and when an order for advertisement is made as also after the admission and advertisement of the winding up of the company.

(*iii*) if a winding up order is made and the workers are aggrieved by it, they would also be entitled to prefer an appeal and contend in the appeal that no winding up order should have been made by the company.

(*iv*) the workers have a right to be heard even when an application for appointment of a provisional liquidator is made in a winding up petition, because the appointment of a provisional liquidator may adversely affect the interest of the workers.

Venkataramaiah and A.C. Sen JJ., on the other hand, refused to concede any such right to the workers or their Trade Unions since they have not been given any right under the Companies Act. Venkataramaiah J. was of the view that once this right is conceded to workers there would be no stopping point. He felt that there is no reason why such right not be available to others like agents, dealers, consumers and the local community. Moreover, the workers have at their disposal the Industries (Development and Regulation) Act, 1951 under which they can ask the Central Government to takeover their unit which is facing winding up. Sen J. was also not in favour of giving to the employees as of right to appear and convey their point of view to the Court particularly where it is of opinion that a proper disposal of the matter would require consideration of worker position also.

4. Worker Right to Run Sick industries

Navneet R. Kamwni v. *R.R. Kaniani* is an epoch-making judgement on the worker right to run sick units. Here the Supreme Court, for the first time, conceded the demands of the workers to own and manage a sick industry. The Supreme Court also reduced the value of Rs 10 per share to Re 1 per share and directed the transfer of shares to the employees.

The aforesaid line of thinking found expression in the summary of recommendations of the Inter-Ministerial Group on Industrial Restructuring wherein it is recommended that sick units which are taken over by workers cooperatives should be provided special concessions by the Central Government, FIs banks and the State Governments. Besides, writing-off loans, National Renewal Fund can be utilized to provide equality to units managed by worker cooperatives.

4.3 WORKER PARTICIPATION IN MANAGEMENT: SITUATION IN INDIA

The Industrial Dispute (Amendment) Bill, 1990 was introduced in the Rajya Sabha. Three reasons were advanced for the introduction of such a Bill, namely:

(*i*) It is a step required to be taken under Article 43 of the Constitution.

Check Your Progress

1. State the different modes of worker participation.
2. What are the salient features of the 1975 Scheme of Worker Participation in Industries?
3. State the applicability of the 1983-Scheme of Worker Participation in Management.

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(*ii*) The non-statutory schemes for worker participation in management failed to provide an effective framework for a meaningful participation of workers in management at all level.

(*iii*) The statutory Works Committee has been proved to be ineffective.

The Bill abolishes the institution of Works Committee under Section 3 of the Industrial Disputes Act, 1947.

The Bill extends to whole of India. It shall come into force on such date as the Central Government may notify. The Central Government is required to give not less than three months' notice of its intention so to do. However, the Central Government may fix different dates of application of different provisions of the Act and for different classes of industrial establishments.

4.3.1 Constitution of Council

The Bill requires every industrial establishment to constitute one or more 'Shop Floor Council' at the shop floor level and an 'Establishment Council' at the establishment level. However, no 'Shop Floor Council' is required to be constituted in establishment having only one shop floor.

The Shop Floor Council and Establishment Council shall consist of equal number of representatives of employer and workmen. The number of representatives of employer and workmen is required to be determined by the appropriate Government in consultation with the employer.

4.3.2 Issues of Labour Flexibility Participation

The issue of labour flexibility participation was discussed in the 28th, 29th, 32nd and 33rd session of ILC as well. The broad outcome of the discussions in these sessions were:

(a) The envisaged statutory framework should be flexible enabling the Government to introduce the scheme in a phased manner beginning with the establishments above a certain size.

(b) The mode of representation of the workers should be decided in consultation with the recognized Trade Union and in other cases by secret ballot. Dismissed employees whose cases are subjudice should not be eligible for participation.

(c) The participation should be on equal basis between the workers and employers. However, there were differences as regards the participation at the board level. While the worker representatives felt that in the board level also the workers representation should be 50 per cent, the employers representatives felt that to begin with the representation of workers at the board level should be confined only to one representative as workman director. The majority of the state labour ministers were of the opinion that at the board level the representation of workers should be limited to 25 per cent (except the labour minister of West Bengal who wanted that the workers should be given 50 per cent representation on the board).

(d) The question relating to participation in equity should be kept separate from the proposed statutory scheme.

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(e) In the 32nd session of the ILC the worker representatives by and large favoured a legal framework for worker participation in management whereas the employers' representatives expressed their opposition to the same and they suggested that this should be left to the voluntary initiatives of the employers.

4.3.3 Strategies and Planning for Implementing WPM Effectively

While dealing with the strategies and planning the [Second] National Commission on Labour observed as follows:

> We have seen that worker participation in management introduced statutorily through the institution of works committees under Section 3 of the Industrial Disputes Act has not been successful. The reasons have perhaps to be sought in the method of constitution of the works committees and the functions assigned to them. We have also seen that the three voluntary schemes introduced in 1975, 1977 and 1983 have also not found many takers. The debate is still on, whether it should be introduced by a statute or by voluntary arrangements. While the Central Trade Union Organizations have been demanding the introduction of workers participation in management by statute, the employers' organizations have been against introducing schemes of workers participation in management by law.
>
> If we look at the institutions of worker participation in the management set-up in various countries like Germany, Japan and now the member nations of the European Union, we see that most of these systems have been established by law. There is no evidence to show that worker participation in management has in any way weakened an enterprise financially or otherwise. In fact, there is overwhelming evidence to suggest that wherever the system has been introduced the enterprises and the economy as a whole have shown tremendous growth. We, therefore, feel that a legal base should be provided for institutionalising worker participation in management particularly in the context of liberalization and globalization. Workers and the management have to join together to not only sort out their day to day problems, but build up confidence in each other, improve work culture, enable the introduction of new technology, improve production processes, achieve production targets. These objectives can be achieved only by mutual understanding. Mutual dialogue and workers participation are therefore, the need of the hour. It will not only ensure that the worker welfare is taken care of and their interests are safeguarded while effecting changes in the enterprise structure or improving technology by obviating unnecessary retrenchments and ensuring payment of dues and full compensation in cases where retrenchment etc. become necessary, but also ensure smooth revision of the strength of the workforce, introduction of new technologies, improving work processes, etc. and make the enterprises capable of standing up to global competition.
>
> The very fact that for more than half a century we have been trying to explore and expand the area of mutual contact, cooperation and co-determination between the management and workers surely underlines the extreme importance of the co-operative approach to the problems that arise in the course of industrial activity. Almost all the economically advanced nations have worked cut their own variants of industrial cooperation and co-determination—Germany, Japan, and now the countries in the European Union. All of them have found systems of participatory management useful and beneficial for efficiency, and for creating the atmosphere necessary to meet the demands of competitiveness. They have expanded the rights of workers and increased managerial efficiency. They have reduced the distance between workers and managerial personnel.
>
> They have improved human relations, and improved human relations have led to improved industrial relations. It has become easier to understand each others' point of view, and frequent, if not constant interaction has led to a clearer picture of the common interest in the viability and profitability of the enterprise. With revolutionary changes in the means of communication, it has become possible for workers to keep track of information relating to processes, balance sheets and the like.

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The content of work has undergone a sea change in many essential processes. The knowledge worker has taken the place of the old unskilled worker who depended merely on his body labour, or was in demand only for the body labour that he could contribute. There has been a shift in paradigms or/and in responsibility and power equations. All production or processes of production no longer have to be under one roof. The methods that can elicit the best contribution from one who contributed body labour, it has been proved, are not necessarily the same when it comes to eliciting the best from the knowledge worker or one who can contribute only if he has understanding initiative, perhaps even innovativeness. The degree of inter-dependence in the inputs of workers who work together has changed. Collective excellence, it has been found depends very much on cooperation, voluntary vigilance and coordination, at every level, between one human component and another. Changes in technology that we have witnessed have also resulted in greater understanding of the need for voluntary and imaginative co-operation. Such cooperation can come only with the awareness of the commonness of objectives and the identity of interests as far as the work on hand, and its fall out or fruits are concerned.

India cannot be an exception to this state of affairs in the age of new technology. Globalization will accentuate and accelerate this process. It will, therefore, make it necessary for us to reach higher levels of participatory activity. We will, therefore, have to discover the appropriate system that can ensure contact, cooperation and co-determination at as many levels as possible from the plant level to the board level.

4.4 COLLECTIVE BARGAINING: MEANING, SIGNIFICANCE, PRINCIPLES AND PROCESS

The legal recognition of united power is based upon the strong bargaining power of management as against of the weak and unorganized workmen. Collective bargaining is the foundation of this movement and it is in the interest of labour that statutory recognition has been accorded to trade unions, and their capacity to represent workmen, who are members of such bodies. Of course, there are limits that have been stipulated, for otherwise, it may stifle the freedom of an individual worker. It is not the law that every workman must necessarily be a member of the Trade Union, and that outside its fold, he cannot exercise any volition or choice in matters affecting his welfare. The representative powers of the labour organization, with regard to enactments, such as the Industrial Disputes Act, will have to be interpreted in the light of the individual freedoms guaranteed in the Constitution and not as though such freedoms did not independently exist, as far as organized labour is concerned.

Collective bargaining: A process of accommodation between two institutions which have both common and conflicting interests

Check Your Progress

4. State the reasons that prompted the introduction of the Industrial Disputes (Amendment) Bill, 1990?
5. How are the Shop Floor Council and the Establishment Council constituted?

4.4.1 Meaning of Collective Bargaining

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

The meaning of the expression 'collective bargaining' has been a controversial matter. It is defined in a variety of ways. Harbison defines '**collective bargaining**' as, 'a process of accommodation between two institutions which have both common and conflicting interests'.[13]

In 1960, the manual published by the International Labour Office defined 'collective bargaining'' as the 'negotiations about working conditions and terms of employment between an employer, a group of employers or one or more employers'

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organisation on the one hand, and one or more representative workers organisations on the other, with a view to reaching agreement'.[14]

Golden, however, treats collective bargaining as 'a measure to distribute equitably the benefits derived from industry among all the participants including the employees, the unions, the management, the customers, the supplier and the public'.[15]

The aforesaid definitions of collective bargaining indicate that there is no unanimity among the authors regarding the meaning of collective bargaining. Be that as it may, collective bargaining is a process by which the terms of employment and conditions of service are determined by agreement between the management and the union. In effect, 'it is a business deal (which) determines the price of labour services and the terms and conditions of labour's employment'.

An analysis of 'collective bargaining' requires the description of:

(*i*) parties to collective bargaining,

(*ii*) subject-matter of collective bargaining and

(*iii*) objects of collective bargaining. Let us turn to discuss them.

Parties to collective bargaining

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

The subject matter of collective bargaining

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

(*i*) That which sets out standards of employment which are directly applicable to relations between an individual employer and worker.

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

The first category includes subjects like wages, working hours (including overtime), holidays with pay and period of notice for termination of contract. The second category according to ILO includes eight items viz.,

(*i*) Provisions for enforcement of collective bargaining.

(*ii*) Methods of settling individual disputes.

(*iii*) Collective disputes including grievance procedure and reference to conciliation and arbitration.

(*iv*) Recognition of an union as the bargaining agent for the workers.

(*v*) Giving the preference in recruitment to union members seeking employment.

(*vi*) The duration of the agreement.

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(*vii*) Undertaking not to resort to strike or lock-out during the period and

(*viii*) procedures for the negotiation of new agreements.

4.4.2 Objectives of Collective Bargaining

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

1. To establish and build up union recognition as an authority in the work place.
2. To raise worker standard of living and win a better share in company's profits.
3. To express in practical terms the worker desire to be treated with due respect and to achieve democratic participation in decisions affecting their working conditions.
4. To establish orderly practices for sharing in these decisions and to settle disputes which may arise in the day-to-day life of the company.
5. To achieve broad general objectives such as defending and promoting the worker interests throughout the country.[16]

The ILO also states that 'In collective bargaining the object is to reach agreement on wages and other conditions of employment about which the parties begin with divergent viewpoints but try to reach a compromise. When a bargain is reached the terms of the agreement are put into effect'.[17]

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

Duration of collective bargaining

The duration of collective bargaining agreements vary from agreement to agreement. There is a general tendency on the part of unions to have the contract of short duration, but management, on the other hand, prefers agreements of long duration. In the United States, many of the contracts are for a period of one to three or more years, with options to renew. In the United Kingdom, 'open end' contracts which can be renegotiated on notice at any time, are the rule. In the Scandinavian countries, one-year contracts with renewal clauses are usual.[18]

4.4.3 Prerequisites for Collective Bargaining

The prerequisites for collective bargaining as follows:

1. Freedom of association

In order to achieve collective bargaining, it is essential to ensure that the denial of such freedom negates collective bargaining. In this respect, it is significant to note that the International Labour Organization adopted 'Convention No. 87 concerning the freedom of association and the protection of the right to organize' which seeks to provide for the freedom of association. India has, however, not, formally ratified that convention perhaps due to administrative and constitutional problems. However, Article 19(1) (c) of the Constitution of India guarantees 'the right to form associations or unions'. Earlier, the Trade Unions Act, 1926, impliedly conceded the freedom of association by

conferring certain rights, duties and immunities upon members of registered trade unions. However, there is a need to ratify the ILO Convention.

2. Strong and stable trade unions

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

3. Recognition of trade unions

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

4. Willingness to give and take

The mutual trust and appreciation of the viewpoints of the management and union is also essential. Said the ILO, 'The fact of entering into negotiations implies that the differences between two parties can be adjusted by compromise and concession in the expectation that agreement can be reached. Obviously, if one or both sides merely make demands when they meet, there can be no negotiation or agreement'.

5. Regulation of unfair labour practices or victimization

Statutory provisions for unfair labour practice or victimization is another prerequisite of collective bargaining.

4.4.4 Significance of Collective Bargaining

Collective bargaining has been preferred over the compulsory adjudication system for several reasons like:

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

(*ii*) It is a quick and efficient method of settlement of industrial disputes and avoids delay and unnecessary litigation.

(*iii*) It is a democratic method of settlement of industrial disputes.

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

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4.4.5 Collective Bargaining in India

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

Plans and collective bargaining

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

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

> Legislation... can only provide a suitable frame-work in which employers and workers can function. The best solution to the common problems, however, can be found by mutual agreement.

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

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

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

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

Response of the (First) National Commission on Labour

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

> We have to evolve satisfactory arrangements for union recognition by statute as also to create conditions in which such arrangements have a chance to succeed. Apart from this, we have to indicate the place which strike/lockout will have in the scheme we propose. Collective bargaining cannot exist without the right to strike/ lockout.[19]

Earlier it observed:

> Collective bargaining as it has developed in the West may not be quite suitable for India, it cannot appropriately co-exist with the concept of a planned economy where certain specified production targets have to be fulfilled. Though we are not convinced

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that collective bargaining is antithetical to consumer interests even in a sheltered market, we envisage that in a democratic system pressure on Government to intervene or not to intervene in a dispute may be powerful. It may hardly be able to resist such pressures and the best way to meet them will be to evolve a regulatory procedure in which the State can be seen in the public eye to absolve itself of possible charges of political intervention. The requirements of national policy make it imperative that State regulation will have to co-exist with collective bargaining. At the same time, there are dangers in maintaining *status quo*. There is a case for shift in emphasis and this shift will have to be in the direction of an increasing greater scope for, and reliance on, collective bargaining. But, any sudden change replacing adjudication by a system of collective bargaining would neither be called for nor practicable. The process has to be gradual. A beginning has to be made in the move towards collective bargaining by declaring that it will acquire primacy in the procedure for settling industrial disputes.

Factors affecting successful collective bargaining in India

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

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

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

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

Further, the law relating to labour management relations and the adjudication system prevalent in our country reveals that, labour law had not been to a great extent

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responsive to the bargaining power of Indian workers. Thus, the Industrial Disputes Act, 1947, restricts the striking power of Indian workers. It regulates the use of the instruments of economic coercion. Of course, Article 19 (1) (c) of the Constitution guarantees 'the right to form associations or unions' but after the Supreme Court decision in the *All India Bank Employees case* that the Article merely guarantees the 'right to form associations or unions' and, in particular, does not guarantee the right to strike, the usefulness of the Article is extremely limited.

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

Moreover, the surplus labour market (which exists in India) affects the bargaining power of the Indian labour. It will be observed that 'the backlog of unemployed which stood at 3 million at the commencement of the First Five-Year Plan was estimated to be above 10 million in 1968. This is in spite of 31 million jobs created during the first three plans which is almost equivalent to the size of the entire economically active population of a number of countries like West Germany, United Kingdom and Pakistan.' In addition about 1.8 crore–1.9 crore job opportunities were created during the Fourth Five-Year Plan. They further estimated that even if the entire plan projects were successfully implemented over 40 lakhs would represent the backlog at the end of the Fourth Five-Year Plan.

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

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

4.4.6 Principles and Process of Collective Bargaining

There is no theory of collective bargaining but many contributors, such as like John Dunlop, Walton and Mckersic have developed important theories of collective bargaining which are discussed as follows:

1. Industrial relations systems approach of Dunlop

John Dunlop evolved the 'Industrial Relations Systems' approach. This emphasizes the environmental context in which industrial relations is viewed as one of several sub systems operating within a total social system encompassing the entire nation. In Dunlop's industrial relations system three sets of actors are recognized:

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(i) The workers and their organization;

(ii) A luerarchy of managers and their organization; and

(iii) A group of government agencies directly involved in labour-management relations. The aforesaid actors interact with three related environmental contexts of the industrial relations system–the technology, the market or budgetary constraints, and the power relations in the larger community–to determine the 'we of rules' that govern the workplace.

Source: Nirmal Singh and S.K Bhatia Industrial Relaions and Collective Bargaining: Theory and practice Deep and Deep, 2000

Emerging trends in collective bargaining

(i) The institution of collective bargaining is being decentralized and being replaced by unit performing, individual banning and commercial bargaining collaborative burpaing.

(ii) Labour law has also influenced collective bargaining and provide for tripartite settlement.

(iii) Courts and Tribunal interferes in the area of collective bargaining by providing ruling to workers and employers.

Collective bargaining has now become a highly technical and complex job, almost a profession, requiring the services of bargaining specialists possessing an intimate knowledge of the needs of industry as well as of workers. Factual data pertinent to agreements has to be collected and interpreted. The small bargaining unit is not only highly defensive and circumscribed in outlook but lock the resources needed to making the bargaining effective. It is this context that larger bargaining units industry wide or national can play a key role in the bargaining process.

The view that a strong employers association is an impediment to the development of trade unionism is far from correct.

2. Productivity Bargaining

Experience shows that in day-to-day running of industry, management faces a series of problems to manage its workplace. Such problems arise when workmen are absent without leave, take unauthorized breaks, abandon work place, insist on getting overtime as a prerequisite or object to introduction of new technology or more efficient drive for effective work. This may displace or interfere in the day-to-day functioning of the management periodicity and high cost of the production, which is unwarranted.

In such a situation a need was felt to enter into productivity bargaining.

Productivity bargaining is a process of making and entering into an agreement between management and workers with not only a view to increase production or productivity but to link workers wages, allowances and other benefits with production or productivity. There is a corresponding increase or decrease in wages and benefit in relation is the standard productivity norms/index/output. The norms/index/output is finalized through negotiations.

An analysis of the productivity bargaining reveals the following:

(i) It is performance based.

(ii) workers share in prosperity of the unit is linked with the productivity index.

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3. Negotiation and collective bargaining: Walton and Mckersée principle

Collective bargaining and negotiations are often used synonymously. It would be more logical and meaningful to consider negotiations as part of collective bargaining. 'Collective Bargaining' refers to the structural and/or institutional arrangements of Union Management Relations and also covers the parties, goals, environments, and content as well as the process frequently used for resolving the conflict of interest between the management and unions. Whereas the negotiation process has been described by Walton and McKersieas as 'the deliberate interaction of two or more complex social units which are attempting to define or redefine the terms of their interdependence', Gottschaik defines negotiation process as 'an occasion where one or more representatives of two or more parties interact in an explicit attempt to reach a jointly acceptable position on one or more divisive issues'. The term Negotiation, as described by Michael Salamon, is 'the interpersonal process used by representatives of management and employees/unions, within the various institutional arrangements of collective bargaining in order to resolve their differences and reach agreement'. Negotiation is a process for resolving conflict between two or more parties whereby both or all modify their demands to achieve a mutually acceptable compromise.

Negotiating is a means of getting what you want from others. It is back-and-forth communication designed to reach an agreement when you and the other side have some interests that are shared and others that are opposed. Based on this definition, it is clear that certain conditions must exist for negotiations to take place:

- There must be mutual dependence between the parties: each party must have, or be capable of supplying, something that the other party wants or needs. If one party does not have the ability to fulfill any of the wants or needs of the other party, there is no point in negotiating.
- Some interests must be shared and others opposed. If there are no differences, then there is nothing to negotiate.
- One party should not have, or be unwilling to use, coercive power in the old 'command and control' management strategy. It was believed that the manager had the power to coerce employees into performing tasks that they would normally be unwilling to do. However, this sort of management style only works in the short run, since employees do have power, power to not work to their capabilities, to phone in sick at inopportune times or to find a job elsewhere.

Walton and Mckersie have brought the new idea of bargaining process in negotiations. According to them, labour negotiations is a fruitful setting for the study of the larger field of social negotiations: 'a deliberate inter action of two or more complex social units which are attempting to define or redefine the terms of their inter-dependence'. This analytical framework identifies four sub-processes or types of bargaining in labour negotiations namely:

(*i*) ***Distributive Bargaining,*** where the objectives of the parties on particular issues are in conflict and the outcome represents a gain for one party and a loss for the other.

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(*ii*) ***Integrative Bargaining,*** where the objectives of the parties on particular issues are not fundamental conflict. It is the situation in which management and the union work to solve a problem to the benefit of both. Most quality of work life changes involve integrative bargaining

(*iii*) Attitudinal structuring implies an approach where the objective of the bargaining action is an ongoing relationships between the parties or shaping of attitudes toward one another. It presupposes trust and confidence in each other. Four dimensions of this relationship have been identified by various authors.

(*a*) Indicators whether the interaction will be competitive or cooperatives.

(*b*) Beliefs about the legitimacy of the other party's right to bargain.

(*c*) Level of trust in conductive affairs (belief in the integrity and honesty of other party).

(*d*) Degree of friendliness (whether the interactions are friendly or hostile).

As the bargaining process proceeds, these attitudes may be altered. The attitudes emerging from the negotiations will have a serious impact on the administration of the contract and on future negotiations.

(*iv*) ***Intra-organizational Bargaining***, where the objective is to obtain consensus within the negotiator's own organisation on the bargaining issues. During negotiations, the bargaining teams from both sides may have to engage in intra-organisational bargaining or conferring with their constituents over changes in bargaining positions. Management negotiations may have to convince management to change its position on an issue—for instance, to agree to a higher wage settlement. Union negotiators must convince their members to accept the negotiated contract, so they must be sensitive to the demands of the membership but be realistic as well.

Other writers concern themselves with particular aspects of the bargaining process, no doubt influenced by their own backgrounds and personal predilections. Thus, some writers consider collective bargaining negotiations as a form of bilateral monopoly or a function of market forces, others as a 'form of industrial government (in which) sovereignty in the work place is shared by management and worker representatives', and still others as 'a form' of management method for making business decisions —a sharing of management.

Importance of negotiation skills

There is an age of negotiation. Almost each and every aspect of our lives is subject to one or the other form of negotiation. Sometimes, we negotiate several times a day also, though we don't realise doing so.

Nations, governments, employers, employees, unions, management, husbands, wives, parents and children all negotiate whether it is a national or international problem. Negotiation is the solution, e.g., summit of super-power negotiation between Israel and the Arabs or the Palestinians, etc.

Labour disputes are far more visible and get extensive news coverage than commercial disputes which are as frequent but less public and visible. Go slows, strikes, bans and lock-outs have become quite familiar dramas. Industrial relations disputes do get more publicity and coverage, as, in this case, both the parties try

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to win public support and sympathy to strengthen their sides, whereas commercial negotiations are generally held in a private kind of environment, partly to have an edge over competitors and to protect the company's image.

There has been substantial increase in the use of the term 'Negotiation' in the commercial context. Negotiating, in this context, is not merely selling but its extension where the interested parties, having agreed to do business, need to agree on the terms and conditions. Myriads interest groups negotiate every day. Retailers negotiate their margins with their suppliers. Community action groups negotiate with their local authorities/government for various social welfare, rights and amenities. Negotiated settlement for marriage between the parents of a prospective couple for the size of dowry, has been a common practice and a far more decisive factor than the compatibility of the prospective partners. Now negotiation has become quite common and effective in divorce settlements. Lawyers specialise in representing their clients in such negotiations. Husbands, wives and lovers negotiate. One thing which is common in all such cases, and which makes negotiation necessary, is that the parties involved may have varying degrees of powers but not absolute power over each other. We are forced to negotiate because we are not fully in control of events.

Skills for negotiation

Negotiation is considered an art. Some believe that it is learnt by experience, but some of the common skills of successful negotiation are identified, which are as follows:-

1. Set clear objectives
2. Do not hurry
3. When in doubt, call for a caucus
4. Be prepared
5. Remain flexible
6. Continually examine why the other party acts as it does
7. Respect face-saving tactics employed by the opposition
8. Attempt to ascertain the real interest of the other party by the priority proposed
9. Actively listen
10. Build a reputation for being fair but firm
11. Controls emotions
12. Remember to evaluate each bargaining move in relation to all others
13. Measure bargaining moves against ultimate objectives
14. Pay close attention to the wording of proposals
15. Remembers that compromise is the key to successful negotiations; understand that no party can afford to win or lose all
16. Try to understand people
17. Consider the impact of present negotiations on the future relationship of the parties

Tactics of negotiation

1. Anticipate the demands and work-out alternatives
2. Do the preparation/homework well in advance
3. Build the negotiating team and inculcate team spirit. Identify a leader in the team
4. While negotiating, separate the personality from problems - hard on merit, soft on people
5. Negotiation is a two-way traffic, therefore, adopt a give-and-take approach
6. Patient hearing, maintaining calm and no provocation and reaction during the negotiation
7. Have adequate authority before going to the negotiating table.

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4.5 WAGE ADMINISTRATION AND INDUSTRIAL RELATIONS

Services rendered by individuals to organizations have to be equitably paid for. This compensation generally comprises cash payments which include wages, bonus, and shared profits. Good compensation plans have a salutary effect on the employees. They are happier in their work, cooperative with management and productivity is up. Although, there can be both monetary and non-monetary forms of compensation, it is the monetary form of compensation which is the most basic element by which individuals are attracted to an organization and are persuaded to remain there.

Wages in the widest sense mean any economic compensation paid by the employer under some contract to his workers for the services rendered by them. The Payment of Wages Act 1936, sec 2 (vi) defines wages as, 'any award of settlement and production bonus, if paid, constitutes wages.'

4.5.1 Wage Compensation Structure

Jobs offered by an organization vary in terms of their value. Value is ascertained by job evaluation and the value of each job is compared in relation to other jobs in an organization. How an organization structures its base salary programme depends on the organizational philosophy and marketplace practices. In structuring its wage and salary organizations can make use of several options that are available:

1. An organization can use a single rate structure in which all employees performing the same work receive the same pay rate.
2. An organization can use a tenure-based approach that focuses on the length of service.
3. An organization can use a combination of tenure-based plan and a merit-based plan.
4. An individual can be paid only on the basis of performance, for example, commission of sales.
5. An organization can form a base pay with an incentive opportunity based on individual, team unit or company performance. This method is quite popular in the modern-day organizations.

Check Your Progress

6. Who are the parties to collective bargaining?
7. How has the ILO divided the subject matter of collective bargaining?

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6. Organizations may combine elements of all the above mentioned approaches and create their own formal programme.

Determining a wage structure compensation plan

Once all jobs are assigned values, then these are placed in a grade. The grades are arranged in a hierarchical order starting with lower to higher jobs. A wage and salary structure consists of various salary grades as given in the following example:

Foreman: 10000-500-15000-600-18000

Senior Operator: 8000-400-12000

Operator: 7000 - 350 - 9100

While designing a salary structure the following outline has to be borne in mind:

1. Ascertain and establish the market rate survey and the studies on the existing salary structure from the senior to the junior grade.
2. Draw up a salary grade structure ranging from the lowest limit to the highest limit along with the salary gaps between jobs.
3. Make a job evaluation and rank the jobs into a hierarchy.
4. Procure market data to establish external equity in the pay scales.
5. Based on the result of the job evaluation and market rate survey or studies arrange all jobs in the grades in a hierarchical order.
6. While constructing a salary structure two points have to be borne in mind:
   (i) *Salary progression:* **Salary progression** refers to a sequence of increase in salary to merit. The procedure for salary progression is characterized by (a) Salary zones, for example, a foreman starts with a salary of Rs 10,000 basic pay and touches a maximum of Rs 15,000 after 9 years and Rs 18,000 after 12 years. (b) The incremental rate consists of Rs 500 during the first 9 years and Rs 600 for the subsequent 3 years of experience.
   (ii) *Broad Banding:* **Broad banding** means collapsing salary grades and ranges into a few broad and wide levels or 'bands' each consisting of a relatively wide range of jobs and salary levels. In the example given above all production staffs are reduced into three categories of foreman, senior operator and operator.

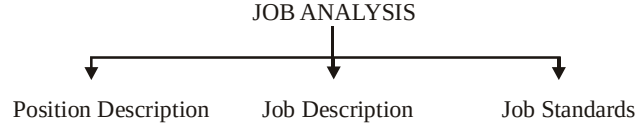
Salary progression: A sequence of increase in salary to merit

Broad banding: Collapsing salary grades and ranges into a few broad and wide levels or 'bands' each consisting of a relatively wide range of jobs and salary levels

Figure 4.1 shows the flow chart showing the phases of compensation management:

PHASE 1

Identify and Study Jobs



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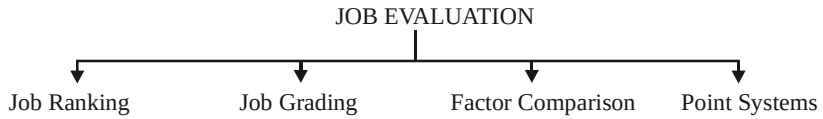
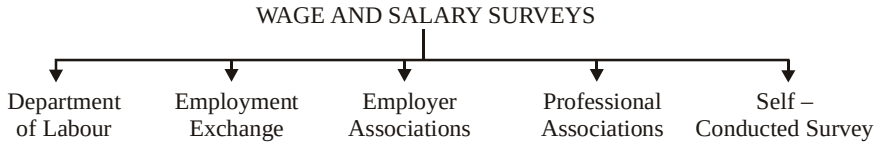
PHASE 2

Internal Equity



PHASE 3

External Equity



PHASE 4

Matching Internal and External Worth

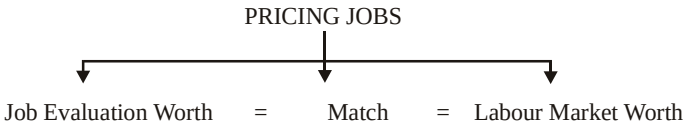


Fig. 4.1 *Determination of Wage Structure*

Source: William B. Werther and Keith Davis. (1986). *Human Resource Management and Personnel Management*, McGraw-Hill, page 319.

Equity in compensation

Pay structure focuses on internal equity (through job evaluation), external equity (through market surveying) and some reconciliation of the two to arrive at a final pay structure that fits the organizational requirement and also enables the organization to attract and retain qualified employees.

There are three requisites of a sound primary compensation structure.

They are -

1. Internal equity
2. External competitiveness
3. Performance-based payment

1. Internal equity

Internal equity means that there should be a proper relationship between the wages for the various positions within the organization. Job evaluation is the cornerstone of a formal wage and salary programme.

Job evaluation and merit rating

Job Evaluation: Job evaluation or job rating is a systematic procedure for measuring the basis of common factors such as skill, training, effort, responsibility and job

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conditions. The relative job values are thus converted into definite wage rates by assigning the money rate of pay to each job according to a definite system on scale.

According to Knowles and Thomson, job evaluation is useful in eliminating the following discrepancies of a wage payment system:

(i) Payment of high wages and salaries to persons who hold jobs and positions not requiring greater skill, effort and responsibility

(ii) Paying beginners less than they are entitled to receive in terms of what is required of them

(iii) Giving a raise to persons whose performance does not justify the raise

(iv) Deciding rates of pay on the basis of seniority rather than ability

(v) Payment of widely varied wages for the same or closely related jobs and positions

(vi) Payment of unequal wages and salaries on the basis of race, sex, religion or political differences

2. External competitiveness

Once the internal equity has been established through job evaluation, the next step is to make a comparison with other firms in the industry. To achieve external alignment, the management must first know the average rates of wages for the jobs. Here, it should be noted that it is not always easy to compare the wage rates of two firms because of some significant difficulties. They are:

(i) The content of the jobs that have the same title may differ considerably.

(ii) The wage payment methods may differ.

(iii) Employees with the same jobs may have different degrees of regularity of employment, so that even if wage rates are identical, annual earnings are not.

(iv) The costs of living in different geographic locations may be different.

Though it is difficult to make a comparison, the organization should make a comparison. It is only then that they can fix their wage level at the average rate prevailing in the industry or they may decide on a higher or lower wage level for itself.

3. Performance-based payment

Finally, the organization has to decide whether all individuals in jobs at the same level should be paid the same pay or not. There are four approaches to determine the individual pay:

(i) *Single rates*: When employee performance is almost similar, single rates are paid to employees on jobs, e.g., clerks in office jobs.

(ii) *The informal approach*: Under this method, individual pay decisions are made on an informal basis without any guides or controls.

(iii) *The automatic approach*: Under this method, both the amount of the pay increase and the period of review are usually predetermined. Individual merit has no consideration.

(iv) *Merit approach*: Under this method, individual performance and output are important basis for compensating employees. Merit rating system assumes that performance can be observed with reasonable accuracy.

4.5.2 Methods of Wage Payment

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Compensation paid to the labour for the service offered is called wages or salary. Giving satisfactory and fair amount of compensation can probably eliminate most of the labour disputes. The fundamental methods of compensating the workers are:

(a) Time wage

(b) Piece wage

(a) Time wage: It is based on the amount of time spent. Wage is measured on the basis of unit of time, e.g., per day, per month, etc. Wages do not depend on the performance of the employee.

Features of time wage:

(i) It is more widely used as it is very simple to compute the earnings.

(ii) It provides guaranteed and secured income, thereby removing the fear of irregularity of income.

(iii) It facilitates payroll function.

Advantages of time wage system:

(i) Sense of security of income. The worker knows the exact amount he is to get.

(ii) Conducive climate is provided for better labour–management relations as disputes are minimized.

(iii) The worker will give greater care and attention on quality and, therefore, workmanship can be assured.

Disadvantages of time wage system:

(i) Time wage system offers no incentive for employees to put forth their best efforts. Efforts and reward have no direct positive correlation.

(ii) There is no encouragement for better performance. Merit is discounted and inefficiency is at a premium as all receive the same salary. It is an unsound, unscientific and arbitrary basis of wage payment.

(iii) Ambitious workers receive no monetary rewards for their talents.

(iv) It demands intensive and strict supervision.

(b) Piece wage system: It is based on the amount of work performed or productivity. The earnings of the employee are directly proportional to his output or performance.

Features of piece wage system

(i) It can offer direct connection between effort and reward. Hence, it is the best method to ensure higher productivity.

(ii) Wage cost determination is easy.

Advantages of piece wage system

(i) Direct connection between effort and reward.

(ii) It is simple and easy to understand.

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(iii) The worker is interested in higher efficiency.

(iv) Cost accounting and control by management is made easy.

Disadvantages of piece wage system

(i) Danger of overwork. This leads to risk of accident and excessive fatigue.

(ii) It requires a lot of supervision to maintain the quality and standard of work.

(iii) It is an ineffective method, if quality is to be given top preference.

4.5.3 Wage Policy and Regulation Machinery

One of the objectives of economic planning is to raise the standard of living of the people. This means that the benefits of planned economic development should be distributed among the different sections of society. Therefore, in achieving a socialistic pattern of society the needs for proper rewards to the working class of the country can never be overemphasized. A national wage policy, thus aims at establishing wages at the highest possible level which the economic conditions of the country permit and ensuring that the wage earner gets a fair share of the increased prosperity of the country as a whole resulting from the economic development.

The term 'wage policy' here refers to legislation or government action calculated to affect the level or structure of wages or both, for the purpose of attaining specific objectives of social and economic policy.

Objectives of national wage policy

(a) To eliminate malpractices in the payment of wages.

(b) To set minimum wages for workers, whose bargaining position is weak due to the fact that they are either unorganized or inefficiently organized. In other words, to reduce wage differential between the organized and unorganized sectors.

(c) To rationalize inter-occupational, inter-industrial and inter-regional wage differentials in such a way that disparities are reduced in a phased manner.

(d) To ensure reduction of disparities of wages and salaries between the private and public sectors in a phased manner.

(e) To compensate workers for the raise in the cost of living in such a manner that in the process the ratio of disparity between the highest paid and the lowest paid worker is reduced.

(f) To provide for the promotion and growth of trade unions and collective bargaining.

(g) To obtain for the worker a just share in the fruits of economic development.

(h) To avoid following a policy of high wages to such an extent that it results in substitution of capital for labour thereby reducing employment.

(i) To prevent high profitability units with better capacity to pay a level of wages in excess to the prevailing level of wages in other sectors.

(j) To permit bilateral collective bargaining within national framework so that high wage islands are not created.

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(k) To encourage the development of incentive systems of payment with a view to raising productivity and the real wages of workers.

(l) To bring about a more efficient allocation, utilization of manpower through wage differentials and appropriate systems of payments.

Wage regulations

In order to achieve the objectives stated earlier under the National Wage Policy, the following regulations have been adopted by the government:

(a) Prescribing minimum rates of wages

(b) Compulsory conciliation and arbitration

(c) Wage boards

(a) Minimum wages: In order to prescribe the minimum rate of wages, the Minimum Wages Act, 1948, was passed. The act empowers the government to fix minimum rates of wages in respect of certain sweated and unorganized employments. It also provides for the review of these wages at intervals not exceeding five years.

(b) Compulsory conciliation and arbitration: With the object of providing for conciliation and arbitration, the Industrial Disputes Act, 1947, was passed. It provides for the appointment of Industrial Tribunals and National Industrial Tribunals for settlement of industrial disputes including those relating to wages.

(c) Wage boards: A wage board is a tripartite body with representatives of management and workers, presided over by a government-nominated chairman who can act as an umpire in the event of disagreement among the parties. Technically, a wage board can make only recommendations, since there is no legal sanction for it, but for all practical purposes, they are awards which if made unanimously are considered binding upon employers.

Wage policy in a developing economy

A suitable wage policy for a developing economy must ensure economic growth with stability. If the wage level is too high it will hamper industrial growth. If the wage level is too low, it will adversely affect the workers. Therefore, a proper wage level is necessary to sustain a steady growth of the economy. There are two main considerations in wage fixation. They are:

(a) To adjust wages to cost of living (need-based wages)

(b) To link wages with productivity

(a) Need-based wages: The meaning of the term 'need-based wage' is that the wage should enable the worker to provide for himself and for his family not merely the bare necessities of food, clothing and shelter but also include education for children, protection against ill-health, requirements of essential social needs and a measure of insurance against misfortunes and old age. The Indian Labour Conference held in 1957 accepted the following norms of determining the need-based wage:

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(i) The standard working family should consist of three consumption units.

(ii) The minimum requirements of food should be calculated on the basis of net intake of calories as recommended by Dr Aykroyd.

(iii) The clothing requirements should be taken as 18 yards per head per annum.

(iv) As for housing, the rent corresponding to minimum provided under the Government Industrial Housing Scheme.

(v) Fuel, lighting, and other miscellaneous items should constitute 20 per cent of the total minimum wage.

However need-based wage has many practical difficulties. If wages are raised to the need-based wage level and there is no corresponding increase in productivity, there is bound to be inflationary rise in prices. Further, the capacity of the industry to pay is relevant. This capacity of industry to pay will depend on the productivity of labour.

(b) Linking wages with productivity: Improvement in wages can result mainly from increased productivity. However, no attention is being paid to productivity, and wages are being either increased on an ad hoc basis or on the basis of cost of living. The Third Plan observed that 'for workers no real advance in their standard of living was possible without steady increase in productivity, because any increase in wages generally beyond certain narrow limits, would otherwise be nullified by a rise in prices.' However, linking wages with productivity gives rise to the following difficulties:

1. Productivity in India is low. Since productivity is low, wages will have to be low. This position is totally unacceptable to the workers.
2. Employers are opposed to the linking of wages with productivity, because they are not interested in productivity but profitability.
3. Even employees are opposed to the linking of wages with productivity, because they feel that low productivity is due to poor management.
4. Employers argue that the raise in output is not due to the worker effort but because of improvement in technology, plant and machinery.
5. There is the difficulty of assessing productivity especially in industries where the output does not consist of standardized units.

A suitable wage policy

A suitable wage policy in a developing economy should aim at:

1. Containing the rise in prices which can be achieved through a suitable monetary and fiscal policy
2. Linking wage increases to increase in productivity

Principal constituents of a national wage policy

Three reports on national wage policy were presented in the post-independence period. They are:

1. Report of the National Commission on Labour (1969)
2. Professor S. Chakrovarty Committee Report (1973)
3. S. Bhoothalingam Committee Report (1978)

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These reports have raised several issues concerning wage policy. They are as follows:

(a) Minimum wage: The National Commission on Labour describes living wage as 'a measure of frugal comfort including education of children, protection against ill health, requirements of essential social needs and some insurance against the more important misfortunes.' Thus, according to this definition 'living wage' provides for a bare physical subsistence and for the maintenance of health. On the other hand, 'minimum wage' includes not only living wage but also provides for some measure of education, medical requirements and amenities. In other words, 'minimum wages' provides a worker with physical subsistence, maintenance of health, requirements of essential social needs and some measure of education for self and for children.

The National Commission on Labour states 'the first claim is of the worker for a basic minimum wage irrespective of any other consideration'. Thus, the minimum wage prescribes the lower limit; the upper limit will be set by the capacity of the industry to pay.

(b) Fair wage: The Committee on Fair Wages felt that between the two limits, the actual wage would depend on:

(i) The productivity of labour

(ii) The prevailing rate of wages

(iii) The level of national income and its distribution

(iv) The place of industry in the economy of the country

(v) The degree of unionization of labour in the industry

Thus, fair wage is something more than the minimum wages. It is the wage fixed by considering several factors such as wage rate prevailing in other industries in the location, similar industries and, ability of the firm to pay wages.

(c) Wages and productivity: Wages should be linked to productivity because an industry's capacity to pay would be determined by productivity. Furthermore, a raise in productivity provides legitimacy to the claims of labour for a higher wage.

Productivity is measured by VAM (value added by manufacture). VAM is not the result of the effort of labour alone. Along with labour, capital, technology and management also contribute towards productivity. Therefore, it would be highly incorrect to link the entire productivity to labour alone. The National Commission on Labour disclosed that in the first decade of planning, labour did not benefit from the gains in productivity of the industry. However, in the next two decades, a part of the gains in productivity was shared with labour, though in a disproportionate manner.

Failure of the national wage policy

Although several commissions have deliberated on the need for evolving a National Wage Policy, so far there is not enough evidence towards its emergence. There is all round failure in implementing minimum wages in the private sector. There still exist

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inter-industry and inter-occupational differences in wages. Further, there is the failure to restrain the increase of wages and salaries in the public sector far in excess of the raise in consumer price index. Even though the National Wage Policy has failed on many counts, there is still a sufficient degree of consensus on the objectives of National Wage Policy.

4.5.4 Incentive Wage Plans

Incentive wage plan: A system of wage payment which would maintain both quality and quantity is called

A system of wage payment which would maintain both quality and quantity is called **incentive wage plan**, and it is naturally a judicious combination of both basic systems of wage payments, i.e., time and piece wages. Under the incentive plans of wage payment, both time wage and piece wage systems are blended in such a manner that the workers are induced to increase their productivity.

Essentials of a sound wage incentive plan

(a) Measurement of the amount of work done.

(b) Establishment of standard output on the basis of which the incentive has to be worked out.

(c) Setting up a suitable rate of incentive.

Halsey plan: A plan originated by F.A. Halsey to encourage efficiency among workers as well as to guarantee them wages according to time basis

Types of incentive plans

(a) Halsey plan: It is a plan originated by F.A. Halsey to encourage efficiency among workers as well as to guarantee them wages according to time basis. The standard time required for a job is determined beforehand on the basis of time, and motion studies. Workers who perform the job in less than the standard time and thus save time are rewarded with a bonus but the worker who takes longer than the standard time is not punished, and is paid wages according to time wage system. The total earnings of a worker under this plan consist of wages for the actual time plus a bonus which is equal to the money value of 33 per cent of the time saved in case of standard time set on previous experience, and 50 per cent of the time saved when the standards are scientifically set.

(b) Rowan plan: Wages, according to time basis, are guaranteed and the slow worker is not made to suffer. A standard time is determined before and a bonus is paid according to time saved. The only difference between Halsey Plan and Rowan Plan relates to the calculation of bonus. Under this plan bonus is based on that proportion of the time saved which the time taken bears to the standard time. It can be expressed as follows:

$$\text{Bonus} = \text{Time Saved} \times \frac{\text{Time Taken} \times \text{Hourly Rate}}{\text{Standard Time}}$$

Thus, if a 20-hour job is done in 16 hours and if the hourly rate is 80 paise, the total earnings of the worker will be:

$$[16 \times .80] + [4 \times (16 \div 20) \times .80]$$

$$= 12.80 + 2.56 = ₹\ 15.36$$

(c) Taylor's differential piece wage plan: Under this plan, there is no guarantee of wages. The standard of output is fixed per hour or per day and two piece

wage rates are laid. Those exceeding the standard or even just attaining it, are entitled to the higher rate and those whose output is less than the standard output are paid at a lower rate. For example, the standard may be fixed at 40 units per day and the piece rates may be 30 paise and 25 paise per unit. If a worker produces 40 units he should get wages at the rate of 30 paise, i.e., ₹ 12. If he produces only 39 units he would be paid at the rate of 25 paise per unit so his wages will be ₹ 9.75.

(d) The Emerson efficiency system: In this system, the worker is allowed a certain time within which he is required to complete his job. If he completes the job within the required time, he is paid bonus. If he takes longer then the required time, he receives a lower bonus. Under this system, the daily wage is guaranteed.

(e) The Gantt system: This system is similar to the Emerson efficiency system. The worker receives the bonus only if he attains the required standard of efficiency. No bonus is paid to a worker where his efficiency is less than 100 per cent. The foreman is also given a bonus if the worker under his care attains the required standard of efficiency.

(f) Bedeaux point premium plan: The chief novelty of this plan is that the value of time saved is divided between workers and foreman, three-fourths to workers and one-fourth to foreman. This is done on the premise that a worker cannot show good results if his foreman does not fully cooperate with him. Therefore, the foreman is also entitled to an incentive.

Categories of wage incentive schemes

A wide variety of incentive wage plans has been devised by industries under which the workers earnings are related directly to some measurement of work done either by himself or by his group. There are three broad categories of incentive schemes as classified by Dunn and Rachel. They are (a) simple incentive plan (b) sharing incentive wage plan and (c) group incentive plan.

(a) Simple incentive plan: The simplest of all wage incentives may be described as the straight piece-rate system. The piece-work method is perhaps one of the oldest and simplest of the incentive plans. The basis of computation is the rate per piece multiplied by the number of pieces produced. For example, if the piece-rate is ₹ 2 for each unit of output, then a worker who produces 10 units in a given time, say 8 hours, will be paid ₹ 20. Another worker whose production is 12 units in the given time (i.e., 8 hours) will receive ₹ 24, and so on.

This method of payment is suitable if the process of production is standardized and large quantities are produced by repetition. The system is not suitable where workers by working rapidly to earn more wages are likely to lower the quality of the goods they produce.

(b) Sharing incentive wage plan: There are a large number of plans in this category. These plans are the modifications of the Taylor's differential piece rate incentive plan. Under this plan, the workers exceeding the standard or even just attaining it, are entitled to the higher rate and those, whose output is less than the standard output are paid at a lower rate. Taylor's philosophy was to attain a high level of output and, therefore, there was a differential piece rate,

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low rates for output below the standard, and high rate for output above the standard.

(c) Group incentive plan: Individual incentive scheme is not suited to cases where several workers are required to perform jointly a single operation. In such cases, a team approach is called for, with all the members of that team doing their share to achieve and maintain the output. The advantage of group incentive plans is that they encourage team spirit and a sense of mutual cooperation among workers. Under the group incentive plan, each member of the group is determined first of all by measuring the amount of the production which passes inspection as it leaves the group. The total earnings for the group are then determined and if all the members are of equal skill, these earnings are usually divided among them equally.

Requisites for the success of an incentive plan

An incentive scheme is based on three basic assumptions. They are:

1. Money is a strong motivator.
2. There is a direct relationship between effort and reward.
3. The worker is immediately rewarded for his efforts.

Though monetary incentive plans do motivate employees, these plans will not be effective unless certain requisites are met. Several authorities on the subject have suggested a list of requisites that monetary incentive plans should meet if they are to be attractive to the employees. These requisites are:

(a) The relations between management, supervisory staff and workers should be cordial and free from suspicion. Management, must therefore, ensure association of workers during the development and installation of the scheme.

(b) The incentive plan should reward employees in direct proportion to their performance. The standard set has to be attainable; necessary tools, equipment, training, etc., should be provided and the employee should have adequate control over the work process.

(c) The plan should be easily understood by the employees so that they can easily calculate personal cost and personal benefit for various levels of effort put in by them. Complicated plans and formulae sow seeds of doubt and mistrust in the worker mind.

(d) The plan should provide for rewards to follow quickly after the performance that justifies the reward. Employees do not like to be rewarded next month for extra effort expended today.

(e) The plan must be within the financial and budgetary capacity of the organization. In other words, the plan should not be very costly in operation. It should be ascertained in advance that these costs (incentives) are amply covered by the resultant benefits.

(f) The work standard once established should be guaranteed against change. The work standard should be viewed as a contract with the employees. This rule must be strictly adhered to by management. Once the plan is operational, great caution should be used before decreasing the size of the incentive in any way.

(g) The plan should be set on reasonable standards, i.e., it should not be too difficult or too easy. If the standards set are too difficult they make the employees unenthusiastic about it. If the standards set are too easy, the employees would hardly experience any competition. Thus, a fair and just standard is the key to any incentive plan.

(h) The reward must be valuable to the employees. The incentive payments under the plan should be large enough in relation to the existing income of employees.

(i) The incentive plans must encourage employees to support each other rather than be non-cooperative.

(j) The plan should not be detrimental to the health and welfare of the employees. It should therefore include a ceiling on the maximum earnings by way of incentives.

(k) Individual's or group's contributions and efforts must be clearly identifiable, if rewards are to be given for specific performance.

(l) A guaranteed base rate should be included in any plan. Employees want to be assured that they will receive minimum wages regardless of their output. This introduces an element of security for the employees.

4.5.5 Fringe Benefits

Fringe benefits: Additional benefits and services that can be provided by a company to its employees in addition to their direct salary

Fringe benefits are the additional benefits and services that can be provided by a company to its employees in addition to their direct salary. Therefore, fringe benefits can be defined as the additional benefits and services that a company provides to its employees on the basis of their performance. Both the terms, benefits and services, are considered similar by most people but some believe that they are entirely different. According to them, benefits are applicable only for those items that can be associated with some monetary value whereas services is applicable for the items that cannot be associated with any direct money values. However, more or less, both the terms, benefits and services, mean the same in reference to fringe benefits.

The fringe benefits help:

1. Lessen fatigue
2. Oppose labour unrest
3. Satisfy employee objectives
4. Promote recruitment
5. Minimize turnover
6. Reduce overtime costs

Principles of fringe benefits

There are few factors that must be considered while determining the fringe benefits which must be provided to the employees of a company. These are:

1. Benefits and services must be provided to the employees of a company to provide them better protection and encourage their well-being. The top management should not feel as if it is doing some charity by giving incentives to their employees.
2. The benefits that are provided to the employees should fulfil the real life requirements of the employees.

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3. The benefits and services should be cost effective.
4. Fringe benefits should be monitored with proper planning.
5. While determining the fringe benefits, the requirements of employees that are communicated by union representatives must be considered.
6. The employees of a company should be well informed so that they can make better utilization of fringe benefits.

Table 4.1 *Examples of Monetary Benefits*

Benefits	***Example***
Legally required payments	Old age, survivors and health insurance Worker's compensation Unemployment compensation
Dependent and long-term benefits	Pension plan Group life insurance Group health insurance Prepaid legal plans Sick leave Dental benefits Maternity leave
Payments for time not worked	Vacations Holidays Voting pay allowance
Other benefits	Travel allowance Company car and subsidies Child care facilities Employee meal allowances Moving expense

Types of fringe benefits

As we have discussed in the concept, fringe benefits can be of two types. One that can be measured in terms of money value and the other that cannot be measured in terms of money value. Fringe benefits such as medical insurance and holiday pay that can be associated with money value are known as monetary benefits whereas benefits such as company newspaper and company service that cannot be associated with any money value are known as non-monetary benefits.

Table 4.2 *Examples of Non-monetary Benefits*

Benefits	***Example***
Treats	Free lunch Coffee breaks Picnics Birthday treats Dinner for the family
Knick-Knacks	Company watches Desk accessories Wallets T-shirts Diaries and planner

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Important fringe benefits

Some important fringe benefits are:

Payment for the time employees have not worked: This fringe benefit forms an important benefit for the employees of company. Mostly, every company provides the payment for time not worked benefit to its employees. Payment for time not worked benefit can be of two types, on-the-job free time payment and off-the-job free time payment. On-the-job free time includes lunch periods, coffee breaks, rest periods, get-ready times and wash-up times, whereas off-the-job free time includes vacations, sick leave, public holidays and casual leave.

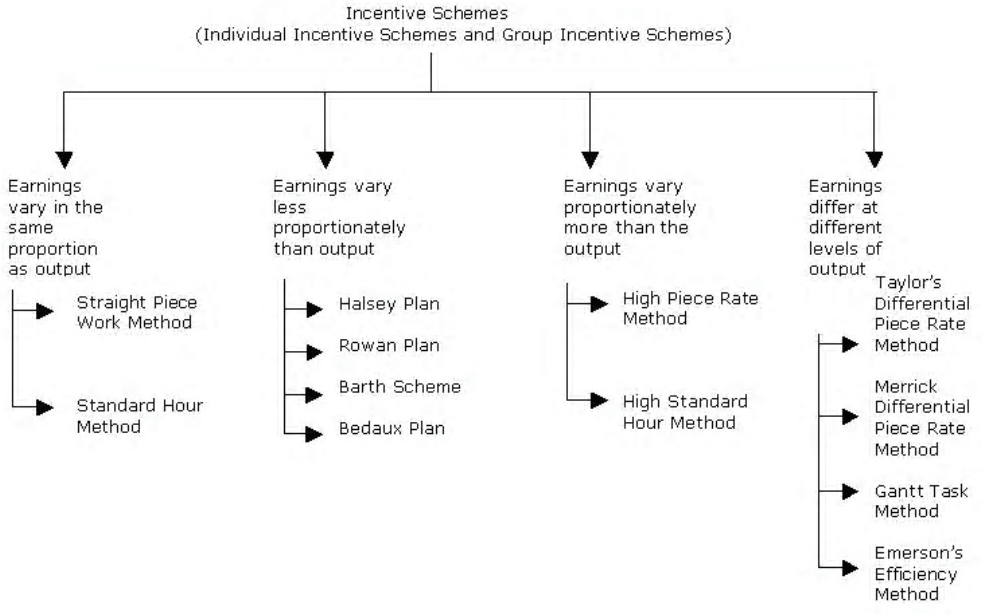
Insurance benefits: Insurance benefits are also an important fringe benefit for the employees of a company. Nowadays, every company provides its employees with the facility of purchasing insurance policies at a price which is much less than the cost the employees would have to pay if they were to buy insurance themselves.

Compensation benefits: Companies also provide compensation benefits to its workers against some disability or injuries to the employees or their family members. Other employees of the company contribute to the funds that are collected for the ill or injured employees. All these compensation benefits form a part of the Workmen's Compensation Act.

Pension plans: Companies also provide supplementary income or pension to its employees after their retirement. These pension plans can be company paid or both company and employee paid. In addition to the pensions, companies also provide bonus to the employees reaching superannuation.

4.5.6 Concept of Variable Compensation

Variable compensation refers to the incentive schemes that are given to the workers on the basis of their productivity. These schemes may use bonuses or variety of rates as incentives to compensate for the superior performances of workers. These schemes are popular all over the world and are used extensively for raising productivity.



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Incentives schemes are several and varied. They are broadly classified under two heads:

- Individual incentive schemes
- Group incentive schemes

4.5.7 Wage Board: Growth, Development Composition and Functions

In the 1950s and 60s, when the organized labour sector was at a nascent stage of its development without adequate unionization or with trade unions without adequate bargaining power, Government in appreciation of the problems which arise in the arena of wage fixation, constituted various Wage Boards. The Wage Boards are tripartite in character in which representatives of workers, employers and independent members participate and finalize the recommendations. With the passage of time, it was felt that Government need not set the wage rates in respect of employees in different sectors and can be left to the industry itself. However wages are still decided by the Wage Boards for journalists and non-journalists newspaper and news-agency employees, since the award given by the Wage Boards are non-statutory in nature, recommendations made by these Wage Boards are not enforceable under the law.

The importance of the non-statutory Wage Boards has consequently declined over a period of time and no non-statutory Wage Board has been set up after 1966, except for sugar industry, where last such Wage Board was constituted in 1985. The trade unions, having grown in strength in these industries, are themselves able to negotiate their wages with the management. This trend is likely to continue in future.

The Working Journalists and other Newspaper Employees (Conditions of Service) and Miscellaneous Provisions Act, 1955 (45 of 1955) (in short, the Act) provides for regulation of conditions of service of working journalists and non-journalist newspaper employees. The Section 9 and 13 C of the Act, inter-alia, provide for constitution of two Wage Boards for fixing or revising the rates of wages in respect of working journalists and non-journalist newspaper employees, respectively. The Central Government shall, as and when necessary, constitute Wage Boards, which shall consist of:

- Three persons representing employers in relation to Newspaper Establishments;
- Three persons representing working journalists for Wage Board under Section 9 and three persons representing non-Journalist newspaper employees for Wage Board under Section 13 C of the Act.
- Four independent persons, one of whom shall be a person who is, or has been a judge of High Court or the Supreme Court, and who shall be appointed by the Government as the Chairman thereof.

Since 1955, the government has constituted 6 wage boards for the working journalists and non-journalist newspaper employees.

4.5.8 Evaluation of Wage Boards

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The boards have been successful in fulfilling their primary object of promoting industry – wise negotiations and active participation by the parties in the determination of wages and other conditions of employment. The following quotation point to the success of this institution: The board's deliberations and awards have contributed significantly towards the development of a national and 'development oriented' outlook on questions pertaining to particular areas and sectors. They have given serious attention to the impact (of wage increase) on factors like prices, employment and the profitability of the industry. The committee setup by the National Commission on Labour identified three major problems from which the wage boards suffer:

1. A majority of the recommendations of the wage boards are not unanimous.
2. The time taken by the wage boards to complete their task has been rather undualy long and
3. The implementation of the recommendations of the wage boards has been difficult.

But it concluded: The system of wage boards has, on the whole served a useful purpose. As bipartite collective bargaining on wages and allied issues on an industry wise basis at the national level has not been found practicable at present for various reasons, this system has provided the machinery for the same. It is true that the system has not fully met all the expectations; and, particularly in recent years, there has been an erosion of faith in this system on the part of both employers and employees. The Committee is convinced that these defects are not such as cannot be remedied.

Remedies

The committee made some important recommendations. These have been given below:

1. The chairman of the wage should selected by common consent of the organizations of employers and employees in the industry concerned.
2. In future, the wage board should function essentially as a machinery for collective bargaining and should strive for unity.
3. Wage boards should be assisted by technical assessors and experts.
4. The terms of reference of wage boards should be decided by the government in consultation with the organisations of employers and the workers concerned.
5. A central wage board should be set up in the Union Ministry of Labour on a permanent basis to serve all wage boards through the supply of statistical and together material and lending of the necessary staff.
6. Unanimous recommendations of wage boards should be accepted and incase of non – unanimous recommendations, the government should hold consultations with the organizations of employers and employees before taking a final decision.
7. Wage boards should not be set up under any statues, but their recommendations, as finally accepted by the government, should be made statutorily binding on the parties.

Check Your Progress

8. List the requisites of a sound primary compensation structure.
9. What is the informal approach to performance-based payment?
10. What are the essentials of a sound wage incentive plan?
11. What is the character of the Wage Boards?

8. For the industries covered by wage boards, a permanent machinery should be created for follow-up action.
9. Wage boards should complete their work in one years time and the operation of its recommendation should be between two or three years, after which the need for a subsequent wage boards should be considered on merit.

If these recommendations are accepted, the working of wage boards maybe made more affective.

4.6 SUMMARY

Some of the important concepts discussed in this unit are:

- It is imperative for a nation to encourage cooperation between workers and management to ensure better productivity.
- Worker participation in management is a psychological process by which workers become self-involved in an establishment and see that it works successfully. Keeping this in mind, the Government of India instituted the 1975 and 1983 Schemes of worker participation in management.
- Workers can participate as shareholders, as representatives on Board of Directors, by being made to run sick industries and to help winding up of operations.
- The introduction by the Government of India of the scheme of worker participation in industries at the shop and floor levels on October 30 1975, opened a new chapter in the history of the employer–employee relations in Indian industries.
- The Shop Floor Council and Establishment Council consists of equal number of representatives of employer and workmen. The number of representatives of employer and workmen is required to be determined by the appropriate government in consultation with the employer.
- The meaning of the expression 'collective bargaining' has been a controversial matter. It is defined in a variety of ways. Harbison defines 'collective bargaining' as, 'a process of accommodation between two institutions which have both common and conflicting interests'.
- The International Labour Organization has divided the subject matter of collective bargaining into two categories:
  - o That which sets out standards of employment which are directly applicable to relations between an individual employer and worker.
  - o That which regulates the relations between the parties to the agreement themselves and have no bearing on individual relations between employers and workers.
- Collective bargaining has been preferred over the compulsory adjudication system for several reasons like:

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- It is a system based on bipartite agreements and is as such superior to any arrangement involving third party intervention in matters which essentially concern employers and workers.
- It is a quick and efficient method of settlement of industrial disputes and avoids delay and unnecessary litigation.

- John Dunlop evolved the 'Industrial Relations Systems' approach to collective bargaining. This emphasizes the environmental context in which industrial relations is viewed as one of several sub systems operating within a total social system encompassing the entire nation.
- Wage and salary are forms of compensations that are paid to employees in return for the contributions to the organization. Services rendered to organizations by individuals have to be equitably paid for. Good compensation plans have a salutary effect on employees.
- There are many ways to determine a compensation package. The fundamental methods of compensating the workers are time wage and piece wage.
- Incentive compensation, also called 'payment by result', is essentially a managerial device for increasing worker productivity.

4.7 ANSWERS TO 'CHECK YOUR PROGRESS'

1. Different modes of worker participation are as follows:
   (*i*) Collective bargaining
   (*ii*) Joint administration
   (*iii*) Joint decision-making
   (*iv*) Consultation
2. The salient features of the 1975 Scheme of Worker Participation in Industries are as follows:
   - There is no legal sanction.
   - It provides that the Shop Council should be set up at floor levels and Joint Council at plant level.
   - It has been designed to be a flexible one so as to allow variations to suit local conditions and for the system to work properly.
   - It can be implemented through executive action.
3. The 1983-Scheme of Worker Participation in Management is applicable to all public sector undertakings. The state governments and private sector enterprises have also been asked to implement the scheme.
4. Three reasons prompted the introduction of the Industrial Disputes (Amendment) Bill, 1990:
   (*i*) It is a step required to be taken under Article 43 of the Constitution.

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(*ii*) The non-statutory schemes for worker participation in management failed to provide an effective framework for a meaningful participation of workers in management at all level.

(*iii*) The statutory Works Committee has been proved to be ineffective.

5. The Shop Floor Council and Establishment Council shall consist of equal number of representatives of employer and workmen. The number of representatives of employer and workmen is required to be determined by the appropriate Government in consultation with the employer.
6. Collective bargaining involves two parties, namely, the management represented either alone or through the Employers' Association or Federation of Employers on the one hand and workers represented either through a union or worker federation, on the other hand.
7. The ILO has divided the subject matter of collective bargaining into two categories:

   (*i*) That which sets out standards of employment which are directly applicable to relations between an individual employer and worker.

   (*ii*) That which regulates the relations between the parties to the agreement themselves and have no bearing on individual relations between employers and workers.
8. There are three requisites of a sound primary compensation structure.

   (i) Internal equity

   (ii) External competitiveness

   (iii) Performance-based payment
9. Under the informal approach to performance-based payment, individual pay decisions are made on an informal basis without any guides or controls.
10. The essentials of a sound wage incentive plan are as follows:

    (a) Measurement of the amount of work done.

    (b) Establishment of standard output on the basis of which the incentive has to be worked out.

    (c) Setting up a suitable rate of incentive.
11. The Wage Boards are tripartite in character in which representatives of workers, employers and independent members participate and finalize the recommendations.

4.8 QUESTIONS AND EXERCISES

Short-Answer Questions

1. State three complications that may arise on the appointment of workers as Director on the Board of Management.

2. Identify the various forms of worker participation in management.
3. Write a note on the 1975 scheme of worker participation in management in India.
4. What do you understand by collective bargaining?
5. What do you understand by wage incentives? Which of the two incentive schemes would you recommend for industry?
6. What is equity in compensation?

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Long-Answer Questions

1. 'Worker participation in management is one of the most significant modes of resolving industrial disputes and encouraging a sense of belonging for the establishment in the worker.' Discuss.
2. Elaborate on the levels how workers can participate in an establishment.
3. Discuss the significance of collective bargaining.
4. Explain the process of collective bargaining.
5. What are the requisites for the success of an incentive plan?
6. Is there a need for a wage policy in a developing economy? Discuss

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UNIT 5 EMPLOYEE COMMUNICATION

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Structure

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5.0 INTRODUCTION

In this unit, you will study about an important factor that affects management and organizational behaviour and performance. It is the process by which information is transmitted between two individuals, between groups of people or between individuals within or outside an organization. This process, called communication, has a process model, which comprises a series of steps that together make communication successful. There are various forms of communication such as oral, written and nonverbal. Formation of a communication network shows the various communication patterns or relationships that can exist amongst a group or among various individuals. It has been found that effective communication is at times not possible due to many barriers, such as noise and cultural barriers. Each of these barriers will be discussed in this unit.

In this unit, you will also learn about employee education and training. For any organization to perpetuate itself through growth, there is a basic need for developing its manpower resources. It is one thing to possess knowledge but another to put it to effective use. It is essential to help develop skills and also update knowledge. Especially, in a rapidly changing society, employee training and development is very important for an organization. Training is a method of acquiring a succession of planned behaviour. It attempts to improve employees' performance on the current job or prepare them for

an intended job. Among other benefits, training instructs the workers towards better job adjustment and reduces the rate of labour turnover and absenteeism.

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5.1 UNIT OBJECTIVES

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

- Understand the meaning, types and significance of communication
- Identify communication barriers and methods of overcoming them
- Explain the principles of effective communication
- Discuss the significance of employee education
- Describe the concepts and features of employee training
- Understand and evaluate employee training methods and schemes

5.2 COMMUNICATION

Communication is considered to be the most important ingredient of the management process. Interpersonal and two way communication is fundamental to all managerial activities. All other management functions involve communication in some forms of directions and feedback. Effective management is a function of effective communication. Many operations have failed because of inadequate communication, misunderstood messages and unclear instructions.

5.2.1 Meaning and Significance

Communication skills can make or break a career or an organization. Studies conducted by Gary Benson[1], through a survey questionnaire sent to personnel managers of 175 of the largest companies in Western States in America indicated that written and oral communication skills are critical not only in obtaining a job but also in performing effectively on the job. The questionnaire contained some questions regarding the factors and skills that are most important in helping graduating business students obtain employment. Oral communication was considered to be the most important skill and the second most important skill was the written communication.

From organizational point of view, effective communication is very essential for management to perform its functions. It seems that there is a direct correlation between employee communication and profitable operations of an organization. As a senior executive noted: The best business plan is meaningless unless every one is aware of it and pulling together to achieve its objectives. Good communications are the lifeblood of any enterprise, large or small. Communications are essential to keep our entire organization functioning at maximum levels and to make the most of our greatest management resource - our people".

Communication can be defined as "the process by which a person, group or organization (the sender) transmits some type of information (the message) to another person, group or organization (the receiver)". It is only through communication and transmitting meaning from the sender to the receiver that ideas can be conveyed and discussed. It is a meaningful interaction among people so that the thoughts are transferred

Communication: Process by which a person, group or organization (the sender) transmits some type of information (the message) to another person, group or organization (the receiver)

from one person to another in such a manner that the meaning and the value of such thoughts is same in the minds of both the sender of the communication as well as the receiver of the communication. This is a very important aspect, otherwise an idea, no matter how great, is useless until it is transmitted and fully understood by others. This is one reason why, generally speaking, groups form on the basis of intellect similarities so that the group members are at a similar level of thinking and communicating. The communication cannot be understood by all members if some members of the group are highly intelligent or highly technical and others are not.

Proper communication between interested parties reduces the points of friction and minimizes those that inevitably arise. Accordingly, by proper communication and sharing of information, the management takes the employees into confidence and makes them more knowledgeable about problems and policies of the enterprise. The scope for a two-way means of consulting and exchanging facts, opinions and ideas between management and employees pertain to the knowledge of :

- Objectives and policies of the organization
- Results and achievements from these policies
- Plans and prospects for the future
- Conditions of service
- Ways and means of improving efficiency and productivity.
- All aspects of industrial safety, health and welfare.

Information and knowledge about all these aspects makes the operations of the organization comparatively trouble free and it is the management's responsibility to ensure that employees have obtained all the necessary information about these different aspects and get the necessary feedback relative to these aspects. This would make the workers aware of their own duties and responsibilities as well as the instructions and directives from the upper levels of management hierarchy and also their own suggestions, grievances and feedback. Proper communication eliminates delays, misunderstanding, confusion, distortions and bottlenecks and improves coordination and control. It is a basic tool for motivation and improved morale. Supervision and leadership are impossible without it.

Objectives of communication

As we have previously discussed, effective management depends upon effective communication to achieve organizational goals. Since managers work with and through other people, all their policies, rules, procedures and directives must pass through some kind of communication channels to reach all employees. Also, there must be a channel of communication for feedback. Accordingly some of the objectives of effective communication are:

- To develop information and understanding among all workers and this is necessary for group effort.
- To foster an attitude which is necessary for motivation, cooperation and job satisfaction.
- To discourage the spread of misinformation, ambiguity and rumors which can cause conflict and tension.

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- To prepare workers for a change in methods of operations by giving them necessary information in advance.
- To encourage subordinates to supply ideas and suggestions for improving upon the product or work environment and taking these suggestions seriously.
- To improve labour-management relations by keeping the communication channels open and accessible.
- To encourage social relations among workers by encouraging inter-communication. This would satisfy the basic human need for a sense of belonging and friendship.

5.2.2 Types of Communication

Managers use several different types of communication in their work. The choice of the method of communication would depend upon such factors as the physical presence of the receiver of the message, the nature of the message as to whether it is urgent or confidential and the costs involved in the transmission of the message. Various means of communication fall into four categories : (1) oral, (2) written, (3) nonverbal, and (4) information technology. These means are not mutually exclusive and very often some of these methods are combined to increase the emphasis or clarity of information.

1. Oral communication

The most prevalent form of organizational communication is oral. It could be face-to-face communication which is in the form of direct talk and conversation between the speaker and the listener when they are both physically present at the same place. It could also be telephone conversation or intercom system conversation. Where one way communication is required, then oral communication may include a public address system. This is quite common at airports when providing information to passengers about flight departures and arrivals. All political leaders are required to develop oratory skills as they often address their followers via a public address system. Every professional gets an opportunity to use oral communication when making presentations to groups and committees, a customer or a client or at a professional conference.

Oral communication is preferable when the message is ambiguous (can be discussed and clarified) and urgent (provides for rapid feedback). Furthermore, it conveys a personal warmth and friendliness and it develops a sense of belonging because of these personalized contacts.

It is not recommended when a formal record of communication is required, when the communication is lengthy and distant, and when the information is statistical in nature and requires careful and objective analysis.

Written communication: Putting the message in writing and is generally in the form of instructions, letters, memos, formal reports, information about rules and regulations, policy manuals, information bulletins and so on

2. Written communication

A **written communication** means putting the message in writing and is generally in the form of instructions, letters, memos, formal reports, information about rules and regulations, policy manuals, information bulletins and so on. These areas have to be covered in writing for efficient functioning of the organization. It is most effective when it is required to communicate information that requires action in the future and, also in situations where communication is that of general informational nature. It also ensures that every one has the same information.

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Written communication is recommended when evidence of events and proceedings are required to be kept for future references, when many persons must be contacted at the same time, when transmitting lengthy statistical data and when more formal authority is to be exercised.

Written communication can have its disadvantages in that it is very time consuming, specially for lengthy reports, there is no immediate feedback opportunity to clarify any ambiguities, and confidential written material may leak out before time, causing disruption in its effectiveness.

3. Non-verbal communication

Some of the meaningful communication is conveyed through nonverbal ways. Even some of the verbal messages are strengthened or diluted by nonverbal expressions. These nonverbal expressions include facial expressions and physical movement. In addition some of the work environment elements such as the building and office space can convey a message about the authority of the person. For example, visitors tend to feel uncomfortable in offices where there is a desk between them and the person they are speaking to. That is one reason that there are sitting sofas and chairs in many offices so that they can all sit together and talk. Similarly, artwork in the office and its neatness conveys an aura of professionalism.

Non-verbal communication affects the impressions we make on others. A handshake is probably the most common form of body language and tells a lot about a person's disposition. Similarly, eyes are the most expressive component of the facial display. For example, in a bar or a club, a glance, a stare, a smile, a wink or a provocative movement are all various forms of communication. Other examples of body language are tilting of head, folding of arms or sitting position in a chair.

Our facial expressions can show anger, frustration, arrogance, shyness, fear and other characteristics that can never be adequately communicated through written word or through oral communication in itself. Some of the other body language symptoms are shrugging your shoulders for indifference, wink an eye for mischief or intimacy, tap your fingers on the table for impatience and we slap our forehead for forgetfulness.

Some of the basic types of nonverbal communication are:

- **Kinetic behaviour.** Body motion such as facial expressions, gestures, touching, eye movement and so on.
- **Physical characteristics.** Body shape, posture, height, weight, hair and so on.
- **Paralanguage.** Voice quality, volume, speech rate, choice of words, manner of speaking and extent of laughing.
- **Proxemics.** Proximity of people during conversation, perceptions about space, seating arrangements and so on.
- **Environment.** Type of building where the office is, room design, furniture, interior decorating, light, noise and neatness.
- **Time.** Being late or early for appointments, keeping others waiting and so on. Typically, the longer you have to wait to see some one, the higher is his organizational status.

Kinetic behaviour: Body motion such as facial expressions, gestures, touching, eye movement and so on

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- **Dress**. Appropriate dress reflects the status symbol. Many organizations have a dress code. You cannot wear T-shirts and jeans for an interview for a managerial position. Personalities are generally communicated through dresses.

Some of the nonverbal messages and their interpretations are described below:

- **Facial Expressions**

Frown	—	Displeasure
Smile	—	Friendliness
Raised eyebrows	—	Disbelief, amazement
Biting lips	—	Nervousness

- Gestures

Pointing finger	—	Authority, displeasure
Arms at side	—	Open to suggestions, relaxed
Hands on hips	—	Anger, defensiveness

- **Voice**

Shaky	—	Nervous
Broken	—	Unprepared
Strong/clear	—	Confident

- **Body gestures**

Fidgeting	—	Nervousness
Shrugging shoulders	—	Indifference
Sitting on edge of chair	—	Listening, great interest
Shifting while sitting	—	Nervousness

- **Eye contact**

Sideways glance	—	Suspicion
Steady	—	Active listener
No eye contact	—	Disinterest

Source: Adopted from Pamela S. Lewis, Stephen H. Goodman and Patricia M. Fandt, "Management". West Publishing, 1995. P-393.

4. Information technology

Information technology is a broad category of communication techniques and includes video-conferencing, telecommuting, electronic mail, and so on. Such devices as videotape recorders, telephone answering devices, fax machines all provide new communication flexibility and are rapidly influencing how managers communicate. Many major companies have gone into networking which ties computers together so that information can be communicated and shared from vast data bases.

Video-conferencing:
A channel of communication which uses live video to communicate with various employees at various locations simultaneously

- **Video-conferencing:** Video-conferencing is a channel of communication which uses live video to communicate with various employees at various locations simultaneously. It enables organizations to hold interactive meetings with other

people, separated geographically even in different countries, at the same time via camera and cable transmission of the picture and sound. This technology makes it easier to obtain information from all operations around the world fast for the purpose of decision making and control.

- **Telecommuting:** Telecommuting is the result of high technology at work, where people can work from their homes using a computer linking them to the place of work. Telecommuting provides flexibility of working and comfort for the worker, even though it isolates the employees working together in a team. Also, it makes supervision more difficult. This communication technique is helpful for those who work out of a customer's office so that they can communicate with their own office via laptop computer link-up. The method is popular with computer programmers, financial analysts, consultants and among secretarial support service.
- **Electronic mail (E - mail):** E-mail is a system whereby people use personal computer terminals to send and receive messages among each other, allowing for a very rapid transmission of information. Messages can be sent and received by anyone, anywhere in the world, who has access to a computer terminal and has a computer mail box number on the computer network. Hughes Aircraft, a Los Angeles based company, uses E-mail to connect more than 30,000 users in 32 different locations world wide. Similarly, Bill Gates, CEO of Microsoft Corporation, keeps up with his 10,000 employes via E-mail. All employees are encouraged to use E-mail to share suggestions and information - even send ideas directly to Gates without going through a supervisor.

5.2.3 Communication Barriers and Methods of Overcoming Them

Communication must be interpreted and understood in the same manner as was meant to be by the sender. If not it will be ineffective and result in a communication breakdown. There are certain external road blocks to effective communication such as poor timing of communication, poor choice of channel of communication, incomplete, inadequate or unclear information, network breakdown and so on, that can affect the proper reception of communication. In addition there are personal factors that may interpret the communication in a manner different from what was intended by the sender. Interpretation depends upon the stimuli present, emotions or prejudices for or against a concept or ideology or personal conflicts. As a result, the intent of the sender may be interpreted instead of the content.

1. Noise barriers

Noise is any external factor that interferes with the effectiveness of communication. The term is derived from noise or static effects in telephone conversation or radio wave transmission.

Example: You are on an important phone call and just then a generator starts nearby. The noise of the generator acts as a barrier to your conversation. It may interfere in the process of communication by distracting you or by blocking a part of the message or by diluting the strength of the communication. Some of the sources contributing towards the noise factor are shown in Figure 5.1.

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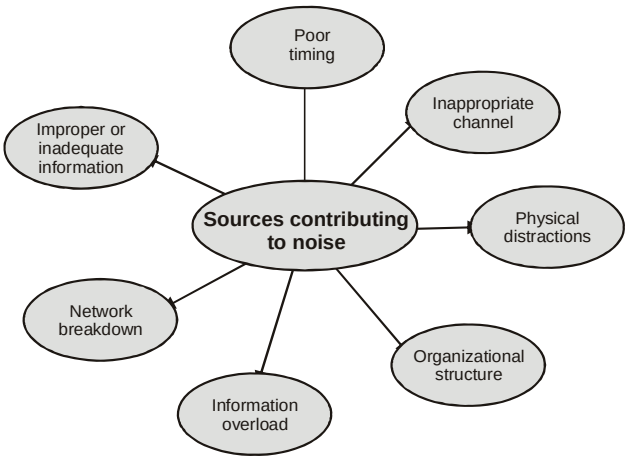

Fig. 5.1 *The Noise Factor*

2. Interpersonal barriers

There are many interpersonal barriers that disrupt the effectiveness of the communication process and generally involve such characteristics of either the sender or the receiver that cause communication problems. Some of these are as follows:

Filtering: Intentional withholding or deliberate manipulation of information by the sender

1. **Filtering**: This is the intentional withholding or deliberate manipulation of information by the sender. This could be because the sender believes that the receiver does not need all the information or because the receiver is better off not knowing all the aspects of a given situation.

   The more vertical levels there are in an organization's structure the more likely the filtering.

2. **Semantic barriers**: These barriers occur due to differences in individual interpretations of words and symbols. The words and paragraphs must be interpreted with the same meaning as were intended. A wrong word or a comma at a wrong place in a sentence can sometimes alter the meaning of the intended message.

3. **Perception**: Perception relates to the process through which you receive and interpret information from the environment and create a meaningful world out of it. As mentioned earlier, different people may perceive the same situation differently. Perceptual situations may distort a manager's assessment of people resulting in reduced effectiveness of the communication.

A successful manager must be aware of the impact of factors that affect perception by interaction with others and should also possess the ability to influence or change the perceptions of others where necessary. This ensures that the events and situations are interpreted as accurately and objectively as possible.

3. Cultural barriers

Cultural differences can adversely affect communication effectiveness, especially for multinational companies and enterprises with multi-ethnic workforce. **Examples:**

- In Austria and France, children are not permitted to do television commercials. Most Jewish people do not work on Saturdays and most Muslims do not work on Friday afternoons;

- Establishing deadlines to accomplish work assignments is considered rude in most of the Middle East countries punctuality is not considered important in some countries many important meetings and activities are contemplated after consultations with astrologers in India.

Accordingly management must identify these cultural differences and attempt to minimize any adverse effects on communication effectiveness due to these differences.

Sender credibility

When the sender of the communication has high credibility in the eyes of the receiver, the message is taken much more seriously and accepted at face value. If the receiver has confidence, trust and respect for the sender, then the decoding and the interpretations of the message will lead to a meaning that would be closer to the intended meaning of the sender. Conversely, if the sender is not trusted, then the receiver will scrutinize the message closely and deliberately look for hidden meanings or tricks and may end up distorting the entire message.

Emotions

The interpretation of a communication also depends upon the state of the receiver at the time when the message is received. The same message received when the receiver is angry, frustrated or depressed may be interpreted differently than when he is happy.

Multi-meaning words

Many words in the English language have different meanings when used in different situations. Accordingly, a manager must not assume that a particular word means the same thing to all people who use it. For example, the word 'run' can be used in 15 different ways.

Accordingly, managers must make sure that they use the word in the same manner as the receiver is expected to understand it. Otherwise, it will create a barrier to the proper understanding of the message.

4. Feedback barriers

The final source of communication process problems lies in the feedback or lack of it. Feedback is the only way to ascertain how the message was interpreted. Feedback closes the communication loop and is important for effective communication. It is equally important to pay attention to feedback. The feedback may be for the purpose of communicating the results of an action or it may be for asking questions about communication for further clarifications. A student who misunderstands a question in the exam but does not have the provision to ask for clarification may end up giving the wrong answer.

Overcoming communication barriers

It is very important for the management to recognize and overcome barriers to effective communication for operational optimization. Some of the steps that can be taken in this respect are as follows:

1. **Provide feedback and upward communication**: Feedback helps to reduce misunderstandings. The information is transferred more accurately when the

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receiver is given the opportunity to ask for clarifications and answer to any questions about the message. Two-way communication, even though more time consuming, avoids distrust and leads to trust and openness that builds a healthy relationship contributing to communication effectiveness. Upward communication is strengthened by keeping an open door policy and providing opportunities for workers to give suggestions that should be taken seriously by the management.

2. **Improve listening skills**: Listening is believed to be a very important part of the communication process. An active mental process, it goes beyond simple hearing. Good listening habits lead to better understanding and good relationships with each other. Some guidelines for effective listening are as follows:
   - Listening requires full attention of the speaker.
   - The language used, tone of the voice and emotions should receive proper attention.
   - Ask questions to clarify any points that you do not understand clearly and reflect back to the speaker your understanding of what has been said.
   - Make sure that there are no outside interruptions and interference during the course of conversation.
   - Do not prejudice or value the importance of the message due to your previous dealings and experiences with the sender or your perceptions about him, positive or negative.
   - Do not Jump to conclusions before the message is over and is clearly understood.
   - Summarize and restate the message after it is over to doubly make sure about the content and the intent of the message.
3. **Develop writing skills**: A well-written communication eliminates the possibility of misunderstanding and misinterpretation. When writing messages, it is necessary to be precise thus making the meaning as clear as possible so that it accomplishes the desired purpose. Some hints in written communication are suggested by Robert Degise as follows:

   Keep words simple; Do not be bogged down by rules of composition; Write concisely; Be specific.
4. **Avoid credibility gaps**: Communication is a continuing process and the goal of communication is complete understanding of the message as well as the creation of trust among all members of the organization. Accordingly, the management must be sincere and should earn the trust of the subordinates. Management should not only be sensitive to the needs and feelings of workers but also its promises should be supported by actions. The word of the management should be as good as a bond. Only then would an atmosphere of congeniality accrue, that would enhance the communication process.

5.2.4 Principles of Effective Communication

In today's total quality oriented organizations, communication processes extend throughout the organization in a number of different ways, both formally as well as

informally. As organizations become more diverse, the quality and clarity of communication at all levels becomes highly critical. Both formal and informal channels are described as follows:

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Principles of formal communication

Formal communication follows the chain of command and is recognized as official. In classical bureaucratic organizations, the flow of communication has been primarily from top downwards. In current organizational structures, communication flows top-down, bottom-up and horizontally and in coordination with all cross-functional systems and processes.

- **Downward communication:** The downward communication is from the superior to the subordinate or from the top management, filtered down to workers through the various hierarchical communication centres in between and may include such standard managerial tools as statement of the organizational philosophy and organizational directives, standard operating procedures, standard quality control procedures, safety regulations and other relevant material. Downward channels re used to give employees work instructions and other information needed to exercise the delegated authority. In order for this communication to be effective, the workers should be told not only what they are expected to do but also why they are doing it and why their contribution is important to the organization. This increases a feeling of acceptance on the part of the workers. It is also important that the communication be transmitted to workers in the language that they can understand. For example, a machine operator may not understand much about the organization philosophy or any specialized terminology about strategic planning or technological dynamics. Accordingly, workers must be communicated in their own language and perceptions. Also most workers are conditioned to accept communication from their immediate superiors and hence the message must be filtered down through normal channels and edited on the way down for the sole purpose of simplification wherever necessary without losing the content or intent of the message. It is important that there should be no communication breakdown at any level or from any source.

  The following humorous account of information loss and distortion that can occur in downward communication is adopted from J.W. Gould:

  A Colonel issued the following directive to his executive officer :

  "Tomorrow evening at approximately 2000 hours, Halley's Comet will be visible in this area, an event that occurs only once in 75 years. Have the men fall out in the battalion area in fatigues, and I will explain this rare phenomenon to them. In case of rain, we will not be able to see anything, so assemble the men in the theater and I will show them films of it."

  This message was filtered down as follows:

  - **Executive Officer to Company Commander:** "By order of the Colonel, tomorrow at 2000 hours, Halley's Comet will appear above the battalion area. If it rains, fall the men out in fatigues. Then march to the theatre where the rare phenomenon will take place, something that occurs only once every 75 years."

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- **Company Commander to Lieutenant:** "By order of the Colonel in fatigues at 2000 hours tomorrow evening, the phenomenal Halley's Comet will appear in the theatre. In case of rain in the battalion area, the colonel will give another order, something that occurs once every 75 years".
    - **Lieutinent to Sergeant.** "Tomorrow at 2000 hours, the Colonel will appear in the theatre with Halley's Comet, something that happens every 75 years. If it rains, the Colonel will order the Comet in the battalion area in fatigues".
    - **Sergeant to Squad.** "When it rains tomorrow at 2000 hours, the phenomenal 75-years old General Halley, accompanied by the Colonel, will drive his Comet through the battalion area theatre in fatigues".

Source: G.W. Gould, "Quotations that Liven a Business Communication Course". The Bulletin, December 1985. p-32. Quoted in Lewis, Goodman and Fandt, "Management". West Publishing Company, 1995. p - 407

- **Upward communication:** Upward communication moves in the opposite direction and is based upon the communication demand system designed by management to receive information from operational levels. This information may consist of standard reporting items such as production reports and so on. The top management which is always concerned with improvements and higher productivity and wants to know the reactions of employees to certain policy or procedural changes and the effectiveness of the operational instructions issued will be isolated if there is none or poor upward communication. Upward communication provides a clear channel for transmitting information, opinions and attitudes up through the organization channels. The organization must provide a climate which is conducive to encouraging such upward communication. This climate can be generated by an "open door" policy where the workers know that their superiors are always available for discussion of problems and concerns. The systems must ensure that the superiors have developed listening skills as well as a sincere and sympathetic attitude towards worker's problems. This opportunity for upward communication encourages employees to contribute valuable ideas for improving organizational efficiency. The participative decision techniques can develop a great deal of upward communication by either informally involving subordinates or formally allowing their participation. Thus the upward informational feedback can be gainfully utilized in decision centres to assess the results of organizational performance and to make necessary adjustments to attain organizational objectives.

Horizontal communication: Lateral information flow that occurs both within and between departments

- **Horizontal communication:** Horizontal communication is the lateral information flow that occurs both within and between departments. Generally speaking, it is communication among equals. Messages that flow laterally are characterized by efforts at coordination so that members at the same levels of an organization can share information without involving their superiors. This communication is more of an informal nature and is necessary in promoting a supportive organizational climate. For example, supervisors at the same level, but from different departments, having lunch together or coffee together, can discuss and organize their activities in such a manner that they complement each other and

the process is beneficial to the company as a whole. This type of communication is particularly frequent between the line units and the staff units. Production managers and marketing managers often communicate with each other directly to discuss common problems and issues.

- **Transactional communication:** Wenburg and Wilmont[2] suggest that communication, instead of being "upward" or "downward", which is inter-communication, should be "transactional" communication which is mutual and reciprocal because "all persons are engaged in sending (encoding) and receiving (decoding) messages simultaneously. Each person is constantly sharing in the encoding and decoding process and each person is affecting the other".

In the transactional communication process, the communication is not simply the flow of information, but it develops a personal linkage between the superior and the subordinate. This linkage is very important for cooperative efforts and this cooperation improves the quality of operations. As Katz and Kahn suggest, there are five purposes served by superior-subordinate communication. These are :

1. To give job instructions and directions
2. To give information about organizational procedures and practices.
3. To educate employees as to why their jobs are important.
4. To give feedback to subordinates about their performance as to how well they are doing and how they can improve.
5. To provide ideological type information to facilitate the indoctrination of goals.

It has been found that in most classical types of organizations, only first two of these five purposes are generally accomplished. Attention to the other three purposes would have a very positive impact upon the organizational climate. As Katz and Kahn point out, "if the man knows the reasons for his assignment, this would often ensure his carrying out the job more effectively, and if he has an understanding of what his job is about in relation to his subsystem, he is more likely to identify with organizational goals". In order to achieve these five communication purposes effectively, it is necessary to have effective superior-subordinate communication which requires careful attention to the needs and the psychology of the receiver of the communication at both ends. Accordingly, transactional communication requires that the superior and the subordinate work together and have a personal linkage along with professional relationship so that they can discuss the problems more amicably and arrive at solutions together.

Principles of informal communication

In addition to formal channels, organizations also have informal channels of communication. Informal communication channels arise from the social relationships that evolve in the organization and even though these are neither required nor controlled by management, they can communicate some important matters to the management which would not be available or feasible through formal channels.

Also known as the "grapevine", the information carried by informal channels is often quite accurate. In fact, one well known study found that approximately 80 percent of the information transmitted through grapevine was correct. The remaining 20 percent,

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though, can often create serious problems, when it generates unfounded rumours. A rumour is an unverified belief that is in general circulation. A rumour, as it is passed along can either become highly complex so that the entire meaning is changed at the end or it becomes oversimplified so that some difficult to remember important details will be omitted before it reaches the final receiver. Wise managers keep their ears open for any such rumours and attend to them so that they can be corrected and do not become destructive.

5.2.5 Guidelines for Effective Communication

The guidelines for effective communication are designed to help management improve their skills in communicating. This will help avoid any barriers to effective communication and also strengthen the basis for optimum results that depend upon the clear understanding of the desired communication. These guidelines are partially based upon the principles proposed by the American Management Association (Figure 5.2).

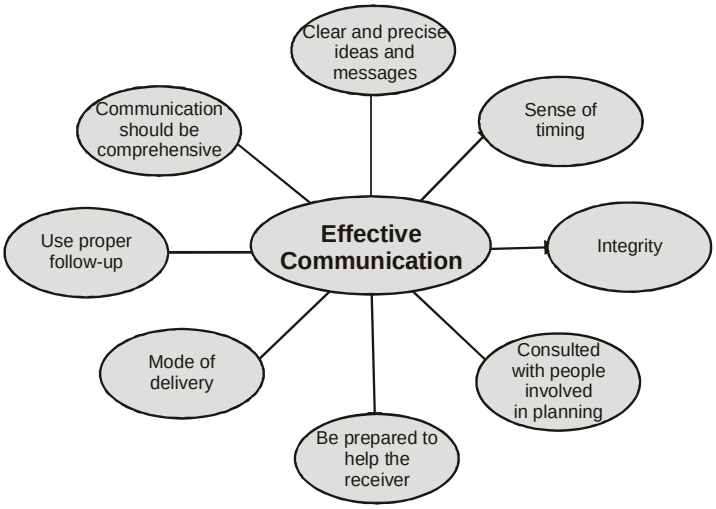

Fig. 5.2 *Guidelines for Effective Communication*

5.3 EMPLOYEE EDUCATION

In a developing economy, trade unions are required to play a major and constructive role in the nation's development. Inevitably, strong democratic and enlightened trade union movement is essential. Workers' education naturally, has to play a key role in streamlining the trade unions in our country. Under the circumstances, the need for workers' education programme appears to be indispensable for the economic development of a country like India. This has become all the more important in view of the illiteracy of workers. A study of literacy in the working class reveals that out of 2.815 million workers engaged in tea plantation, coal mines, jute and cotton textiles, iron and steel, 2.08 million workers are illiterate.

Check Your Progress

1. State any three objectives of effective communication.
2. Into how many categories can the various means of communication be grouped?
3. What do you understand by semantic barriers to communication?
4. What is the downward communication?

Objectives and Contents

There can hardly be any precise definition of workers' education which can fit in every analysis of this programme. Workers' education varies from situation to situation and country to country. There is, however, some resemblance in almost all the programmes

of workers' education. It is aimed to make the workers more responsible and better citizens and trade unionists. In India the aims and objectives of workers' education scheme are, '(i) to develop strong and more effective trade unions through better trained officials and more enlightened members; (ii) to develop leadership for the rank and file and promote the growth of democratic processes and tradition in trade union organization and administration, (iii) to equip organized labour to take place in a democratic society and to fulfil effectively its social and economic functions and responsibilities; and (iv) promote among workers a greater understanding of the problems of their economic environment and their privileges and obligation as union members and officials and as citizens.'

In India, the task of imparting education has been undertaken by the various agencies, e.g. (i) Trade union agencies, e.g., local and national trade unions (ii) International trade union agencies, e.g., ICFTU—Asian Trade Union College (iii) Semi-autonomous bodies like the Central Board of Workers' Education. Further, help has also been rendered by various agencies, namely (1) International Labour Organization; UNESCO, (2) governmental agencies and (3) educational institutions and universities.

The movement of workers' education in India since 1958 –1959 on a national basis represents our awareness of challenges faced now and to be faced in the future in this regard.

5.3.1 Teaching Techniques

In order to run its scheme, the Government of India appointed a semi-autonomous board, viz., the Central Board of Worker's Education to administer the scheme. The Board has on it representatives of the Central and state governments, organizations of employers and workers, and educational institutions, with a maximum of twenty representatives. To give it an orientation in favour of labour, workers' organizations have been given a relatively greater representation. While the Board normally meets once a year, mostly for an annual review of its work and adoption of the budget, a smaller body, the Board of Governors, consisting of not less than six but not more than ten members, meets four times a year. The administrative functions, training and induction of new officers, and preparation of literature, audiovisual aids, etc., are centralized in the Board's office. The educational activity is decentralized. Regional and subregional centres which conduct educational work in the local area have now been opened in almost all important industrial centres. To guide the policies at the regional level, a local committee, on the same model as the Board itself, is set up at each centre.

The programme is mainly run by the Central Board of Workers' Education. It has a three system. In the first, education officers selected by the Board by open competition are given training at a central place by the staff of the Board. This staff is but only the nucleus; with it are mixed guest lecturers who are trade union leaders, employers' representatives, educational experts, administrators and the like. On successful completion of training, the education officers are posted to regional centres on the basis of the languages with which they are familiar. The language factor has necessarily to be kept in mind in the initial selection itself. With each batch of education, officers, so trained, the Board's practice has been to include a fair number of trade union workers nominated by the Central organizations. This provides an opportunity to the trainees to be acquainted with trade union problems, albeit in a small way. The

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union nominees also get facilities to widen their interests and add theoretical knowledge to the practical background they possess.

The next stage in the programme is to prepare selected workers as teachers. The local committee is in charge of choosing workers from among those who are initially nominated by unions. If an employer releases a worker for training, the period of training is considered as duty and payment is made by him on that basis. Cases have occurred where an employer finds difficulties in complying with the requests of the local committee for releasing selected workers. By and large, these issues are settled by mutual accommodation. For this training, though the bulk of the educational programme is the responsibility of education officers, 'guest lecturers' are invited with a view to improve the quality of training. A study tour to places of industrial importance also forms part of the education programme.

At the third stage, worker-teachers, on completion of their training return to the establishments and conduct programme for the rank and file of workers in their respective units, workplaces or localities. This activity is supervised by the education officer located at the centre.

Participation of the unions in the Workers' Education Programme takes place in two ways. We have already referred to the inclusion of trade union nominees in the course organized for the initial preparation of education officers. The Board also expects unions which send their nominees for the course to undertake educational work on completion of their participation in the training programme. For programmes approved by the Board, the union is entitled to financial assistance through 'grant-in-aid.'

Working of the scheme

Describing the impact of the scheme, the Seventh Annual Report of the Central Board points out:

'The impact of workers' education is now beginning to be felt in the field of trade union and industrial relations... The impact has naturally been best felt in areas where workers' education programmes have received the required cooperation from both the unions and the managements. Workers have on the whole responded with lively interest..,

Trade Unions nave been gradually showing greater awareness of the usefulness of the scheme and taking advantage of the programmes conducted by the Board.

The workers' trained are now in a position to understand better their responsibilities and duties towards their unions and establishments. Industrial relations have improved in the establishments concerned.'

The Third Five Year Plan has also stated that the courses of workers' education programmes 'have helped to raise the self-confidence of workers, increased their ability to take advantage of protective labour laws, reduced their dependence on outsiders, and inculcated in them an urge for material and economic welfare.'

The current problems

Trade Unions, have however, not satisfactorily responded to this programme. The reasons for trade unions not being an effective agency for running workers' education programme are as follows:

(i) Week financial position of trade unions

(ii) Illiteracy amongst working class

(iii) Inter-union rivalries

(iv) Absence of full time paid office bearers in many industries

(v) Lack of proper incentives

(vi) Absence of organized life

(vii) Employers' unwillingness to release suitable workers sponsored by the trade unions to undergo the necessary training

(viii) Indifferent attitude of union leaders towards this programme

(ix) Lack of interest of workers towards this programme

(x) Lack of proper wages

(xi) Lack of trade unions and industry-oriented programmes

Concluding remarks

After having discussed some of the shortcomings of the trade unions' participation in the programme, it is desirable to suggest some of the measures which may be helpful in making the programme successful:

1. Trade unions should play an active role towards the workers' education programme and should help the government in framing and revising the training and syllabi so that the programme may be made more effective.
2. The managements are also required to encourage trade unions to be effectively associated in the workers' education programme by providing the necessary facilities.
3. Selection of the worker-teacher should be made on the basis of qualifications, experiences and aptitude of workers. The trade unions with the help of the government may insist the management to relieve such workers.
4. Experienced and qualified trade unionists should be appointed as education officers and such (trade unionist) education officers should be placed at various regional centres as suggested by ILO expert Dr Orr. It may further be suggested that academic qualifications for the appointment of education officers should be relaxed in cases of experienced trade unionists. This will serve an impetus for them and will encourage them in assisting the workers' education programme.
5. The syllabi and duration of courses may also be revised after certain intervals keeping in view the changing needs of industrial society.
6. The syllabus of training' courses should also be oriented in such a manner that it may become more interesting to workers and beneficial for the trade unions work and to the industry to which they belong. The worker-trainee should not be economically handicapped during the period of training.
7. The university and educational institutions should be brought in close contact with the programme of the Central Board for Workers' Education in order that they may start such courses as may be helpful to educate the trade unionist.
8. The regional and subregional centres should directly associate themselves in the unit level classes run by worker-teachers. This may be done by organizing special

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classes, seminars and discussions after certain intervals by the education officers of the respective centres.

9. The honorarium of the worker-teachers of unit-level classes should be enhanced as recommended by the Committee on Workers' Education of National Commission on Labour.
10. More guest lectures and seminars of experts on various topics of workers' interest should be organized by the regional and subregional centres.
11. The quality and contents of the training programme should be improved and the duration may be extended as suggested by the Committee on Workers' Education,
12. The trade unions should be encouraged to impart training to workers. This can be done by providing more financial assistance and technical and expert guidance to them by the Central Board for Workers' Education. Here, it might be added that the formalities for getting the grants from the Central Board for Workers' Education should be relaxed and simplified.
13. Trade unions and the Central Board for Workers' Education should run a separate scheme to eradicate the illiteracy of workers.
14. The cooperation and views of the trade unions should be sought on matters connected with the workers' training.

5.4 EMPLOYEE TRAINING

Training is undertaken by organizations to improve the performance, quality, skill and knowledge of their employees. Thus, it is a vital phase in the development of industrial relations.

5.4.1 Training: Concepts and Features

McFarland defines several concepts used in the development of human resources. Although training and education are closely connected, these concepts differ from each other in crucial ways. While the term 'training' relates to imparting specific skills for specific objectives, the term 'education' involves the development of the whole individual socially, intellectually and physically. Accordingly, training forms only a part of the entire educational process. Moreover, education is more akin to the concepts of growth and development than training. The term development can be defined as the nature and direction of change taking place among personnel through educational and training processes.

Nature of tasks and responsibilities as a determinant

The relative amount of training and education changes with the nature of tasks and responsibilities in organizational settings. As one goes upward in the organization, the requirement of training usually diminishes and the requirement of education goes up. Explicitly, non-managerial personnel require more job or trade-related skills than managerial personnel demanding the generalized conceptual skills and human relations insights. Accordingly, there is a difference between employee training and management development. Thus, employee training relates to the process by which non-managerial

Check Your Progress

5. Who constitute the Central Board of Worker's Education?
6. Identify any three problems in running a workers' education programme.

employees are imparted job skills. This type of training is largely task-centred instead of career-centred, and supplements basic skills and job training obtained in trade schools.

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Development as applied to managers

On the other hand, development as applied to managers involves the processes by which managerial personnel accomplish not only skills in their present jobs, but also competence for prospective assignments of enhanced difficulties and scope. The higher responsibilities embrace complex conceptual thoughts and analyses, and decision-making abilities. The development process relates to the pressures, changes and growth patterns. Thus, development as applied to managers embraces all those recognized and controlled measures, which exert a marked influence towards the improvement of abilities of the participant to accomplish his present job more effectively, and enhance his potential for prospective higher responsibilities.

Narrow and broad perspectives

However, Dunn and Stephens do not limit the term 'development' to managerial personnel only. According to them, 'Training refers to the organization's efforts to improve an individual's ability to perform a job or organizational role, whereas development refers to the organization's efforts (and the individual's own efforts) to enhance an individual's abilities to advance in his organization to perform additional job duties.' Thus, training provides knowledge and skills required to perform the job. It may involve showing a lathe operator how to produce a new component, demonstrating to supervisors how to handle grievances, and improving a plant manager's skill to negotiate a contract with the trade union. Accordingly, training can be viewed as job-oriented leading to an observable change in the behaviour of the trainee in the form of increased ability to perform the job.

On the other hand, although development is still job-related, it is much broader in scope. This is implied in management development programmes purporting to prepare managers for higher level positions. It enhances general knowledge related to a job as well as the ability to adapt to change. Thus, training is narrow in scope and largely relates to the acquisition of skills, while development embraces a broader scope. The concept of 'education' relates to the acquisition of knowledge of a general nature.

Present and future orientations

Thus, as Fitzgerald observes, training provides employees with specific skills or helps them to overcome deficiencies in their present performance. On the other hand, development provides employees with that the abilities that the organization will need in the future.

Training versus development

According to Yoder, although the terms 'training' and 'development' appear synonymous, there is a recognized difference between these concepts. Earlier, training programmes stressed preparation for an improved performance in largely specific rank-and-file jobs. With the growth of organizations, several problems developed specifically at the supervisory level. Accordingly, supervisory training programmes were launched enabling them to deal with distinctive problems. During the training of

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the supervisors, the need to train their bosses appeared significant. Therefore, special developmental programmes for middle managers were organized. Later on, the development programmes were started for the top management as well. These programmes indicated the significance of the concept of development, and thus training appeared to be an improper designation for learning a wide variety of complex, difficult and intangible functions of managerial personnel.

Thus, the concept 'training' was degraded. As managers themselves remarked, 'training is for dogs, people are developed'. Today, the terms 'development' and 'education' are more suitable than the term 'training'. It is not the training but the full development of personality that enables the human resources to exert their full potential. Accordingly, training and development programmes are combined together for developing skills as well as basic attitudes, leading to a continued personal growth. These programmes purport to improve job performance, minimize waste and scrap, prepare individuals for promotions, reduce turnover, enable individuals to accept organizational changes, facilitate understanding of the organizational goals and attain allied behavioural objectives. Obviously, the basic problem in development is to integrate the individual's achievement, motivation and self-interest with the goals of the organization.

Difference from four standpoints

Likewise, Gomez-Mezia et al. visualized that training tends to focus on immediate organizational needs, while development focuses on long-term requirements. While the scope of development is on the whole work group of the organization, the scope of training is restricted to an individual employee. The two concepts also differ vis-à-vis their goals. While training overcomes current skill deficiency, development prepares the employees for future work demands. Training is concerned with the current job, whereas development relates to both current and future jobs. Accordingly, it is necessary to remember these differences while evolving and evaluating training programmes.

Thus, the use of training programmes to influence long-range issues is likely to be ineffective. In the same way, the use of a development programme to improve current job performance will be futile.

5.4.2 Aims and Objects

Obviously, training provides a measure for modifying employee behaviour involving complex attitudes, knowledge and understanding and improving organizational effectiveness. Attempts are being made to determine the training needs for the entire organization rather than its specific departments and also to involve the top management in this programme. There is an urgent need for overcoming resistance to a training programme by demonstrating the concrete results of training, allowing the line personnel to determine its specific needs and perform its own training as much as possible. This approach ensures interest and involvement of the line personnel and minimize conflicts between the line and staff personnel.

5.4.3 Training Needs and Objectives

(a) Evaluating gap by skills analysis

As Price observes, a training need exists when there is a gap between the present performance of an employee or group of employees and the desired performance.

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The existence of this gap can be determined on the basis of a 'skills analysis' involving the following five steps: (1) Analysis and determination of the major requirements of the specific job, (2) Identification of the tasks needed to be accomplished to meet the job requirements, (3) Understanding of the procedures needed to accomplish each of the job tasks, (4) Analysis of the knowledge and skills needed to accomplish the procedures, (5) Identification of any special problem of the job and analysis of any particular skill needed to meet the problem.

(b) Training as a preventive tool to specific problems

Training needs should be determined from the standpoint of a specific problem for which training is the most effective solution. The problem may be actual or potential. There may be numerous problems for which training forms a preventive tool. It may solve several problems of excessive number of accidents, lack of ambition among employees, excessive buck passing, poor cooperation, absence of job pride, excessive spoilage of material, frequent changes in procedures, lack of understanding of responsibilities, lack of effective teamwork, excessive number of transfers or request for transfers, higher turnover, etc. The objective of training in these situations is to prevent the occurance of such specific problems. As indicated, specific training needs can be determined by deducting the existing amount of employee skills from the job requirements.

(c) Training as a tool to achieve organizational goals

As Bernardin points out, an organization should provide resources to training programmes if they facilitate in the attainment of organizational goals. For this purpose, needs analysis must be conducted to collect the best possible data for justifying the use of training programmes. Organizations which implement training programmes without such assessments are likely to make pitfalls and waste money. For example, the research may reveal the need for job redesign rather than training. This analysis must be conducted in the context of strategic plans of any type of strength, weakness, opportunity and threat analysis. According to Bernardin, needs assessment can be considered as a systematic, objective determinant for training needs which involves conducting three primary types of analysis: organizational analysis, job analysis, and person analysis. These types of analysis can help in determining the objectives for the training programmes.

5.4.4 Significance and Benefits of Training

Training: Process of learning a sequence of programmed behaviour

Training is a process of learning a sequence of programmed behaviour. It is application of knowledge. It gives people an awareness of the rules and procedures to guide their behaviour. It attempts to improve their performance on the current job or prepare them for an intended job. 'According to Edwin D Flippo, The purpose of training is to achieve a change in the behaviour of those trained and to enable them to perform better.' In order to achieve this objective, any training programme should try to bring positive changes in:

- **Knowledge:** It helps a trainee to know facts, policies, procedures and rules pertaining to his job.
- **Skills:** It helps him to increase his technical and manual efficiency necessary to do the job.

- **Attitude:** It moulds his behaviour towards his co-workers and supervisors and creates a sense of responsibility in him.

Importance of training

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(a) It equips the management to face the pressures of changing environment.

(b) It usually results in the increase of quantity and quality of output.

(c) It leads to job satisfaction and higher morale of the employees.

(d) Trained workers need lesser supervision.

(e) Trained workers enable the enterprise to face competition from rival organizations.

(f) It enables employees to develop and rise within the organization and increase their earning capacity.

(g) It moulds the employees' attitudes and helps them to achieve better cooperation with in the organization.

(h) Trained employees make better economic use of materials and equipment resulting in reduction of wastage and spoilage.

(i) Training instructs the workers toward better job adjustment and reduces the rate of labour turnover and absenteeism.

Benefits of training

(a) Benefits to organizations: A programme of training becomes essential for the purpose of meeting specific problems of a particular organization arising out of the introduction of new lines of production, changes in design, demands of competition, and so on. The major benefits of training to an organization are:

(i) Higher productivity: Training can help employees to increase their level of performance on their present assignment. It enhances skills. Increased performance and productivity are most evident on the part of new employees who are not yet fully aware of the most efficient and effective ways of performing their jobs. Enhanced skill usually helps to increase both quantity and quality of output.

(ii) Better organizational climate: An endless chain of positive reactions results from a well-planned training programme. Increased morale, less supervisory pressures, improved product quality, increased financial incentives, internal promotions, and so on result in a better organizational climate.

(iii) Less supervision: Training does not eliminate the need for supervision; it reduces the need for constant supervision.

(iv) Prevents manpower obsolescence: Manpower obsolescence is prevented by training as it fosters initiative and creativity of employees. An employee is able to adapt himself to technological changes.

(v) Economical operations: Trained personnel will make economical use of materials and equipment. This reduces wastage in materials and damage to machinery and equipment.

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(vi) **Prevents industrial accidents:** Proper training can help to prevent industrial accidents.

(vii) **Improves quality:** Trained employees are less likely to make operational mistakes thereby increasing the quality of the company's products.

(viii) **Greater loyalty:** A common objective of training programme will mould employees' attitudes to achieve support for organizational activities and to obtain better cooperation and greater loyalty. Thus, training helps in building an efficient and loyal workforce.

(ix) **To fulfil organization's future personnel needs:** When the need arises, organizational vacancies can be staffed from internal sources, if an organization initiates and maintains an adequate training programme.

(x) **Standardization of procedures:** Trained employees will work intelligently and make fewer mistakes when they possess the required know-how and understand their jobs.

(b) Benefits to employees

(i) **Personal growth:** Employees on a personal basis gain individually from training. They secure wider awareness, enlarged skill and enhanced personal growth.

(ii) **Development of new skills:** Training improves the performance of the employees and makes them more useful and productive. The skills developed through training serve as a valuable personal asset to the employee. It remains permanently with the employee.

(iii) **Higher earning capacity:** By imparting skills, training facilitates higher remuneration and other monetary benefits to the employee. Thus, training helps each employee to utilize and develop his full potential.

(iv) **Helps adjust with changing technology:** Old employees need refresher training to enable them to keep abreast of the changing methods, techniques and use of sophisticated tools and equipment.

(v) **Increased safety:** Proper training can help prevent industrial accidents. Trained workers handle the machines safely. Thus, they are less prone to industrial accidents. A safe work environment also leads to a more stable mental attitude on the part of the employees.

(vi) **Confidence:** Training creates a feeling of confidence in the minds of employees. It gives safety and security to them in the organization.

5.4.5 Training Methods and Schemes

There are many types of training methods, some of them are:

(a) Induction or orientation training: It is the method of introducing a new employee into the organization with a view to gaining his confidence and developing a sense of cooperation in him. It is a training programme used to induct a new employee into the new social setting of his work. The new employee is introduced to his job situation and to his co-employees. He is also informed about the rules, working conditions, privileges and activities of the company.

Orientation training: Method of introducing a new employee into the organization with a view to gaining his confidence and developing a sense of cooperation in him

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The induction training not only helps personal adjustment of the new employee to his job and work group but also promotes good morale in the organization.

An induction programme should aim at achieving the following objectives:

(i) To build up the new employee's confidence in the organization so that he may become efficient

(ii) To ensure that the new employee may not form false impressions regarding his place of work

(iii) To promote a feeling of belonging and loyalty

(iv) To give information to the new employee about canteen, leave rules and other facilities, etc

In short, planned induction welcomes a new employee, creates a good attitude, reduces labour turnover and makes the employee feel at home right from the beginning.

(b) Job instruction training: The object of job training is to increase the knowledge of workers about the job with which they are concerned, so that their efficiency and performance are improved. In job training, workers are enabled to learn correct methods of handling machines and equipment avoiding accidents, minimizing wastes, and so on.

Under this technique, an employee is placed in a new job and is told how it may be performed. It is primarily concerned with developing in an employee the skills and habits consistent with the existing practices of an organization and with orienting him to his immediate problems. The employees learn the job by personal observation and practice as well as occasionally handling it. It is learning by doing, and it is most useful for jobs that are either difficult to stimulate or can be learned quickly by watching and doing. The actual training follows a four-step process:

(i) Preparation of the trainee for instruction

(ii) Presentation of the instructions in a clear manner

(iii) To help the trainee try out the job to show that he has understood the instructions

(iv) Encourage questions and allowing the trainee to work along with regular follow-up by the trainer

(c) Promotional training: Many concerns follow a policy of filling some of the vacancies at higher levels by promoting existing employees. This policy increases the morale of workers. When the existing employees are promoted to superior positions in the organization, they are required to shoulder new responsibilities. For this, training has to be given.

(d) Refresher training: With the passage of time, employees may forget some of the methods, which were taught to them, or they may have become outdated because of technological development and improved techniques of management and production. Hence, refresher training is arranged for existing employees in order to provide them an opportunity to revive and also improve their knowledge.

According to Dale Yoder 'Retraining (refresher training) programmes are designed to avoid personnel obsolescence.' Thus, refresher training is essential because:

(i) Employees require training to bring them up-to-date with the knowledge and skills and to relearn what they have forgotten.

(ii) Rapid technological changes make even the most qualified workers obsolete in course of time.

(iii) Refresher training becomes necessary because many new jobs are created and are to be manned by the existing employees.

(e) Apprenticeship training: Apprenticeship training system is widely in vogue today in many industries. It is a good source of providing the required personnel for the industry. Under this method, both knowledge and skills in doing a job or a series of related jobs are involved. The apprenticeship programmes combine on-the-job training and experience with classroom instructions in particular subjects. Apprenticeship training is desirable in industries which require a constant flow of new employees expected to become all-round craftsmen.

(f) Internship training: Internship training is usually meant for such vocations where advance theoretical knowledge is to be backed up by practical experience on the job. Under this method, the professional institutes enter into arrangement with a big business enterprise for providing practical knowledge to its students. For example, engineering students are sent to industrial enterprise and medical students are sent to hospitals for practical knowledge.

(g) Vestibule training: In this method, actual work conditions are simulated in a class room. Material, files and equipment that are used in the actual job are used in the training programme too. In vestibule training, theory can be related to practice. This type of training is commonly used for training employees for skilled and semi-skilled jobs. Vestibule training consists of two parts:

- The lecture method that focuses on theoretical framework and the principles involved in the job performance, and
- The practical exercises based on the theoretical aspects in a workshop that is similar to the shop floor in the production department.

The vestibule training is more suitable for those employees who are required to possess certain specific technical skills before they are employed in actual operations.

Systems approaches to training

While designing training programmes the goal of the organization should be kept in mind. The organizational goals and strategies form the basis for training objectives. However many of the organizations do not make the connection between their strategic objectives and their training programme. As a result, much of an organization's investment in training programmes does not contribute directly to organizational effectiveness and performance. To make certain that investments in training and development have maximum impact on individual and organizational performance, a systems approach to training should be used. The systems approach to training has four phases which are explained in Figure 5.3.

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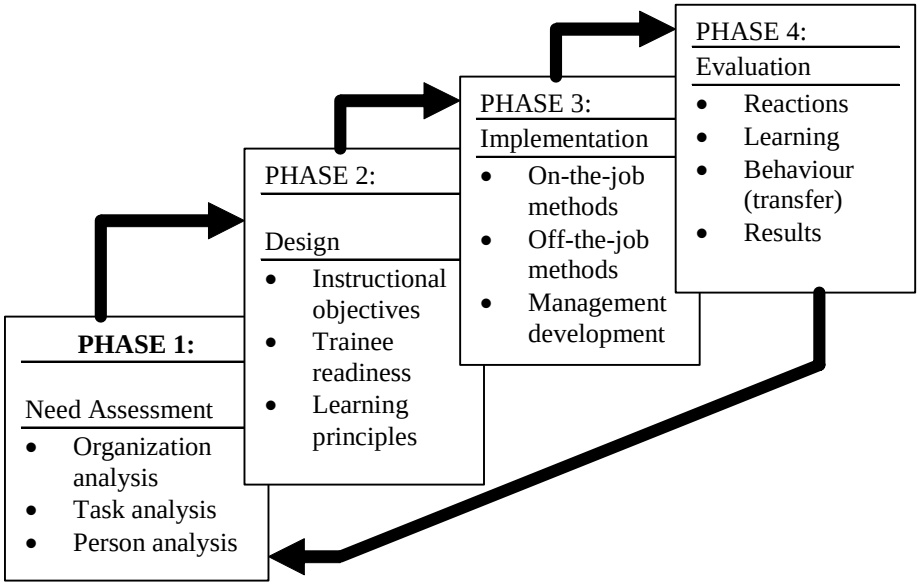

Fig. 5.3 *System Model of Training*

Phase 1: ***Conducting the needs assessment:*** The need for training should be felt by the organization. Managers, particularly HR managers, should find out the types of training that are needed, where they are needed, who needs them and which method should be used to train the employees. In order to do this, we must follow three steps:

1. *Organization analysis*: It is an examination of the environment, strategies, and resources of the organization to determine where training emphasis should be placed.
2. *Task analysis*: After doing the organization analysis, the next step is to do the task analysis. Task analysis involves reviewing the job description and job description and job specification to identify the activities performed in a particular job. Task analysis often becomes more detailed than job analysis, but the overall purpose is to determine the exact content of the training programme. The knowledge skills and abilities (KSAs) needed to perform the particular job should be ascertained. The competency assessment focuses on the set of skills and knowledge employees need to be successful, particularly for decision-oriented and knowledge-intensive jobs.
3. *Person analysis*: Person analysis involves determining which employees require training and which employees do not need the particular type of training. Person analysis helps the organizations in several ways (i) it helps in avoiding the mistake of sending all employees into training when some do not need it. (ii) It enables managers to determine what prospective trainees are able to do when they enter training so that the programmes can be designed to emphasize the areas in which they are deficient.

Phase 2: ***Designing the training programme:*** The second step is to design the type of learning environment necessary to enhance learning. The training design should focus on the following:

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1. *Instructional objectives*: They describe the skills and knowledge to be acquired and the attitudes to be changed. A clear statement of instructional objectives will provide a sound basis for choosing methods and materials and for selecting the means for assessing whether the instruction will be successful or not.
2. *Trainee readiness*: For any training to be successful the trainee should be prepared to receive the training. In order to achieve this prospective trainees should be screened to determine that they have the background knowledge and skill necessary to absorb what will be presented to them.
3. *Principles of learning*: Since the success or failure of a training programme is frequently related to certain principles of learning, managers and employees should understand that different training methods or techniques vary in extent to which they utilize these principles.
4. *Characteristics of instructors*: The success of any training effort will depend to a large extent on the teaching skills of the instructors. A good instructor is one who shows a little more effort or demonstrates more instructional preparation.

Phase 3: ***Implementing the training programme:*** A major consideration in choosing among the various training methods is determining which one is more appropriate for the KSAs to be learned.

Phase 4: ***Evaluating the training programme:*** Training should be evaluated to determine its effectiveness. The four basic criteria available to evaluate training are: (i) reactions (ii) learning (iii) behaviour and (iv) results. These criteria can give a total picture of the training programme and help managers evaluate the success or otherwise of the training programme.

Training programme is a costly and time-consuming process. The following training procedure is essentially an adoption of the job instruction-training course. The following steps are usually considered necessary.

(a) Discovering or identifying the training needs: A training programme should be established only when it is felt that it would assist in the solution of specific problems. Identification of training needs must contain three types of analysis:

(i) ***Organizational analysis:*** Determine the organization's goals, its resources and the allocation of the resources as they relate to the organizational goals.

(ii) ***Operations analysis:*** Focuses on the task or job regardless of the employee doing the job.

(iii) ***Man analysis:*** Reviews the knowledge, attitudes and skills a person must acquire to contribute satisfactorily to the attainment of organizational objectives.

Armed with the knowledge of each trainee's specific training needs, programmes of improvement can be developed that are tailored to these needs. The training programme then follows a general sequence aimed at supplying the trainee with the opportunity to develop his skills and abilities.

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(b) Preparing the instructor: The instructor is the key figure in the entire programme. He must know both the job to be taught and how to teach it. The job must be divided into logical parts so that each can be taught at a proper time without the trainee losing perspective of the whole. This becomes a lesson plan. For each part one should have in mind the desired technique of instruction, i.e., whether a particular point is best taught by illustration, demonstration or explanation.

(c) Preparing the trainee: This step consists of:

- Putting the learner at ease
- Stating the importance and ingredients of the job and its relationship to work flow
- Explaining why he is being taught
- Creating interest and encouraging questions, finding out what the learner already knows about his job or other jobs
- Explaining the 'why' of the whole job and relating it to some job the worker already knows
- Placing the learner as close to his normal position as possible
- Familiarizing him with the equipment, materials, tools and trade terms

(d) Presenting the operations: This is the most important step in a training programme. The trainer should clearly tell, show, illustrate and question in order to put across the new knowledge and operations. There are many ways of presenting the operation, such as explanation and demonstration. An instructor mostly uses the method of explanation. In addition, one may illustrate various points through the use of pictures, charts, diagrams and other training aids. Demonstration is an excellent device when the job is essentially physical in nature. The training programme may be followed as per the following steps:

(i) Explain the course of the job

(ii) Do the job step-by-step according to the procedure

(iii) Explain each step that he is performing

(iv) Have the trainee explain the entire job

Instructions should be given clearly, completely and patiently; there should be an emphasis on key points and one point should be explained at a time. The trainee should also be encouraged to ask questions in order to indicate that he really knows and understands the job.

(e) Try out the trainees' performance: Under this, the trainee is asked to go through the job several times slowly, explaining him each step. Mistakes are corrected, and if necessary, some complicated steps are done for the trainee the first time. Then the trainee is asked to do the job, gradually building up skill and speed. As soon as the trainee demonstrates that he can do the job in the right way, he is put on his own. The trainee, through repetitive practice, will acquire more skill.

(f) Follow-up: The final step in most training procedures is that of follow-up. This step is undertaken with a view to test the effectiveness of training efforts. The follow-up system should provide feedback on training effectiveness and on total

value of training system. It is worth remembering that if the learner has not learnt, the teacher has not taught.

Comparison of on-the-job and off-the-job training programmes

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Merits of on-the-job training

(a) It permits the trainee to learn on the actual equipment and on-the-job environment.

(b) It is a relatively cheaper and less time consuming as no additional personnel or facilities are required for training.

(c) As the trainee gets a feeling of actual production conditions, it increases the effectiveness of training.

Demerits of on-the-job training

(a) The instruction in on-the-job training is often highly disorganized and haphazard.

(b) Trainees are often subjected to distractions of a noisy shop or office.

(c) There is low productivity.

Training methods and their Suitability

The success of any training or development programme largely depends on the selection of the methods used. Here, it should be remembered that no single method can prove to be the best method. Various methods are suitable for various reasons. Table 5.1 shows the methods and their suitability for training.

Selection of a training method

The selection of an appropriate method depends upon the following factors:

(a) Nature of problem area: The choice of a training method depends upon the task to be done or the manner in which people interact with each other, i.e., the problem may be either an operational problem or a human relations problem.

(b) Level of trainees in the organization's hierarchy: The choice of a training method also depends upon the level of the participants.

(c) Method's ability to hold and stimulate the interest of trainees during the training period: A trainer has to consider alternative methods of presenting training material to participants also from the point of view of their ability to stimulate interest and facilitate retention of the matter.

(d) Availability of competent trainers: A training method is as effective as the ability of the trainer. He is the most important figure in the entire training programme. Therefore, before venturing into a training programme we have to first find a good trainer.

(e) Availability of finance: Availability of finance is crucial for any training programme. To make a training programme effective adequate finance is necessary.

(f) Availability of time: Training cannot be done in a hurry. Adequate time is necessary to make the training programme a success.

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Table 5.1 *Suitability of Training Methods*

Technique of Training	*Suitability*
Lecture	For large groups. For orientation or easy to understand material.
Case study	For small groups. Requires discussion and participation by all participants. It may be used to develop group decision-making skills.
In-basket technique	For small groups. For developing analytical and decision-making skills.
Conferences and seminars	For broadening knowledge, stimulating new ideas and changing attitudes and for developing skills.
Programmed instruction and computer-assisted learning	For either large or small groups where cost is critical. Permits people to study at their own convenience.
Simulation and gaming	For group projects. For developing decision-making skills required the integration of many factors.
Laboratory training	For groups of almost any size. For changing an organization's attitudes. For increasing organizational problem-solving capabilities.
T-group sensitivity training	For developing better understanding and better perceptions of co-workers.

5.4.6 Training Schemes in India

In this country we can identify three different classes of managers. In the early days of business enterprise in India, a businessman was supposed to be born and so was a manager. This has created a class of high priests of business management who monopolized most of the entrepreneurship and the control of industries in this country. With the advent of institutes of management and other institutions conferring degrees and diplomas in business administration, another class of managers—the professional managers—has been created in the industrial society. If in the earlier generation, managers were 'born', in the new generation they achieved managership. There is also a third class of business administrators on whom managership is 'thrust'; they are civil servants or bureaucrats of the public enterprises who have come into prominence from the time the business of government was no longer confined to the government of the country but was extended to the government of business.

In as much as management is now regarded as a profession, formal training for it becomes necessary like all professional education. However, in India until very recently, managers were expected to learn their job through experience or through job rotation. Recently, a welcome change is noticeable in more progressive organizations. Many organizations send their top and middle management members to attend executive development programmes organized by various staff colleges and professional institutions.

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A survey of the existing status of management training in India will be useful. In-service training in management subjects was introduced in India during the 1930s by companies owned by foreigners. At that time the university system did not offer any teaching programmes in management except in a few subjects, such as accounting, finance, commerce and economics as part of the existing commerce curriculum.

The establishment of the Indian Institute of Social Welfare and Business Management in 1945 marks the beginning of management education in India. In that year the Institute started the Diploma Course in Social Work (Labour Welfare). This institute enjoys the pride of position being the forerunner both in the field of education in personnel management as well as business and industrial management.

The first major effort to establish management education in India started in the early 1950s when the government sought the cooperation of the International Labour Organization, the Ford Foundation and some American Universities like Massachusetts Institute of Technology. Following the recommendations of the ILO and the Urwick Orr Missions to India, the government established a Productivity Centre at Bombay which has since then run training courses in management techniques and related subjects. It was in the 1950s that a number of universities started part-time and full-time courses in management.

NPC: Established by the Ministry of Industrial Development, the National Productivity Council with as many as 30 local councils runs a large number of training courses in industrial engineering.

Universities: During the 1950s, seven universities including Calcutta, Bombay, Delhi and Andhra started management education, mostly as three-year part-time diploma course in business and industrial management. Today, 30 universities run two-year Master's level programmes and three-year post-graduate part-time diploma courses. Calcutta University has recently introduced a Masters in business management (MBM) course and Burdwan University has introduced a Diploma in industrial relations and personnel management (DIRPM) course, which is equal to Diploma in social work (DSW) course.

Institutes of management (IIM): It was, however, with the establishment of the two institutes of management by the Government of India—one in Calcutta and the other in Ahmedabad—that management education in this country has got a tremendous boost. Both these institutes did pioneering work in taking Indian management education to levels comparable to those in advanced countries. The IIM Calcutta has a tie-up with the Massachusetts Institute of Technology, and the IIM Ahmedabad with Harvard University. In addition to the Master's level programmes and the Ph. D. level programme, these institutes conduct a number of short programmes designed for senior and middle management personnel.

The Government of India established the third national management institute at Bangalore in 1972. It offers a two-year post-graduate programme with orientation toward the needs of the public sector. The fourth IIM has been set up at Lucknow.

The National Institute for Training in Industrial Engineering came into existence in 1963. Though designed for instructions in industrial engineering, it has since added a large number of management programmes to its repertoire and has been running them successfully.

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Banks: The National Institute of Bank Management in Bombay came into being in the 1960s, endowed and patronized by the Association of Banks and the Reserve Bank. It conducts training courses for bank personnel and is engaged in a considerable amount of research relating to the banking sector. The Institute of Financial Management was established in Madras mainly to evolve study and offer instruction in the novel and emergent principles of development banking. It receives financial support from the Industrial Credit and Investment Corporation of India and other financial institutions.

In 1974, the Management Institute was established at Delhi. This is being supported by financial institutions and runs a large number of short courses for senior and top management personnel employed by financial institutions as well as for client companies. The nationalized banks have established their own staff training institutes to train their personnel. The Reserve Bank of India has two such institutes for in-service training—one at Bombay and the other at Madras.

Defence: The Defence Institute of Work Study was established in the 1960s at Mussourie. It runs short-term programmes for training Defence personnel. The Institute of Defence Management came into being during the mid-1960s at Hyderabad. It runs a number of short- and long-duration courses in management. Over the last few years, an attempt has been made to introduce management courses in other teaching institutes of the Ministry of Defence, such as College of Military Engineering at Pune and the Defence Staff College at Wellington in the Nilgiris.

Public administration: The Indian Institute of Public Administration at Delhi runs a number of courses on management subjects in addition to its own courses dealing with public administration proper.

Small industry: The Small Industries Extension Training Institute at Hyderabad was established in the 1950s by the Ministry of Industry. It has been conducting a large number of short courses in management and entrepreneurship suited to the needs of small industry. There are a few Small Industry Service Institutes (SISI) located in important cities in India which run programmes mostly for the development of entrepreneurial talent.

Sectoral institutes: The following institutes run management courses with specialized course of study: (1) the Ahmedabad Textile and Industrial Research Association, (2) The South Indian Textile Research Association, Coimbatore, (3) Sri Ram Centre for Industrial Relations, Delhi, (4) The Institute of Social Studies, Delhi, (5) Vaikunth Mehta National Institute of Co-operative Management, Poona, and (6) National Institute of Labour Management, Mumbai.

Numerous private organizations such as Datamatics Corporation, Davar's College and Bharatiya Vidya Bhavan, run short courses and evening classes in management subjects. International Institute of Management Sciences, Kolkatta, runs regular as well as correspondence classes in management.

Professional bodies also offer a number of part-time management courses, e.g., The Indian Institute of Industrial Engineers, the National Association of Material Engineers, the Computer Society of India, the Institute of Production Engineers, the O&M Society, the Operations Research Society of India, and the Indian Institute of Personnel Management.

Industrial enterprises: Perhaps the largest input of short-term courses in management comes from the business and industrial sectors. Many organizations have their own staff college. Hindustan Aeronautics at Bangalore, the Hindustan Steel Staff College at Ranchi, the Hindustan Lever Staff College at Mumbai and the Bharat Heavy Electrical Staff College at Tiruchirapally deserve special mention.

Management today is faced with numerous challenges emanating from all possible quarters. Management today has to tackle problems which were unknown to its predecessors even a decade back and this has made management all the more challenging. The challenges call for managers with better competence, greater creativity, higher standard of integrity and added resourcefulness. Herein lies the pivotal role of management education to revive, nourish and sharpen talents and faculties for fruitful and purposeful action. Gone are the days of intuitive management or management by the rule of the thumb. We can neither afford to wait for the 'genius' to appear anymore, nor can we undertake management on trial and error basis. Both these techniques have outlived their utility.

In the context of dynamic challenges, managements have necessarily to reorient their outlook, approach and attitude. Management must keep pace with the time. This calls for management training as the best insurance for continued growth and success as against obsolescence and decay.

Management education in India has been under fire for sometime. There is a mismatch between the quality of graduates turned out by most management institutes and what the country needs. It is simply degenerating into a sort of new 'public school education' producing more of 'mods' and 'Beatles'. Management education will loose its significance if it cannot relate itself to the problems and needs of the country; management education in our country should be tailor-made. Unless the training programmes are adjusted to specific needs, there is the risk of dilution of efforts which needs to be certainly avoided. The blind imitation of foreign styles of management may not be good for the country. We must not attempt to plan something that is alien to the environment and will not give the desired result.

Management training is as yet a very much neglected aspect of management in India. The training aspect of personnel management has not taken roots in our country yet and there is a lack of proper appreciation for the value of training. In many cases, training officers have been appointed just to maintain the image of a progressive outlook. Nevertheless, the realization of the role of training as a management tool is gaining ground.

5.4.7 Evaluation of Training

Training should be evaluated to determine its effectiveness. The basic criteria available to evaluate training programmes are:

(i) *Reactions of participants*: One of the simplest and most common approaches to training evaluation is assessing participants' reactions. Participants can give us insights into the content and techniques that they find most useful. Potential questions to trainees may include questions like:

- What were your learning goals from this programme?

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- Did you achieve them?
- Would you recommend the same training programme to others?
- What suggestions do you have for making the training programme effective?

(ii) *Performance of trainees*: Beyond what participants think about the training, it might be a good idea to see whether the trainees actually learned anything. Testing knowledge and skills before beginning a training programme gives a baseline standard on trainees that can be measured again after training to determine improvement. The training programme, trainer's ability and trainee's ability are evaluated on the basis of quantity of content learned and time in which it is learned and learner's ability to use or apply the content learned.

(iii) *Performance of the training itself*: It is necessary to evaluate the training programme itself. The methodology of evaluation consists of setting up a control group and an experimental group and follows a four-tier system (i) by the subordinate (ii) by the superior (iii) by the peers, and (iv) by the trainee in terms of observed behaviour before and after training.

(iv) *Behavioural change in the trainees*: Even after an effective training programme the trainees may not demonstrate behaviour change back on the job. Transfer of training refers to the effective application of principles learned to what is required on the job. There are several methods for assessing transfer of learned skills back to the job. These include observations of trainees, interviews with trainees' managers and examination of trainees' post-training performance appraisals.

(v) *Organizational effectiveness*: Some of the results-based criteria used in evaluating training include increased productivity, fewer employee complaints, decreased costs and waste and profitability. The ultimate result of the training programme should contribute to the organizational goals. If the training is to be effective, the organization should be the prime object. For this, we should diagnose organization needs as a prerequisite. We have to find out the ills that challenge the organization's effectiveness (both now and in the future) and that should form the base for action.

Kirkpatrick model of training evaluation

Companies spend substantial amount of money, energy and time on training and development of their employees. A four-level training evaluation proposed and developed by Donald Kirkpatrick remains a classic and most comprehensive model that has enormous practical value. These four levels are given as follows:

Level I: *Reactions:* One of the simplest and most common approaches to training evaluation is assessing participants' reactions. Participants can give us insights into the content and techniques that they find most useful. Most of the trainers and training institutes perform level I evaluation.

Level II: *Learning:* Beyond what participants think about the training, it might be a good idea to see whether the trainees actually learned anything. Testing knowledge and skills before beginning a training programme gives a baseline standard on trainees

that can be measured again after training to determine improvement. The training programme, trainer's ability and trainee's ability are evaluated on the basis of quantity of content learned and time in which it is learned and learner's ability to use or apply the content learned. Level II evaluation helps to understand the effectiveness of training delivery in terms of participants learning.

Level III: *Transfer:* This involves assessing the benefit of training to the work in the real world. Transfer of training refers to the effective application of principles learned to what is required on the job. There are several methods for assessing transfer of learned skills back to the job. These include observations of trainees, interviews with trainees' managers and examination of trainees' post-training performance appraisals. Level III evaluation is conducted anytime after six weeks to six months of training delivery.

Level IV: *Business results:* The ultimate result of the training programme should contribute besides the organizational goals like increased productivity, fewer employee complaints, decreased costs and waste, profitability, and so on, and the individual goals like personality development and social benefit to the participant. This is the most difficult part of the evaluation. This is usually carried out once in a year using survey techniques and business and training data.

5.5 SUMMARY

Some of the important concepts discussed in this unit are:

- Communication is a meaningful interaction among people.
- In a communication process model, before the communication can take place, an idea or a purpose in the form of a message or information is needed to be conveyed to the intended receiver of such a message.
- There are three primary methods of communication, namely written, oral and nonverbal.
- Written communication can be put in writing and is generally in the form of instructions, letters, memos, formal reports and so on.
- A communication network is a diagram showing communication patterns or relationships that are possible within a group or among individuals.
- Formal communication networks play a significant role in several aspects of organizational behaviour. An understanding is necessary as to which type of network is most useful in the areas of information flow, decision-making and satisfaction as well as commitment of group members.
- Noise interferes in the process of communication by distraction or by blocking a part of the message or by diluting the strength of the communication.
- There are many interpersonal barriers that disrupt the effectiveness of the communication process such as filtering, semantic barriers, perception
- Cultural differences can adversely affect communication effectiveness, especially for multinational companies and enterprises with a multi-ethnic workforce.

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Check Your Progress

7. Differentiate between training and education.
8. State any three benefits of training.
9. What is the objective of job training?
10. What are the drawbacks of on-the-job training?

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- In a rapidly changing society, employee training and development is not only an activity that is desirable, but one that an organization must commit resources to if it is to maintain a viable and knowledgeable workforce.
- Training is a process of learning a sequence of programmed behaviour. It is application of knowledge.
- A programme of training becomes essential for the purpose of meeting the specific problems of a particular organization arising out of the introduction of new lines of production, changes in design, the demands of competition, etc.
- Types of training programmes include induction or orientation training, job-training, refresher training, and so on. Training programme includes a number of steps like: discovering or identifying training needs, preparing the instruction or getting ready for the job, preparing the trainee, presenting the operation, try out the trainees' performance, follow-up or rewards and feedback.

5.6 ANSWERS TO 'CHECK YOUR PROGRESS'

1. Three objectives of effective communication are as follows:
   - To develop information and understanding among all workers and this is necessary for group effort
   - To foster an attitude which is necessary for motivation, cooperation and job satisfaction
   - To discourage the spread of misinformation, ambiguity and rumors which can cause conflict and tension
2. Various means of communication fall into four categories: (i) oral, (ii) written, (iii) nonverbal, and (iv) information technology.
3. Semantic barriers occur due to differences in individual interpretations of words and symbols. The words and paragraphs must be interpreted with the same meaning as were intended. A wrong word or a comma at a wrong place in a sentence can sometimes alter the meaning of the intended message.
4. The downward communication is from the superior to the subordinate or from the top management, filtered down to workers through the various hierarchical communication centres in between and may include such standard managerial tools as statement of the organizational philosophy and organizational directives, standard operating procedures, standard quality control procedures, safety regulations and other relevant material.
5. The Central Board of Worker's Education has on it representatives of the Central and state governments, organizations of employers and workers, and educational institutions, with a maximum of twenty representatives.
6. The following are the three problems in running a workers' education programme:
   (i) Week financial position of trade unions

(ii) Illiteracy amongst working class

(iii) Inter-union rivalries

7. While the term 'training' relates to imparting specific skills for specific objectives, the term 'education' involves the development of the whole individual socially, intellectually and physically.
8. The following are three benefits of training:
   (i) It equips the management to face the pressures of changing environment.
   (ii) It usually results in the increase of quantity and quality of output.
   (iii) It leads to job satisfaction and higher morale of the employees.
9. The object of job training is to increase the knowledge of workers about the job with which they are concerned, so that their efficiency and performance are improved. In job training, workers are enabled to learn correct methods of handling machines and equipment avoiding accidents, minimizing wastes, and so on.
10. The drawbacks of on-the-job training are as follows:
    (i) The instruction in on-the-job training is often highly disorganized and haphazard.
    (ii) Trainees are often subjected to distractions of a noisy shop or office.
    (iii) There is low productivity.

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5.7 QUESTIONS AND EXERCISES

Short-Answer Questions

1. Write a short note on the concept of communication.
2. What are the advantages of various means of communication?
3. What are the disadvantages of various means of communication?
4. Write a short note on 'communication networks'.
5. Differentiate between training and development.
6. How is training beneficial to employees?
7. List the merits and demerits of on-the- job training.

Long-Answer Questions

1. What are the various barriers that hinder effective communication? Discuss the methods of overcoming these barriers.
2. Explain the various principles of effective communication system.
3. Discuss the role of employee education in industrial relations.

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4. Explain the characteristics of various methods of training employees.
5. Describe the system model of training.
6. What are the basic criteria to evaluate training programmes? Discuss the Kirkpatrick model of evaluating training.

5.8 REFERENCES

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UNIT 6 EMPLOYEE HEALTH, SAFETY AND SECURITY

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6.0 INTRODUCTION

In this unit, you will learn about employee health, safety and security. Healthy employees help in increasing the production. On the other hand, poor health of employees increases absenteeism of employees. This affects the production process. Thus, you can say that healthy employees are more productive, confident in their work and are always regular. As far as industrial relations are concerned, the most significant contribution of the current period has been in the area of social security. The Employees State Insurance Act, 1948 introduced a scheme of compulsory health insurance and provides for certain benefits in the event of sickness, maternity and employment injury to workmen employed in or in connection with the work of non-seasonal factories. The language of the statute is sufficiently wide to provide for other benefits such as unemployment, compensation, and to extend the coverage to all workers—industrial, commercial, agricultural or otherwise. Two statutes, the Coal Mines Provident Fund and Bonus Schemes Act, 1948, and the Employees Provident Fund Act, 1952, seek to insure the economic security of industrial workers after they retire from active service and of their dependents in case of premature death.

In this unit, you will also learn about employee counseling. Today's business organizations are faced with the complex challenges of improving corporate survival, growth and profitability through its employees. In conjunction with counselling,

innovative approaches such as empowerment and quality of work life have emerged as powerful devices to accomplish these corporate goals.

Another important topic of discussion in this unit is industrial conflict and its management. Conflict can be defined in many ways and can be considered as an expression of hostility, negative attitudes, antagonism, aggression, rivalry and misunderstanding. Except in very few situations where the conflict can lead to competition and creativity so that in such situations the conflict can be encouraged, in all other cases where conflict is destructive in nature, it should be resolved as soon has it has developed and all efforts should be made to prevent it from developing.

This unit will also introduce you to the concepts of quality circles (QCs). Importance of quality in anything we do can never be underrated. The quality of work environment shapes the personality of employees and makes them committed to the organization. In many organizations, small teams of employees (called QCs) from within the departments meet for a few hours each week to identify quality and productivity problems, offer solutions to management and monitor their implementation.

6.1 UNIT OBJECTIVES

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

- Understand the meaning and significance of industrial health and safety
- Describe the features of various social security legislations in India
- Explain the various aspects of employee counseling
- Identify the various types of industrial conflicts and describe their features
- Discuss the measures to manage industrial conflicts
- Understand the meaning, objectives and techniques of quality circles

6.2 INDUSTRIAL HEALTH AND SAFETY: MEANING, SIGNIFICANCE AND PROGRAMMES

In an industrial plant, the health of the employees working there plays a vital role in the production. If the workers are not in a good health, they will not be able to give good output and this will directly affect the production. Hence, we can say that health of employees and production are directly proportional to each other.

Bad health of employees increases absenteeism of employees and hence, affects the production process. On the other hand, healthy employees help in increasing the production. Therefore, we can say that healthy employees are more productive, confident in their work and are always regular. The common health hazards that affect the employees physically are shown in Table 6.1.

These days the mental health of employees has become a matter of concern for the employers. There are three main factors that are increasing the mental problems of the employees. The first factor is the mental breakdown that occurs because of the result of pressures and tensions. The second factor is the mental disturbance of different types, which results in reduced productivity and hence decreases the company profit. The third and last factor is the mental illness, which arises due to personal disputes among the employees and high employee turnover.

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Table 6.1 *Common Health Hazards Affecting the Employees*

Health Hazards	*Causes*
Lung Cancer	Coke oven emission, asbestos, active or passive cigarette smoke
White Lung Cancer	Asbestos
Black Lung Cancer	Coal Dust
Brown Lung Cancer	Cotton Dust
Leukemia	Benzene, Radiation
Cancer of other organs	Asbestos, Radiation, Vinyl Chloride, Coke oven emission
Reproductive problems	Radiation
Deteriorating Eye-sight	Chemical fumes, Office equipments
Hearing Impairment	High noise levels

Noise control

The noise problems till the past few years were considered due to old age or they were not taken so seriously. Health problems due to noise came into existence with the invention of machineries for almost all the productions. These days noise from the machineries has increased problems like hearing impairment among the employees. It is said that exposure of an individual to noise for a long period of time results in deafness. Hearing impairment is not the only result of exposure to noise, other problems such as hormonal imbalance, changes in blood circulation, dizziness, increase in respiratory rate, heartburn, sleep disturbance and fatigue, also occur because of noise. The Factories Act, 1948 and Workmen's Compensation Act 1923 also includes noise problems as a disease that should be taken care of by the management.

It seems that the workers are used to with the noise but their body slowly suffers from the noise problems. Table 6.2 shows the noise level that the industry produces.

Work stress

Stress is defined as the reaction of disturbing factors around the environment and the result of those reactions. The factors that cause stress can be physical, psychological and behavioural. These factors are called the stressors. Stress can be positive or negative. **Positive stress** is the one from which an individual can gain something. Such stress is also called the Eustress. For example, when you do any kind of exercise, you stress yourself but the result of the exercise is a good health. Negative stress is the one from which an individual loses something.

The level of experiencing stress for each individual is not the same. These levels depend on how an individual reacts to stressors. Some might react to stressors in a faster pace and get deeply stressed while others might react slowly. The reaction of an individual to stressor depends on: the person's way to the situation, the past experience

Stress: Reaction of disturbing factors around the environment and the result of those reactions

Positive stress: One from which an individual can gain something

of the person, the presence of the social support and the difference between the individual's way of taking the stress.

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Table 6.2 *Noise Level Produced by the Industry*

Industrial Noise Levels	
Industry	***Sound Pressure Level (dBA)***
Detonator manufacturing and testing	94-140
Pharmaceutical	94-128
Foundry in motor manufacturing plant	104-120
Heavy engineering	94-124
Synthetic fibre manufacturing unit	90-117.5
Electronics	87-122
Hydel power plant	92-106
Road transport workshop	90-124
Cotton textile mill	92-105
Fertilizer plant	104-118
Fertilizer plant	104-11

Measures for improving health of industrial workers

In 1952, ILO adopted a comprehensive Convention No. 102 concerning Minimum Standards of Social Security in which provisions of medical care, sickness benefits, unemployment benefit, old-age and invalidity benefits, employment injury benefit, family and maternity benefit. The concept of social security has been further widened, so as to include provisions for housing, safe drinking water, sanitation, health, educational and cultural facilities as also a minimum wage which can guarantee workers a decent life.

The organized sector workers which constitute about 7% of the total workforce of about 400 million in the country are covered under various legislations providing social security to these workers. The major legislations providing social security to these workers are: the Employees' State Insurance Act, 1948 and the Employees Provident Fund & Miscellaneous Provisions Act, 1952 etc. These two legislations provide for medical and health insurance and provident fund & pension to the workers respectively.

The unorganized sector workers are those who have not been able to pursue their common interests due to constraints like casual nature of employment, invariably absence of definite employer-employee relationship, ignorance, illiteracy, etc. The unorganized workers are also generally low paid and a majority of them are devoid of any of the social security benefits like life and medical insurance, health care, maternity benefits, and old age pension etc. which are available to the workers in the organized

sector under the Employees State Insurance Act, 1948; the Employees Provident Funds and Other Miscellaneous Provisions Act, 1952 and the Factories Act, 1948, etc. (important provisions of these Acts will be discussed in the next section).

The Unorganized Sector Workers Social Security ACT, 2008 is an Indian Act related to Industrial Law to provide for the social security and welfare of unorganised workers and for other matters connected therewith or incidental thereto. Central Government empowered to make appropriate welfare schemes related to:

- Life and disability cover
- Health and maternity benefits
- Old age protection
- Any other benefit as may be determined by the Central Government

The National Commission for Enterprises in the Unorganized Sector (NCEUS) also presented its report on Social Security for Unorganized Sector Workers in May, 2006. The recommendations of the NCEUS's report , amongst other, included that any worker registered with the National Social Security Scheme for the unorganized workers, on payment of prescribed contribution, shall be entitled to National Minimum Social Security benefits including health insurance, maternity benefit, insurance to cover natural and death due to accident, old age pension to Below Poverty Line (BPL) workers above the age of 60 years and Provident Fund for above poverty line (APL) workers.

The National Common Minimum Programme (NCMP) of the present Government highlights the commitment of the Government towards the welfare and well being of all workers, particularly, in the unorganized sector. The NCMP states that: "The UPA Government is firmly committed to ensure the welfare and wellbeing of all workers, particularly those in the unorganized sector who constitute 93% of our workforce. Social security, health insurance and other schemes for such workers like weavers, handloom workers, fishermen and fisherwomen, toddy tappers, leather workers, plantation labour, beedi workers, etc. will be expanded."

Industrial safety

The life of an industrial worker is a hazardous one. An **industrial accident** may be defined as 'an occurrence which interferes with the orderly progress of work in an industrial establishment'. According to the Factories Act, industrial accident is 'an occurrence in an industrial establishment causing bodily injury to a person which makes him unfit to resume his duties in the next 48 hours'.

Industrial accident: An occurrence which interferes with the orderly progress of work in an industrial establishment

Causes of accidents: Accidents are usually the result of a combination of factors. According to safety experts there are three basic causes. These are:

1. Unsafe conditions: Also known as 'technical causes'. They arise when there are improper or inadequate safety guards on machines, when mechanical or construction designs are defective and unsafe; or when there is an absence of proper maintenance and supervision of these devices.
2. Unsafe acts: These acts may be the result of lack on the part of the employee or certain bodily defects or wrong attitudes on the part of the employee.

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3. Other causes: These refer to unsafe situational and climate conditions and variations – such as bad working conditions, rough and slippery floors, excessive glare, etc.

Accident prevention

According to the National Safety Council USA, accident prevention depends on three E's.

- Engineering – the job should be engineered for safety.
- Employees – employees should be educated in safe procedure and
- Enforcing safety – safety rules should be properly enforced.

Accident prevention can be achieved through two basic activities:

1. Reducing unsafe conditions, i.e., removing and reducing physical hazards.
2. Reducing unsafe acts. This can be implemented through proper selection and placement of employees, providing training to new employees in safety practices and through persuasion and propaganda.

Occupational diseases

Occupational diseases are the result of physical conditions and the presence of industrial poisonous and non-poisonous dust in the atmosphere. Occupational diseases usually develop over an extended period of time. They are slow and generally cumulative in their effect. Occupational diseases are the result of constant exposure to the influence of toxic substances of micro-organisms, of air-borne contaminants and stress-producing elements.

Occupational diseases: Result of physical conditions and the presence of industrial poisonous and non-poisonous dust in the atmosphere

6.2.1 Health Provisions under the Factories Act, 1948

The Factories Act, 1948 provides for health safety and Welfare. We explain below the relevant sections pertaining to Health and Safety of workers is explained below:

The Act, provides detailed instructions on cleanliness, disposal of wastage, ventilation, lighting, over-crowding etc. The factors which influence the general health of the worker is the working environment which tends to produce ill health. Every employee should protect his employees against health hazards by:

(i) Devoting adequate attention to working conditions

(ii) Substituting a less toxic substance for the hazardous one

(iii) Providing protective clothing

Sections 11 to 20 of the Factories Act provide detailed instructions. These are:

Sec 11 Cleanliness: Every factory shall be kept clean and free from effluvia and dirt. Accumulation of dirt shall be removed daily by some effective method.

Sec 12 Disposal of Wastes: Effective arrangements shall be made in every factory for the treatment of wastes due to the manufacturing process carried on therein, so as to make them harmless and for their disposal.

Sec 13 Ventilation and Temperature: Effective and suitable provision shall be made in every factory for securing and maintaining in every workroom, adequate

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ventilation by the circulation of fresh air and such a temperature as will secure to workers therein reasonable conditions of comfort and prevent injury to health.

Sec 14 Dust and Fume: Where dust or fume or impurity of such a nature as is likely to be injurious or offensive to the workers is given off as a result of the manufacturing process being carried on in a factory, effective measures shall be taken in the factory for prevention of inhalation or accumulation of dust and fumes in workrooms.

Sec 15 Artificial Humidification: In respect of all factories in which the humidity of the air is artificially increased, the State Government may make rules prescribing standards of humidification.

Sec 16 Overcrowding: There shall not be overcrowding in any room of the factory so as to be injurious to the health of the workers employed therein. There shall be at least 14.2 cubic meters of space for every worker.

Sec 17 Lighting: In every part of a factory where workers are working, there shall be provided and maintained sufficient and suitable lighting, natural or artificial or both.

Sec 18 Drinking Water: In every factory, effective arrangements shall be made to provide and maintain at suitable points conveniently situated for all workers employed therein as sufficient supply of drinking water.

Sec 19 Latrines and Urinals: In every factory, separate enclosed accommodation of latrine and urinals of prescribed types for male and female workers shall be provided for. Such accommodation shall be conveniently situated and accessible for workers at all times.

Sec 20 Spittoons: In every factory, there shall be provided a sufficient number of spittoons in convenient places and they shall be maintained in a clean and hygienic condition.

6.2.2 Safety Provisions under the Factories Act, 1948

Prevention of accidents is an objective which requires no expansion. This is one area in which there is complete identity of employer-employee interests. The employee does not want to be injured and the employer does not want to incur the cost of injuring him. The Act provides 20 different sections on obligatory safety measures.

Sections 21 to 41 of the Factories Act provide detailed instructions. They are discussed below.

Sec 21 Fencing of Machinery: Every dangerous part of every machinery shall be securely fenced by safeguards of substantial construction which shall be constantly maintained and kept in position while the parts of machinery they are fencing are in motion or in use.

Sec 22 Work on Near Machinery in Motion: Where in any factory it becomes necessary to examine any part of machinery while the machinery is in motion, such examination shall be made only by a specially trained adult male worker wearing tight fitting clothing. The clothing shall be supplied by the occupier.

Sec 23 Employment of Young Persons on Dangerous Machines: No young person shall be required or allowed to work on any machine unless -

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(a) He has been fully instructed as to the dangers and the precautions to be observed.

(b) He has received sufficient training or is under adequate supervision by an experienced person.

Sec 24 Striking Gear and Devices for Cutting off Power: When a device, which can inadvertently shift from 'off' to 'on' position is provided, arrangements shall be provided for locking the device in safe position. This is to prevent accidental starting of the machinery.

Sec 25 Self-action Machine: No traversing part of a self-acting machine shall be allowed to run on its outward or inward traverse within a distance of 45 centimetres from any fixed structure which is not part of the machine.

Sec 26 Casing of New Machinery: All machinery driver by power and installed in any factory, shall be completely encased unless it is safety situated, to prevent danger.

Sec 27 Prohibition of Employment of Women and Children Near Cotton: Openers.

Sec 28 Hoists and Lifts: In every factory every hoist and lift shall be of good mechanical construction, sound material and adequate strength.

Sec. 29 Lifting Machines, Chains, Ropes and Lifting Tackles: In every factory, cranes and other lifting machines shall be of good construction, sound material, adequate strength, free from defects and properly maintained.

Sec 30 Revolving Machinery: In every factory in which the process of grinding is carried on, there shall be permanently kept near each machine a notice indicating

(a) Maximum safe working speed

(b) The diameter of the pully.

Sec 31 Pressure Plant: If in any factory any plant or any machinery is operated at above the atmospheric pressure, effective measures shall be taken to ensure that the safe working pressure is not exceeded.

Sec 32 Floors, Stairs and Means of Access: All floors, steps stairs passages and gangways shall be of sound construction and properly maintained.

Sec 33 Pits Slumps, Openings in Floors etc: In every factory, pits, slumps, fixed vessels, tanks, openings in the ground or in the floor shall be securely covered or securely fenced.

Sec 34 Excessive Weights: No person shall be employed in any factory to lift, carry or move any load so heavy as to be likely to cause him injury.

Sec 35 Protection of Eyes: Screen or suitable goggles shall be provided for the protection of persons employed on or in immediate vicinity of any process which involve any danger or injury to the workers' eyesight.

Sec 36 Precautions Against Dangerous Fumes: No person shall be required or allowed to enter any chamber, tank, vat, pit, 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 unless it is provided with a manhole of adequate size or other effective means of exit.

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Sec 37 Precautions Against Explosive or Inflammable Dust, Gas etc: When in any factory any manufacturing process produces dust, gas fume or vapour which is likely to explode on ignition, all practicable measures shall be taken to prevent any such explosion.

Sec 38 Precautions in Case of Fire: In every factory, all practicable measures shall be taken to prevent outbreak of fire and its spread both internally and externally and to provide and maintain safe means of escape.

Sec 39 Power to Require Specifications of Defective Parts or Tests of Stability: If it appears to the Inspector that any building, machinery or plant may be dangerous to human life or safety he may ask the manager to carry out tests to prove their safety.

Sec 40 Safety of Building and Machinery: If any building, machinery or plant is dangerous to human life or safety, the Inspector may prohibit to use until it has been properly repaired or altered.

Sec 40 A—Maintenance of Building: Any building is in a state of disrepair, the inspector may ask the manager specifying the measures to be taken for such repairs.

Sec 40 B—Safety Officers: Wherein 1000 or more workers are employed and the manufacturing process involves any risk of injury, hazard to health, safety officers may be appointed.

6.3 EMPLOYEE SOCIAL SECURITY

The meaning of the term 'social security' varies from country to country. In socialist countries, the nation's goal is complete protection of every citizen. In capitalist countries, a measure of protection is afforded to a needy citizen in consistence with resources of the state. According to the social security (minimum standards) convention (No. 102) adopted by the ILO in 1952, following are the nine components of social security:

- Medical Care
- Sickness Benefit
- Unemployment Benefit
- Old-age Benefit
- Employment Injury Benefit
- Family Benefit
- Maternity Benefit
- Invalidity Benefit
- Survivor's Benefit

Social security in India

Social security schemes may be of two types:

(a) Social Assistance

Under this scheme, the state finances the entire cost of the facilities and benefits are provided. Here benefits are paid after examining the financial position of the beneficiary.

(b) Social Insurance

Under social insurance, the State organizes the facilities financed by contributions from both the workers and employers, with or without a subsidy from the State. Here, benefits are paid on the basis of the contribution record of the beneficiary without testing his means.

At present both types of social security schemes are in vogue in India.

6.3.1 Social Security Legislations in India

There are various laws and acts that have been passed since Independence to govern the functioning of a company. These provide social security to the employees of the company. Following are some of the important laws and acts:

- The Employees' State Insurance Act, 1948
- The Employees' Provident Fund Act, 1952
- The Workmen's Compensation Act, 1923
- The Maternity Benefit Act, 1961
- The Industrial Disputes Act, 1947

1. The Employees' State Insurance Act, 1948

The Employees' State Insurance Act was passed in 1948 to make various social welfare facilities available to the employees of a company through one agency. The Employees' State Insurance Scheme (ESIS) is a compulsory and causative scheme for the well-being of the employees. According to this Act, a company should provide medical benefits, such as medical attendance, treatment, drugs and injections to the insured employees having salary less than ₹ 6,500. The scheme covers their family members too. This Act is applicable only to the companies that employ 20 employees or more.

The ESIS is a breakthrough in the history of social security in India. The main objective of this scheme is to launch social insurance for the employees of a company in order to provide them social security during illness, long-term sickness or any other health hazard. According to this scheme, medical facilities are provided to the retired insured individuals and permanently disabled workers and also to their spouses at a minimal payment of ₹ 10 per month.

The ESIS Act is monitored by the Employees' State Insurance Corporation (ESIC), which is established by Central Government. ESIC has its own funds, known as ESI fund that provides cash benefits to insured persons, medical benefits, such as hospitals and dispensaries. Following are the benefits provided by this act:

- **Sickness Benefits** is given to the employees for a maximum period of 91 days. It is the half of the daily average wages of the employee. For getting the sickness benefit the employee should be under the medical treatment at a hospital maintained by the company. Extended sickness benefit is also given to the insured employees who suffer from long-term diseases. In this case, the employee can get sickness benefit for a maximum period of 309 days and the payment given to the employee is 63 per cent of the wages.

Sickness benefit is useful to an employee who is unable to work due to illness. The employee also gets medical treatment and financial support.

- **Medical Benefit** is a form of free medical treatment that an employee claims in case of illness, maternity and accident. The employee gets this benefit at an ESI hospital or dispensary of the doctor who is treating the worker. The family of the insured worker also avails this benefit. Workers suffering from critical diseases, such as T.B., Cancer, Leprosy and mental diseases are provided special facilities.
- **Maternity Benefit** is in the form of cash payment to the insured women for confinement, miscarriage or illness during pregnancy. This benefit is calculated at half of average daily wages. If the insured woman dies during the period of confinement, the nominee gets the benefit for the whole period.
- **Disablement Benefit** is given in case an employee gets permanently disabled. The benefit is given when an employee is caught in an accident within the factory. The annual benefits depend on the nature of disability. In case of temporary disability full pay is given to the employee for the period of disability. For permanent disability the employee is given cash benefit for life at a percentage of full rate.
- **Dependents' Benefit** is given to the insured, deceased employee's dependents. The benefit is given if an employee dies in an accident within the factory. The family of the employee is entitled to cash benefit under this scheme. The widow receives pension for life.
- **Funeral Benefit** is given in the form of cash up to maximum of ₹ 1,000 to the insured individual for the funeral. This benefit is given to the eldest person or the person who is actually incurring the expenditure at the time of funeral.

2. The Employees' Provident Fund Act, 1952

The Employees' Provident Fund Act launched in 1952 provides retirement benefits to the employees of a company. Retirement benefits include provident fund, family pension, and deposit-linked insurance. This Act is applicable to the companies in India (excluding the state of J&K) with 20 employees or more. It is not applicable to companies that registered under the Cooperative Societies Act, 1912 or under any other law related to cooperative societies with less than 50 individuals. This scheme is applicable to the employees getting a salary of ₹ 5,000 per month.

According to this Act, the employees need to contribute 8.33 per cent of their salary and dearness allowance comprising cash value of food allowances and maintenance allowances given to the employees. Now the government has increased the rate of employee contribution to 10 per cent. The government has introduced various provident fund schemes but the contributory fund scheme became more popular than the others. According to the contributory provident fund scheme, both employer and employee contribute an equal portion of the basic salary of the employee for the provident fund. The total contribution of the provident fund is then deposited with the Provident Fund Commissioner or any trust. The employees get the provident fund after their retirement. They also get 8 to 12 per cent interest on the provident fund. Under this scheme individual pension and family pension are provided to the employees of the company.

Government has introduced various schemes under this act. These are:

- **Employees' Pension Scheme, 1995** was introduced for the individual employees of a company in 1995. Under this scheme, the employees are provided 50 per cent of the salary as their pension after retirement or superannuation after completing 33 years of service.
- **Death Relief Fund** was established by the government in January 1964 in order to provide financial help to the nominees or the successor member of the family whose salary does not exceed ₹ 1,000 per month.
- **Gratuity Scheme** was a scheme introduced under the Payment of Gratuity Act, 1972. It is meant for factories, mines, oil fields, plantations, ports, railways, and other companies. This act is applicable for the employees who obtain salary less than or equal to ₹ 3,500 per month.
- **Employees' Deposit-Linked Insurance Scheme** was launched for the members of Employees' Provident Fund and the exempted Provident Funds on 1st August, 1976. According to this scheme, after the expiry of the member of the provident fund, the individual allowed to obtain the provident fund deposits would be given an extra payment equal to the average balance in the provident fund account of the deceased person during the last three years. This scheme is applicable only when the average amount is greater than or equal to ₹ 1,000.
- **Group Life Insurance** is a plan that provides coverage for the risks on the lives of a number of individuals under one contract. However, the insurance on each life is independent from the insurance of individuals. This facility is given to the employees who work with an employer without evidence of insurability. Following are the features of group life insurance:
  - o Insurance is provided to the employees without any evidence of insurability.
  - o The insurance contract is signed between the insurance company and the employer. There is no direct interaction of the employee with the insurance company.
  - o It is a yearly renewable insurance plan.
  - o In case of an employee's death, the claim received by the employer from the insurance company is given to the nominee of the employee.
  - o The premium of the insurance is either paid by the employer or by both the employer and the employee.

3. The Workmen's Compensation Act, 1923

The Workmen's Compensation Act was established by the government in 1923. According to this Act, a company needs to provide a payment of compensation to its employees and their families on the occurrence of organizational accidents and some disease leading to the death or nay kind of disability of the individual. The main objective of this Act is to ensure a commitment on the employers to offer compensation to the employees against accidents that occur during the course of employment. Following are the important features of The Workmen's Compensation Act:

- This Act provides social security to the employees of a company by providing them compensation against various risks.

- A company is liable to pay the compensation only if the accident or the injury to the employee has been caused during the course of employment.
- This Act also provides overtime pay and the value of concessions or benefits in the form of food, clothing, and accommodation.
- The amount of compensation that a company needs to pay an employee depends on the type of injury or disability suffered by the employee.
- The minimum amount of compensation that must be paid to an employee on the occurrence of permanent disability or death is ₹ 60,000 and ₹ 50,000 respectively. However, the maximum amount of compensation that must be paid to an employee on the occurrence of permanent disability or death is ₹ 2.28 lakh and ₹ 2.74 lakh, respectively.

This Act is applicable to all the employees who work in railways, factories, mines and other companies. It also applies to all the companies that are involved in an industry specified in Schedule II of the Act.

4. The Maternity Benefit Act, 1961

The Maternity Benefit Act came into being in 1961. This is a compensation given against the loss of salary to a woman who discontinues work during pregnancy. Following are the main objectives of this Act:

- It enables a female employee of a company to withdraw her services six weeks before her expected confinement date.
- It allow the female employee to discontinue her services after six weeks of confinement.
- It provides free medical treatment to a female employee during her pregnancy.
- It provides an expecting female employee the facility of public funds along with cash benefits so that she can take good care of herself and her child.
- It disallows the dismissal of a female employee during her pregnancy period.
- It allows the female employee to feed her baby twice a day during working hours.

5. The Industrial Disputes Act, 1947

The Industrial Disputes Act was passed in 1947. This Act is related to the termination and retrenchment of the employees by a company. It includes Sections 25-A to 25-S related to employee termination. Amongst these sections, section 25-C to 25-E are not applicable for the companies that employ less than 50 individuals. Sec 25-C states that when any permanent employee who has worked for more than or equal to one year is being terminated by the company, the company is liable to provide a compensation equal to the 50 per cent of her/his basic salary. Sec 25-C also states that the company is not responsible to give any compensation to an employee if he or she refuses to accept an alternative job equivalent to his/her previous job. A company is also not liable to give compensation if he or she does not reach the workplace at the scheduled time during the normal working hours at least once a day.

Sec 25-F states that a company cannot terminate the services of an employee without giving a written notice of one month provided the employee has worked for at least one year with the company. The notice must contain the termination information,

such reason for termination and wages for the period of notice. Similarly, according to Sec 25-FF, Sec 25-FFA and Sec 25FFF, a company is liable to give compensation in case of transfer of undertaking, 60 days notice to the employees before closing the company and compensation to the employees if the employer is closing down the company, respectively.

Section 25-G and Section 25-H handle the processes of retrenchment and re-employment for retrenched employees. Section 25-M states that a company cannot terminate a permanent employee without the permission of the Government or such authority as may be specified by the Government in the official gazette.

Section 25-N states that a company cannot terminate the services of an employee without giving a written notice of three months, provided that the employee has worked for at least one year with the company. The notice must contain the termination information, such reason for termination and wages for the period of notice. Sections 25-Q and 25-R deal with the notice of at least 90 days by a company before closing a company, special provisions relating to restarting a company closed down before operation of the Industrial Disputes Act, 1976 penalty for termination, and retrenchment without any prior notification and penalty of closure.

Drawbacks of social security schemes in India

(a) Our social security measures are fragmented in character. All social security provisions need to be integrated into one Act.

(b) The burden of various social security benefits, at present, is borne predominantly by the employer. Very little contribution is made by the workers or the State. This is against the social security principle.

(c) The social security benefits at present cover the industrial workers only. Workers in the unorganized sectors do not get these benefits.

(d) There is no effective implementation and enforcement of the Acts pertaining to social security schemes.

Counselling: Process of advising an employee or preferably in most cases, listening to his problem and enabling him to find from his own thinking and talking a solution for it which is satisfactory to himself

Check Your Progress

1. Name the three E's on which, according to the US National Safety Council, accident prevention depends.
2. How do occupational diseases usually develop?
3. What is the provision under Section 21 of the Factory Act, 1948?

6.4 EMPLOYEE COUNSELLING

This section is devoted to the study of employee/counselling.

6.4.1 Meaning and Significance of Counselling

In general, as a human relations technique, counselling is essential for effectiveness in managing human resources. Specifically, it forms a prerequisite to perform the preceding personnel functions of performance appraisal, promotion, transfer and separation.

Meaning

Counselling refers to the process of advising an employee or preferably in most cases, listening to his problem and enabling him to find from his own thinking and talking a solution for it which is satisfactory to himself. It relates to a method of understanding and helping people who are emotionally upset. Thus, it can also be defined as a discussion of an emotional problem with an employee with the general objective of minimizing it.[1] As this definition implies, counselling deals with emotional

problems and relates to 'trouble of the heart' rather than 'bother on the hands'. It precludes job difficulties which do not have much emotional repercussion. Moreover, as counselling involves discussion, it forms a process of communication.

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Effective counselling is a product of good communication skills, largely oral, by which an individual tends to share his emotions with another individual. Explicitly, a simple social discussion of an emotional problem between two persons is not counselling. For counselling, there must be an understanding on the part of the employee (counselee), while the other person (counsellor) must come forward to facilitate it. Finally, counselling is not merely limited to professionally trained counsellors who are usually required in cases of serious emotional difficulties. Supervisors and managers of the organization can effectively counsel employees having less serious problems.

In this context, the term 'emotional difficulty or problem' deserves explanation and illustration. It excludes serious mental illness. Although the emotional problems may not appear to be very significant or complex to others, they are important to the individual who has them and thus, whose productive efficiency or performance is affected by them. These problems also exert an impact on the individuals' 'off-the-job' activities in other settings. The examples of such emotional problems cited in literature include: an employee who feels that his progress is very slow and that he has no chance for promotion in the company; an employee who expects to be transferred soon and thus, who is disturbed by the insecurity caused by this situation; a woman employee upset by her supervisor's criticism of her work; an employee who has a higher paid job elsewhere but cannot decide whether to accept it or not; an employee in friction with co-workers on the job. Majority of problem employees in industry suffer from such minor emotional difficulties. If these people are given timely help, their productive energies are released and they become more effective in their jobs.

Significance

The need for counselling stems from the complexity of human beings. It is almost impossible for any human being to always have an optimal emotional balance. However, the point of 'blow-up' varies with every human being because of individual differences with respect to tolerance of emotional problems. Suppression of emotional problems which gets reflected in an individual's low morale and reduced performance, is dangerous both to the individual and the organization. As the management cannot afford to ignore any mechanical faults, so also it cannot overlook the emotional problems of its people. Keeping in view the necessity for maintaining a reasonable emotional balance and directing the emotions of employees towards constructive applications, the need for counselling was realised for the first time in Hawthorne Works in 1928. The counselling programmes received further momentum during World War II through staff services. After the war, the personnel function of counselling was assigned to the line supervisors.

Today, the need for counselling may arise from varied on- and off-the-job conditions such as dissatisfaction, resistance to change, alienation, frustration, conflict and stress. Among these conditions, stress deserves special attention in view of its major contribution to emotional problems in today's complex work environment. Although counselling forms an important technique to prevent and treat emotional problems stemming from stress at work, there are a number of other techniques which can also be used independently to accomplish this goal. One of the most promising of

such techniques is the bio-feedback process which enables the individual to gauge the undesirable effects of stress from the feedback provided by instruments that measure symptoms of stress such as heartbeat, oxygen consumption, stomach acid flow and type of brainwaves. Thus, he can reduce undesirable effects of stress. Likewise, practice of Zen, Yoga and transcendental meditation also help to manage stress. Specifically, in transcendental meditation, attempt is made to meditate daily for two periods of 20 minutes through concentration on silent repetition of a *mantra*. One survey of several organizations in the USA where employees actively practised meditation for about a year revealed that the meditators had significantly more job satisfaction, better performance skills, less desire to leave the job and improved interpersonal relationships than a controlled group. Notwithstanding the growing use of meditation in reducing emotional strains, counselling forms the most frequently used technique of dealing with emotional problems at work. As pointed out earlier, the general objective of counselling is to provide support to the emotionally disturbed employee to deal with his problem so that he develops self-confidence, understanding, self-control and ability to work effectively in the organization.

6.4.2 Functions of Counselling

Counselling accomplishes the objectives discussed earlier by performing one or more of the following six functions: (*i*) advice, (*ii*) reassurance, (*iii*) communication, (*iv*) release of emotional tension, (*v*) clarified thinking, and (*vi*) reorientation.

(i) Advice. Advice is mistakenly considered as equivalent to counselling. However, it forms one of its several functions. Advising involves judging an individual's emotional problems and marshalling a course of action. It causes complications because of the inability of a person to understand another person's problem and suggest a solution for it. It also provides an inferior status to a counselee who remains dependent on the counsellor. Despite its ineffectiveness in resolving emotional problems of an employee, advice-giving is the most natural phenomenon practised between a superior and a subordinate in day-to-day work situations.

(ii) Reassurance. Counselling performs the function of reassurance which refers to a way of providing courage to an individual to deal with a problem or developing confidence in him that he is facing towards an appropriate course of action. However, the difficulty with such assurance is that the counselled does not accept counselling intrinsically. Even when he is reassured, the counsellor's re-assurance fades away with the reemergence of the problem. Despite its weaknesses, reassurance is useful in certain situations, if handled carefully.

(iii) Communication. Counselling facilitates both upward and downward communication. It provides the employee with an opportunity to express his feelings in an upward direction to the management. Thus, the management comes to know how the employees feel. The counsellor should keep in confidence the names of individual employees and interpret their feelings and convey to the management. These feelings expressed through logically classified statements may relate to their emotional problems with varied aspects of the organization. Counselling also facilitates downward communication where the counsellor helps to interpret varied policies and programmes of the company to people who tend to discuss their problems related to them.

(iv) Release of Emotional Tension. Release of emotional tension or catharsis forms a significant function of counselling. By expressing the emotional problem during the process of counselling, the counselled gets an emotional release from his frustration and allied problems. Indeed, as soon as an individual starts explaining the problems to an active listener, his tensions tend to subside and his speech becomes coherent and rational. Although this release of tension may not necessarily solve the problems, it removes mental barriers and enables the person to again face his problems boldly.

(v) Clarified Thinking. Counselling facilitates clarified thinking which is an outcome of emotional release. It can be generated quickly by a skilled counsellor acting as a catalyst. It may partly or entirely take place outside the counselling session as a result of certain developments during the counselling relationships. With the emergence of clarified thinking, the individual tends to accept responsibility for solving his emotional problems in a realistic way.

(vi) Reorientation. Last but not the least, counselling performs the function of reorientation which relates to a change in an individual's psychic self stemming from a change in his basic goals and values. It involves a shift in one's level of aspiration corresponding to reality and enables one to recognize and accept one's own limitations. However, it can be largely generated by a professional counsellor rather than a line executive.

6.4.3 Accomplishment of Counselling

While performing these functions, counselling may have several accomplishments. Maier indicates seven such accomplishments of counselling: (*a*) identification of attitudes and values, (*b*) reduction of frustration, (*c*) location and acceptance of true problems, (*d*) stimulation of problem-solving, (*e*) development of responsibility, (*f*) conformity of solution with value system, and (*g*) availability of expert knowledge.

- Counselling helps in identifying attitudes and needs, and enables the management to recognize and deal with misunderstandings stemming at work.
- It reduces tensions and relieves frustration of the individual in view of the expression of hostile and regressive behaviour in a permissive climate.
- As soon as pockets of frustrated feelings are discovered and hostilities expressed during counselling, the individual is able to locate and accept his true problem. Prior to this accomplishment, the individual is preoccupied with his/her emotional feelings and thus, not able to focus on his/her true problem. Once he/she is ready to accept his/her problem, he/she is able to see it constructively.
- Counselling stimulates problem-solving. The problem-solving behaviour refers to a search for a way to circumvent, remove or overcome a barrier which is hampering progress towards a goal. During the counselling session, the individual tends to explore varied courses of action in the context of prevailing realities and before reaching the best course of action, he examines and evaluates different routes to his goal.
- Counselling facilitates the development of responsibility within the individual. As nothing develops a sense of responsibility better than responsibility itself, the skilled counsellor contributes towards this accomplishment by providing the individual with the responsibility for solving his own problem.

- The solution discovered during the counselling fits the personal value system of the individual. Indeed, as the individual is induced to solve his own problem, the solution is likely to conform with his personal value system. If decisions are imposed from above, they may be in contradiction to his value system and thus, the individual may develop guilt feelings which may be more dangerous to him than the problem itself.
- Counselling provides the individual with the expert knowledge and relevant information to solve his problem. The counsellor (supervisor) may have useful knowledge which he may provide at the problem-solving stage to help the individual to solve his problem by taking effective decisions. Obviously, such type of knowledge and information is provided only when the counsellee really wants it and is ready to explore alternative courses of action constructively.

6.4.4 Types and Processes of Counselling

Depending upon the extent of direction provided by the counsellor to a counsellee, Davis classifies counselling in three forms: directive, non-directive and cooperative.

Directive counselling: A process of listening to an employee's emotional difficulty, deciding with him what can be done and then telling and motivating him to do it

1. Directive counselling

Directive counselling is a process of listening to an employee's emotional difficulty, deciding with him what can be done and then telling and motivating him to do it. In usual practice, although its major role relates to advice, it also performs to a certain extent other functions of communication, release of emotional feeling and, in some cases, clarification of thinking. However, advice is generally unwise and thus, of questionable value. In situations where the counsellor is an effective listener, there is an enhanced possibility on the part of the counsellee to experience emotional release and to clarify his own thinking. The advice and reassurance provided during the course of directive counselling may become worthwhile if the employee is enthused by the counsellor to take a workable course of action.

Non-directive counselling: Process of skilfully listening and inducing an employee to describe his bothersome emotional difficulties, so that the counsellor can understand them and ascertain plausible courses of action

2. Non-directive counselling

Because of its focus on the counsellee rather than on the counsellor, this form of counselling is also called client-centred counselling. It refers to the process of skilfully listening and inducing an employee to describe his bothersome emotional difficulties, so that the counsellor can understand them and ascertain plausible courses of action. It allows the individual, overwhelmed by emotional problems to speak about them as long as he wishes without any interruption with an empathetic and an appreciative listener in the counsellor, who shows a feeling of empathy rather than of sympathy and who acts with an attitude of deep respect for the individual having a problem. He understands that the individual himself is best qualified to resolve his own problems. Accordingly, the counsellor helps the individual realize that goal and thus, allows him to talk about anything which may even seem to be irrelevant. The counsellor is required to have an agile and a receptive mind, and mirror each individual's feelings to enable the person to solve his problem. The counsellor encourages him to express his thoughts on the problem and concentrate on it. The counsellee may proceed from mere superficialities to deeper problems and with the release of his feelings, tends to reconcile himself with other persons and himself.

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Theory of non-directive counselling

Rogers, the founder of non-directive counselling, summarizes the theory of this method as: "... within the client reside constructive forces whose strength and uniformity have been either entirely unrecognised or grossly underestimated .... In most, if not all, individuals there exist growth forces, tendencies towards self-actualisation .... The individual has the capacity and the strength to devise, quite unguided, the steps which will lead him to a more mature and more comfortable relationship to his reality .... All of the capacities ... are released in the individual if a suitable psychological environment is provided."

Thus, non-directive counselling appears to be instrumental in the release of dynamic forces within the individual and resolving his emotional problems himself. Probably, he can understand himself better than any other person if placed in an appropriate psychological environment. This will also help him to follow more effectively the course of action evolved by himself. This method is also in line with democratic or participative leadership. The counsellor considers the counsellee as socially and organizationally equal. He attempts to listen between the lines to understand the complete meaning of a counsellee's feelings. He also looks for painful events and feelings which the counsellee attempts to avoid in discussion with him. He follows an 'iceberg model' of counselling which assumes that there are more hidden feelings under the counsellee's communication than are actually revealed, and that the latent content of the message embodies deeper feelings than the readily evident manifested content.

Processes of non-directive counselling

Harrell indicates that non-directive counselling embodies four techniques relating to (*i*) listening, (*ii*) focus on feeling, (*iii*) emotional detachment, and (*iv*) smooth ending of the interview.

(i) Listening. Once the counsellor has provided proper conditions and has clarified his role, his most important function relates to listening. The major purpose of listening is release of emotional expression. The counsellee is required to talk largely during the counselling session. As an emotionally upset person, neither does he wants to talk to someone to obtain information nor to have that person solve his problem. Rather, he is confused and does not understand what his real problems are and thus, cannot ascertain what is the best course of action to follow. As he is frustrated and not motivated, he is not ready to accept advice. Therefore, the counsellor's role is to help him to get rid of his frustrations, become motivated to understand what he wants and decide what values and goals are significant to him. While performing this role, the counsellor listens to the counsellee expectantly without expressing either approval or disapproval. He provides his whole-hearted attention to the counsellee and indicates occasionally that he is understanding his (counsellee's) line of thinking.

(ii) Focus on Feeling. As counselling relates to emotional rather than intellectual problems, there is a focus on feelings and not facts. Accordingly, the non-directive counsellor tends to stimulate further expression of the counsellee's feelings. In other words, he focusses his attention on the feelings and attitudes rather than on the content of the counsellee's remarks. His role consists in mirroring what the counsellee asserts for varied reasons. Use of counsellor's own terms and

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symbols by the counsellor facilitates the former's thinking. Indeed, the process of 'mirroring' returns the counsellee's own thoughts to him and thus, enables him to realize that his words and ideas justify (or conceal from himself/herself) the feelings which form the real determinants of his behaviour. On the other hand, if the counsellor tends to interpret his (counsellee's) thoughts or leads him to an obvious conclusion, it will detract him from the path of reasoning and will result in the failure of counselling. The counsellor must ensure that the responsibility for problem remains with the counsellee. There may be moments of silence on the part of the counsellee while he is engrossed in deep thought. In such situations, the counsellor is required not to interrupt his thoughts.

(iii) ***Emotional Detachment.*** The counsellor is required to maintain emotional detachment during the counselling session and remain impervious to any remark of the counsellee. The counsellor must ensure that the disturbed individual feels completely free to express his varied feelings. The effectiveness of counselling also necessitates that the counsellor does not disagree with the counsellee when he is antagonistic or contradicts the company policy or morality and ethics. In the role of a counsellor, the supervisor, especially when he is an 'autocrat', may find it difficult to keep calm and remain emotionally detached in such situations. In compliance with adherence to high professional standards, he may resolve this emotional conflict by rationalizing that such complaints heard in a confidential counselling session are not to be held against the disturbed employee. In course of time, the employee may realize that he himself was the cause of his problem rather than the supervisor or the company. He may then be glad to realize that his supervisor was broadminded enough to forgive him. If the employee complains about a correctable shortcoming of the company or the supervisor, attempts may be made to remove it.

Another problem which the counsellor faces relates to detachment from feelings with which he would agree in day-to-day conversation. Thus, for example, when the counsellee states his positive attitudes, the counsellor should reveal that he understands them rather than expresses his agreement with them. Again, when the employee (counsellee) expresses his deep positive personal feelings towards him, the supervisor (counsellor) should recognize the expression of feelings for whatever it is worth without reacting emotionally. Indeed, the positive feelings represent progress over frustrated feelings of hostility. By emotional involvement, the counsellor is diverted from his path of helping the upset employee and does not perceive the counsellee's problem clearly, or solve it effectively. Therefore, although permissive in approach, he must remain emotionally detached for which the employee will be grateful. It must be remembered that the nature of an employee's feelings expressed during the counselling session is a function of his needs. Thus, while the expression of anger relates to his hostile feelings rather than what the supervisor has done, an expression of deep appreciation for the supervisor merely represents his inner feelings which have surfaced. In both situations, the supervisor must remain calm without either reacting positively or negatively. Finally, the counsellor is required to deal tactfully with situations demanding his advice. The most effective way to tackle such situations is to throw back the question to the employee so that he further elaborates his point and in doing so gains insight into his problem.

(iv) Smooth Ending. Last but not the least, there is the problem of ending the counselling process smoothly. Usually, the duration of each non-directive counselling session is around an hour. In less than this duration, it may not be possible for the counsellee to complete his 'story' and thus, he may tend to continue longer. However, it does not mean that the session should continue till the counsellee reaches a definite conclusion. If the counsellee fails to arrive at a definite conclusion even at the end of a session, he may be prone to think more about his problem. As a result of this groundwork, he is more likely to solve his problem in the subsequent session(s). A safe course of action in this context is that the counsellee should be told in advance the time available for the counselling session and adhere to it strictly despite how unresolved his problems appear to be at the end of the session. Attempts may be made to further fix a date and time to continue the discussion with the counsellee. Usually, when the counsellee expects some remarks from the counsellor, it is the optimal moment to end the session even if the problem remains unresolved. The issue of length and number of counselling sessions will be further discussed in the next section of this chapter.

Limitations of non-directive counselling

Notwithstanding its varied advantages, non-directive counselling has many limitations. Since it requires several hours of counselling, it is a highly time-consuming and costly affair. Hence, it is possible for a supervisor to assist only a limited number of employees in organizational settings. Engaging thereby a professional counsellor to perform this function is in itself very costly. Its effectiveness is also dependent on how receptive a counsellee is to the counsellor and his modus operandi. A counsellor is required to possess the drive for the attainment of mental health and adequate social intelligence to visualize problems to be resolved and to have enough emotional stability to deal with them. Above all, the counselling itself may not provide any solution as it has no built-in mechanism to remove the counsellee from his native environment which caused his problem or to be able to modify it. Indeed, an effective solution to the problem may relate to an improved environment so as to provide a psychological support to the employee. In such situations, the management may be advised to take corrective action to improve the individual's work environment.

3. Cooperative counselling

As Davis indicates, while the use of pure non-directive counselling is not quite widespread in work settings because of its varied limitations, the adherence to directive counselling appears to be inappropriate in modern day democratic work situations. This indicates the need for application of a counselling method which falls between the two extreme forms of non-directive and directive counselling. Modern executives can integrate the two forms of counselling to accomplish their advantages and throw off their disadvantages. Cooperative counselling meets this need of the present industrial settings. It is neither entirely counsellee-centred nor counsellor-centred but requires both of them to come forward with their varied knowledge, perspectives and insight to resolve the counsellee's problems in a cooperative way. Thus, it can be defined as a cooperative process of mutual discussion of an individual's emotional problems and establishment of conditions conducive to their solutions. It can be practised by people

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who do not necessarily possess full-time professional training in counselling. This form of counselling is also free from the autocratic approach of directive counselling.

Although it demands some amount of training and time to practice, it is certainly within the reach of managers. It initiates the active listening technique of non-directive counselling. However, the cooperative counsellor tends to play a more positive role than the non-directive counsellor with progress of the discussion. The cooperative counsellor tends to provide the counsellee with whatever knowledge and insight he himself possesses and discusses the situation from a broad organizational perspective. Adherence to this approach enables the counsellee to see different perspectives for purposes of comparison. This form of counselling accomplishes the four functions of counselling including reassurance, communication, emotional release and clarified thinking. However, it is not possible to accomplish reorientation through this type of counselling for which the counsellee can be referred to as a professional counsellor. Likewise, if there is a need for directive action, the management can do so through its supervisory powers rather than through its counselling role. This type of counselling is most appropriate for practising managers to help resolve day-to-day emotional problems of their employees. Its major contribution to management practice relates to a shift of the traditional management role of directive counselling towards a participative management role of non-directive counselling.

6.4.5 Practical Considerations in Counselling

Some practical considerations in counselling relate to responsibility of counselling; length and number of sessions; time and place of sessions; and need for keeping confidence.

1. Line responsibility

Counselling of employees with minor emotional problems is certainly within the capabilities of line management. Therefore, the responsibility of counselling in less serious cases of emotional difficulties should not be shunted to special staff counsellors. The line supervisor must aid the employees in solving problems for which he is responsible. In addition to fostering the relationship between a supervisor and the employee, use of supervisors as counsellors has several other advantages.

First, they are more available to employees than the staff counsellors.

Second, counselling by the supervisor forms a more natural part of job relationship than counselling by the staff specialist.

Third, as a line responsibility, it does not involve any stigma.

Fourth, the job performance of the counsellee (employee) is known to the counsellor (supervisor).

Fifth, there is no need for the induction of a counselling programme when it is conducted by the supervisor.

Finally, skills acquired during the counselling sessions are useful in performing other supervisory functions including interviewing and resolving several communication problems.

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2. Use of staff counsellors

On the other hand, the use of staff counsellors has several advantages. They provide more skilful services, more confidential nature of counselling, less conflict in view of other duties, lack of bias due to the knowledge of an individual's work history, and absence of emotional involvement in the case of a problem employee. However, there are certain disadvantages related to the use of staff as a counsellor. Frequently, the supervisor may suspect that his subordinate is criticizing him while talking to the staff counsellor. Although it provides the employee with an opportunity to express his criticism of his supervisor, there exists a possibility for developing antagonism and further worsening the relationship between the supervisor and the subordinate. Moreover, the employees may feel embarrassed to contact the staff counsellor who, comparatively speaking, is a stranger to discuss their emotional problems. However, the staff counsellor may be useful in counselling employees who are either upset by off-the-job problems such as domestic problems, or who suffer from serious emotional difficulties.

3. Length and number of sessions

A number of counselling sessions are required to help a disturbed or confused individual to improve his emotional adjustment. These sessions may have a duration of 45 to 60 minutes, and the counsellee is made to realize that the predetermined time is his if he intends to use it. This helps both the counsellor and the counsellee to utilize the time at their disposal adequately. Moreover, the spacing of sessions helps the counsellee to consolidate gains that grow between them. The requirement of the actual number of sessions varies with the nature of the counsellee's problem. Although improvement may occur within counsellee even after one session, 10 to 20 sessions are considered as typical for personal off-the-job problems involving personality difficulties. In situations where problems are not rooted in an individual's past, there is need for fewer sessions to locate the disturbing condition and manage it effectively. Even single counselling session is found to solve some complex job problems, prevent others getting involved and serve as the means for clarification of others' problems.

4. Time and place of sessions

An attempt may be made to take into account the feelings of the counsellee in making arrangements for fixing the time and place of counselling sessions. The sessions must be of interest to both parties arranged by mutual consent and convenience. The setting for counselling must be one where the counsellee can feel at ease. Care should be taken not to conduct counselling in a strained atmosphere, such as caused by elegant surroundings or caused by distractions and interruptions. If the workplace does not provide suitable surroundings, counselling can be conducted elsewhere, for example, in a coffee house.

5. Need for keeping confidence

The counsellor must keep full confidence of thoughts shared with him by counsellees. Use of information received through permissive method of counselling as a bargaining point with the employee (counsellee) can do more harm in the long run than the immediate gains that may accrue from counselling if confidentiality is maintained. In situations where the employee commits assertions to a counsellor (supervisor) for which the

former is remorseful or worries about subsequently, the latter must display a mature attitude of well-being and show that he is not annoyed. As an experienced listener, the counsellor tends to learn not to be annoyed when the counsellee speaks frankly on how he feels about him. Whenever there is need to introduce certain changes based on disclosures during counselling, the counsellor should do so only with the consent of the employee to avoid the feeling that the counsellees' confidence has been betrayed.

6.4.6 Indian Perspectives on Counselling

Counselling has vast potential for accomplishing an effective performance in industries. It can foster superior-subordinate relationships, help the management to understand the limitations of seniors and problems of juniors, improve communications and thus quality of decisions, help employees to recognize their strengths and weaknesses, accomplish goal clarity, and assess the impact of management decisions. Although several Indian organizations encourage counselling, most of them go about it incorrectly. It is usual to come across managers who mistakenly regard counselling as 'giving feedback in a threatening way', correcting the undesirable or unsatisfactory behaviour of employees by pointing it out and warning them not to repeat these behaviours further. As described earlier, counselling is helping the employee to recognize his own strengths, weaknesses and potentials with a view to prepare action plans for his own development and not for the counsellor to abuse information thus gleaned by giving feedback and warning and pointing out and enforcing norms of performance, which relate to functions of other executives.

Findings of a survey

The above observations are based on a survey conducted by Rao and Abraham[2] on the current status of counselling practices in Indian industries. As the survey indicates, out of 53 organizations under study, 41 (80 per cent) required their executives to counsel their subordinates, and 12 (20 per cent) did not have such a requirement. Thirteen (32 per cent) of these 41 organizations required their executives to counsel their subordinates once a year. Two (5 per cent) organizations required their executives to counsel twice a year, and one (2.5 per cent) organization required counselling four times a year. Twenty-seven (61 per cent) organizations reported that their executives were required to counsel their subordinates as often as it was possibly needed and that they did not have any established pattern of counselling. However, Rao and Abraham remark that it is a very deceptive factor of the counselling practice. It was common for some organizations to assert that they required their executives to 'correct' their subordinates through counselling as often as possible. These organizations did not really have performance counselling which necessitates a review of the performance of an employee on all aspects periodically. It is essential to have the time schedule stated and to adhere to it.

In conjunction with the objectives of counselling, the extent of time and attention devoted to it also deserves mention. It provides the counsellor with an opportunity to know and understand the employee's strengths, his perceptions, his ability to interpret the organization, its process and allied issues. There is need to help each individual to identify his strengths and weaknesses rather than tell him about them. A lack of proper understanding of counselling and its skills forms a vital reason why some employees

do not take counselling seriously. In response to a question about how many employees take counselling seriously, only 7 (17 per cent) organizations indicated in the affirmative, 27 (64 per cent) organizations asserted that only some of the employees took it seriously, and 8 (19 per cent) organizations declared that very few took it seriously.

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Study of Counselling in an Engineering Organization

Controlling absenteeism

S.K. Bhatia attempts to determine whether counselling can be effective in controlling absenteeism among chronic absentees who had a double or a higher rate of absenteeism as compared to the average absentee rate in a large engineering enterprise. Prior to the application of counselling, all the 621 habitual absentees identified in the organization were persuaded to improve their attendance through the letter circulated by the management. In most of the cases, detailed case studies were also prepared and in some cases, counselling was also extended to the homes of the employees. Counselling sessions were initiated in May 1980 and continued over a period of eight months. They were conducted in two ways.

First, for 68 habitual absentees, one-to-one counselling was conducted during sessions ranging from 20 to 30 minutes.

Second, in the case of the remaining 553 absentees, the counselling was used on a group basis in sessions lasting for two to three days.

Trust-building

A follow-up was carried out. Counselling was performed both by a trained internal team and a few external specialists. The objective of the counselling programme was to provide the habitual absentees with an opportunity to understand themselves, facilitate their personal growth and help them realize their responsibilities towards their work and family. The basic thrust of the counselling related to development of trust. Specifically, stress was laid on communication through exercises in listening, responding and self-disclosure and understanding of one's own values, attitudes and beliefs towards oneself and others. The habitual absentees were helped to assess their respective striking patterns to satisfy basic emotional needs and enhance the levels of their respective trust and self-confidence. Attempts were also made to develop the personality of the habitual absentee with a view to enable him to understand himself and relate to others in a meaningful way. Last, the counsellors also helped the absentees to deal with their concrete problems and conflicts.

Improvement in attendance

Analysis of results revealed that one-to-one counselling and group counselling led to 51 and 50 per cent improvement in attendance, respectively. In the case of those who were not chronic cases, there was better improvement. It also revealed that if there was no continuous follow-up, employees reverted back to their original habit of absenteeism. Overall, the following results were accomplished through the counselling programme.

- Fifty per cent of the habitual absentees improved considerably in their attendance.
- There was not only a reduction in the duration of absence but also in the number of spells of absence.

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- There was a 19 per cent improvement in attendance leading to a saving of 2,54,716 man-hours during 1980 as compared to 1979.
- One per cent overall absenteeism in the plant was reduced by tackling only habitual absentees.

Side-effects

In conjunction with improvement in absenteeism, there were also some other side-effects (improvements) which included:

- Disappearance of the employees' fear and suspicion about the counselling programme and conviction that its real purpose was to help them to overcome certain problems causing excessive absence.
- An opportunity for employees to express their problems and worries to a helpful counsellor as they appeared to be greatly relieved thereafter even showing signs of cheerfulness (as perceived by them). Their worries were rooted in favouritism by their supervisor and the indifferent attitudes of co-workers and thus counselling appeared to be an invaluable aid in discovering sources of dissatisfaction and correcting them.
- In few cases, the cause of the depressed state of mind could be traced to such factors like domestic unrest, strained marital relations, dispute over property and conflict within the joint family. Counselling helped such employees to realize that by worrying about such problems at work, they could not be solved, and it was therefore, a wasteful exercise.
- In a number of cases, where employees were overwhelmed by social evils of alcoholism and indebtedness, counselling helped them to overcome them through self-introspection and encouragement.
- Bringing together the habitual absentees participating in the counselling programme and develop a good rapport among themselves as a group; this could be utilized as a basis for creating a healthier climate of productive relations at work.
- Employees whose attendance did not improve despite counselling programme, could be tackled through other measures including a judicious mixture of counselling and disciplinary action.

As Bhatia concludes, counselling was substantially effective in controlling habitual absenteeism in the organization. However, its effectiveness depended on the function of three factors, namely: 1. active cooperation, involvement and support of the top management, 2. adequate training of the counsellors in counselling skills, and 3. follow-up of habitual absentees after counselling.

Conflict: An expression of hostility, negative attitudes, antagonism, aggression, rivalry and misunderstanding

Check Your Progress

4. What is the prerequisite for counseling to be effective?
5. What are the functions of counseling?
6. Why is the non-directive counseling also called client-centered counseling?

6.5 CONFLICT MANAGEMENT

Industrial conflict is a dynamic concept. It various from industry to industry, place to place, depending on the condition of the work place.

6.5.1 Meaning of Conflict

The concept of conflict, being an outcome of behaviours, is an integral part of human life. Wherever there is interaction, there is conflict. **Conflict** can be defined in many ways and can be considered as an expression of hostility, negative attitudes, antagonism,

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aggression, rivalry and misunderstanding. It is also associated with situations that involve contradictory or irreconcilable interests between two opposing groups. It can be defined as a disagreement between two or more individuals or groups, with each individual or group trying to gain acceptance of its view or objectives over others.

Conflict must be distinguished from competition, even though sometimes intense competition leads to conflict. Competition is directed towards obtaining a goal and one group does not interfere with the efforts of another group while conflict is directed against another group and actions are taken to frustrate the other group's actions towards goal achievement.

6.5.2 Types of Conflicts

Since conflict has both positive and negative connotations and consequences, it must be looked into and managed for useful purposes. The management must survey the situation to decide whether to stimulate conflict or to resolve it. Thomas and Schmidt have reported that managers spend up to twenty per cent of their time in dealing with conflict situations. Hence, it is very important that managers understand the type of conflict that they have to deal with so that they can devise some standardized techniques in dealing with common characteristics of conflicts in each type of category. There are five basic types of conflicts. These are:

Conflict within the individual

The conflict within the individual is usually value related, where the role playing expected of the individual does not conform with the values and beliefs held by the individual; for example, a secretary may have to lie on instructions that her boss is not in the office to avoid an unwanted visitor or an unwanted telephone call. This may cause a conflict within the mind of the secretary who may have developed an ethic of telling the truth. Similarly, many vegetarian Indians who visit America and find it very hard to remain vegetarians, may question the necessity of the vegetarian philosophy, thus causing a conflict in their minds.

In addition to these value conflicts, a person may have a role conflict. For example, a telephone operator may be advised and required to be polite to the customers by her supervisor who may also complain that she is spending too much time with her customers. This would cause a role conflict in her mind. Similarly, a policeman may be invited to his brother's wedding where he may find that some guests are using drugs which is against the law. It may cause conflict in his mind as to which role he should play—of a brother or of a policeman. Conflict within an individual can also arise when a person has to choose between two equally desirable alternatives or between two equally undesirable goals.

Interpersonal conflict

Interpersonal conflict involves conflict between two or more individuals and is probably the most common and most recognized conflict. This may involve conflict between two managers who are competing for limited capital and manpower resources; for example, interpersonal conflicts can develop when there are three equally deserving professors and they are all up for promotion, but only one of them can be promoted because of budget and positional constraints. This conflict can become further acute when the scarce resources cannot be shared and must be obtained.

Another type of interpersonal conflict can relate to disagreements over goals and objectives of the organization; for example, some members of a board of a school may want to offer courses in sex education while others may find this proposal morally offensive thus causing conflict. Similarly, a college or a university may have a policy of quality education so that only top quality students are admitted while some members of the organizational board may propose 'open admissions' policy where all high schools graduates should be considered for admission. Such a situation can cause conflict among members of the governing board. In addition to conflicts over the nature and substance of goals and objectives, they can also arise over the means to reach these goals. For example, two marketing managers may argue as to which promotional methods would result in higher sales. These conflicts become highlighted when they are based upon opinions rather than facts. Facts are generally indisputable resulting in agreements. Opinions are highly personal and subjective and may provide for criticism and disagreements.

These conflicts are often the results of personality clashes. People with widely differing characteristics and attitudes are bound to have views and aims that are inconsistent with the views and aims of others.

Conflict between the individual and the group

As we have discussed before, all formal groups as well as informal groups have established certain norms of behaviour and operational standards that all members are expected to adhere to. The individual may want to remain within the group for social needs but may disagree with the group methods. For example, in some restaurants, all tips are shared by all the waiters and waitresses. Some particular waitress who may be overly polite and efficient may feel that she deserves more, thus causing a conflict within the group. Similarly, if a group is going on strike for some reason, some members may not agree with these reasons or simply may not be able to afford to go on strike, thus causing conflict with the group.

This conflict may also be between the manager and a group of subordinates or between the leader and the followers. A manager may take a disciplinary action against a member of the group, causing conflict that may result in reduced productivity. 'Mutiny on the Bounty' is a classic example of rebellion of the crew of the ship against the leader, based upon the treatment the crew received. The conflict among the armed forces is taken so seriously that the army must obey their commander even if the command is wrong and in conflict with what others believe in.

Inter-group conflict

An organization is an interlocking network of groups, departments, sections and work teams. These conflicts are not so much personal in nature, as they are due to factors inherent in the organizational structure; for example, there is active and continuous conflict between the union and the management. One of the most common, unfortunate and highlighted conflict is between line and staff. The line managers may resent their dependence on staff for information and recommendations. The staff may resent their inability to directly implement their own decisions and recommendations. This interdependence causes conflict. These conflicts that are caused by task interdependencies require that the relationship between interdependent units be

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redefined, wherever the values of these interdependent factors change, otherwise these conflicts will become further pronounced.

These inter-unit conflicts can also be caused by inconsistent rewards and differing performance criteria for different units and groups; for example, salesmen who depend upon their commission as a reward for their efforts may promise their customers certain quantity of the product and delivery times that the manufacturing department may find it impossible to meet, causing conflict between the two units.

Different functional groups within the organization may come into conflict with each other because of their different specific objectives. There are some fundamental differences among different units of the organization both in the structure and the process and thus each unit develops its own organizational sub-culture. These sub-cultures, according to Lawrence and Lorsch differ in terms of: (i) goal orientation that can be highly specific for production but highly fluid for research and Development, (ii) time orientation that is short run for sales and long run for research, (iii) formality of structure that is highly informal in research and highly formal in production and (iv) supervisory style that may be more democratic in one area as compared to another.

A classic example of inter-unit conflict is between sales and production, as discussed earlier. The sales department is typically customer-oriented and wants to maintain high inventories for filling orders as they are received, which is a costly option as against the production department that is strongly concerned about cost-effectiveness requiring as little inventory of finished product at hand as possible.

Similarly, inter-group conflict may arise between day shift workers and night shift workers who might blame each other for anything that goes wrong from missing tools to maintenance problems.

Inter-organizational conflict

Conflict also occurs between organizations that in some way are dependent on each other. This conflict may be between buyer organizations and the supplier organizations about quantity, quality and delivery times of raw materials and other policy issues, between unions and organizations employing their members, between government agencies that regulate certain organizations and the organizations that are affected by them. These conflicts must be adequately resolved or managed properly for the benefit of both types of organizations.

6.5.3 Causes of Conflicts

The various types of conflict as discussed above have already been pointed out in the previous discussion. Basically, the causes of conflict fall into three distinct categories. Accordingly, these causes can be restructured and placed into one of these categories. These categories deal with communicational, behavioural and structural aspects.

1. Communicational aspects of conflict

Poor communication, though not reflecting substantive differences, can have powerful effect in causing conflict. Misunderstood or partial information during the process of communication can make a difference between the success and the failure of a task and such failure for which the responsibility becomes difficult to trace can cause conflict between the sender of the communication and the receiver of the communication.

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Thus the problems in the communication process — whether these problems relate to too much or too little communication, filtering of communication, semantic problems or noise—act to retard collaboration and stimulate misunderstanding. The filtering process occurs when information is passed through many levels or when it passes through many members. The amount of information is functional up to a point, beyond which it becomes a source of conflict. Semantic difficulties arise due to differences in backgrounds, differences in training, selective perception and inadequate information about others.

As an example, if a manager going on an extended vacation fails to communicate properly with his subordinates as to who would be doing what, he will find these jobs only partially done with subordinates blaming each other for not completing the tasks. Accordingly, adequate, complete, and correctly understood communication is very important in orderly completion of tasks, thus reducing the chances of a conflict.

2. Behavioural aspects of conflict

These conflicts arise out of human thoughts and feelings, emotions and attitudes, values and perceptions and reflect some basic traits of a personality. Thus some people's values or perceptions of situations are particularly likely to generate conflict with others; for example, highly authoritarian and dogmatic persons are more prone to antagonize co-workers by highlighting minor differences that might exist and may overreact causing a conflict. This conflict may also be based on personal biases regarding such factors as religion, race or sex. Some men feel poorly about women workers. These conflicts are not about issues but about persons. Some families carry on enmity for generations.

The conflict can also arise due to differing viewpoints about various issues. For example, two vice-presidents may differ in their viewpoints regarding which strategic plan to implement. The value based conflicts arise due to different values that may be culturally based. For instance, one vice-president may want to retire some workers to save costs while another vice-president may have human sensitivity and support other methods of cutting costs. As another example, a professor may value freedom of teaching methods and a close supervision of his teaching technique is likely to induce conflict.

From an organizational behaviour point of view, there is conflict between the goals of the formal organization and the psychological growth of the individual. While the formal organization demands dependency, passivity and to some degree of obedience from its members, the psychologically developed individuals exhibit independence, creativity and a desire to participate in decision making and decision implementing process. The needs of individuals and the formal organization being inconsistent with each other, result in behavioural conflict.

3. Structural aspects of conflict

These conflicts arise due to issues related to the structural design of the organization as a whole as well as its sub-units. Some of the structurally related factors are:

- ***Size of the organization:*** The larger the size of the organization, the more the basis for existence of conflict. It is likely that as the organization becomes larger, there is greater impersonal formality, less goals clarity, more supervisory levels

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and supervision and greater chance of information being diluted or distorted as it is passed along. All these factors are breeding grounds for conflict.

- ***Line-staff distinction:*** One of the frequently mentioned and continuous source of conflict is the distinction between the line and staff units within the organization. Line units are involved in operations that are directly related to the core activities of the organization. For example, production department would be a line unit in a manufacturing organization and sales department would be considered line unit in a customer oriented service organization. Staff units are generally in an advisory capacity and support the line function. Examples of staff departments are legal department, public relations, personnel and research and development.

  Some of the sources of conflict between line and staff are:

  - Since the staff generally advises and the line decides and acts, the staff often feels powerless.
  - Staff employees may simply be resented because of their specialized knowledge and expertise.
  - Occasionally, staff employees are impatient with the conservative and slow manner in which the line managers put the staff ideas to work. Also line managers may resist an idea because they did not think of it in the first place, which hurts their ego.
  - Staff has generally easier access to top management which is resented by the line management.
  - Staff is generally younger and more educated and did not go through the run of the mill and hence their ideas may be considered more theoretical and academic rather than practical.
  - There is conflict about the degree of importance between the line and staff as far as the contribution towards the growth of the company is concerned.
  - The line usually complains that if things go right then the staff takes the credit and if things go wrong, then the line gets the blame for it.
  - Generally the staff people typically think in terms of long-range issues while line people are more involved with short-term or day-to day concerns. These differing time horizons can become a source of conflict.

- ***Participation:*** It is assumed that if the subordinates are not allowed to participate in the decision-making process then they will show resentment that will induce conflict. On the other hand, ironically, if subordinates are provided with greater participation opportunities, the levels of conflict also tend to be higher. This may be due to the fact that increased participation leads to greater awareness of individual differences. This conflict is further enhanced when individuals tend to enforce their points of view on others.

- ***Role ambiguity:*** A role reflects a set of activities associated with a certain position in the organization. If these work activities are ill defined, then the person who is carrying out these activities will not perform as others expect him to, because his role is not clearly defined. This will create conflict, specially between this individual and those people who depend upon his activities. A hospital or a medical clinic employing a number of physicians with overlapping

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specialties might cause conflict due to role ambiguity. Such conflict can be reduced by redefining and clarifying roles and their interdependencies.

- ***Design of workflow:*** These are primarily inter-group problems and conflicts that are outcomes of poorly designed work-flow structure and poorly planned coordination requirements, specially where tasks are interdependent. According to Sashkin and Morris 'organizations are made up of many different groups that must work together towards the accomplishment of common objectives.' In a hospital, for example, the doctors and nurses must work together and their tasks are highly interdependent. If they do not coordinate their activities well, then there will be confusion and conflict. Similarly, in a restaurant, the cook and the waiter depend upon each other for critical information and uncoordinated activities between the cook and the waiter would create conflicts and problems.
- ***Scarcity of resources:*** When individuals and units must share such resources as capital, facilities, staff assistance and so on, and these resources are scarce and there is high competition for them then conflict can become quite intense. This is specially true in declining organizations, where resources become even more scarce due to cutback in personnel and services so that the concerned units become highly competitive for the shrinking pool thus creating hostility among groups who may have put up a peaceful front at the time of abundance. For example, two research scientists who do not get along very well, may not show their hostility until a reduction in laboratory space provokes each to protect his area.

6.5.4 Managing Conflicts

Except in very few situations where the conflict can lead to competition and creativity so that in such situations conflict can be encouraged, in all other cases where conflict is destructive in nature, it should be resolved as soon has it has developed and all efforts should be made to prevent it from developing.

(i) Preventing conflict

Some of the preventive measures that the management can take, according to Schein[3] are:

(a) Goal structure: Goals should be clearly defined and the role and contribution of each unit towards the organizational goal must be clearly identified. All units and the individuals in these units must be aware of the importance of their role and such importance must be fully recognized.

(b) Rewards system: The compensation system should be such that it does not create individual competition or conflict within the unit. It should be appropriate and proportionate to the group efforts and reflect the degree of interdependence among units where necessary.

(c) Trust and communication: The greater the trust among the members of the unit, the more honest and open the communication among them would be. Individuals and units should be encouraged to communicate openly with each other so that they can all understand each other, understand each other's problems and help each other when necessary.

(d) Coordination: Coordination is the next step to communication. Properly coordinated activities reduce conflict. Wherever there are problems in coordination, a special liaison office should be established to assist such coordination.

Resolving behavioural conflict

Various researchers have identified five primary strategies for dealing with and reducing the impact of behavioural conflict. Even though different authors have given different terminology to describe these strategies, the basic content and approach of these strategies remain the same. These are:

- ***Ignoring the conflict:*** In certain situations, it may be advisable to take a passive role and avoid it all together. From the manager's point of view, it may be specially necessary when getting involved in a situation would provoke further controversy or when conflict is so trivial in nature that it would not be worth the manager's time to get involved and try to solve it. It could also be that the conflict is so fundamental to the position of the parties involved that it may be best either to leave it to them to solve it or to let events take their own course. The parties involved in the conflict may themselves prefer to avoid conflict, specially if they are emotionally upset by the tension it causes. Thus people may try to get away from conflict causing situations.
- ***Smoothing:*** Smoothing simply means covering up the conflict by appealing for the need for unity rather than addressing the issue of conflict itself. An individual with internal conflict may try to 'count his blessings' and forget about the conflict. If two parties have a conflict within the organization, the supervisor may try to calm things down by being understanding and supportive to both parties and appealing to them for cooperation. The supervisor does not ignore or withdraw from the conflict nor does he try to address and solve the conflict but expresses hope that 'everything will work out for the best of all.' Since the problem is never addressed, the emotions may build up further and suddenly explode. Thus smoothing provides only a temporary solution and conflict may resurface again in the course of time. Smoothing is a more sensitive approach than avoiding in that as long as the parties agree that not showing conflict has more benefits than showing conflict, then such conflict can be avoided.
- ***Compromising:*** A compromise in the conflict is reached by balancing the demands of the conflicting parties and bargaining in a 'give and take' position to reach a solution. Each party gives up something and also gains something. The technique of conflict resolution is very common in negotiations between the labour unions and management. It has become customary for the union to ask for more than what they are willing to accept and for management to offer less than what they are willing to give in the initial stages. Then through the process of negotiating and bargaining, mostly in the presence of arbitrators, they reach a solution by compromising. This type of compromise is known as integrative bargaining in which both sides win in a way.

  Compromising is a useful technique, particularly when two parties have relatively equal power, thus no party can force its viewpoint on the other and the only solution is to compromise. It is also useful when there are time constraints. If the

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problems are complex and many faceted, and the time is limited to solve them, it might be in the interest of conflicting parties to reach a compromise.

- ***Forcing:*** As Webber puts it, 'the simplest conceivable resolution is the elimination of the other party–to force opponents to flee and give up the fight–or slay them.' This is a technique of domination where the dominator has the power and authority to enforce his own views over the opposing conflicting party. This technique is potentially effective in situations such as a president of a company firing a manager because he is considered to be a trouble-maker and conflict creator. This technique always ends up in one party being a loser and the other party being a clear winner. Many professors in colleges and universities have lost promotions and tenured reappointments because they could not get along well with their respective chairpersons of the departments and had conflicts with them. This approach causes resentment and hostility and can backfire. Accordingly, management must look for better alternatives, if these become available.
- ***Problem solving:*** This technique involves 'confronting the conflict' in order to seek the best solution to the problem. This approach objectively assumes that in all organizations, no matter how well they are managed, there will be difference of opinions that must be resolved through discussions and respect for differing viewpoints. In general, this technique is very useful in resolving conflicts arising out of semantic misunderstandings. It is not so effective in resolving non-communicative types of conflicts such as those that are based on differing value systems, where it may even intensify differences and disagreements. In the long run, however, it is better to solve conflicts and take such preventive measures that would reduce the likelihood of such conflicts surfacing again.

Resolving structure-based conflicts

The structure-based conflicts are built around organizational environments and can be resolved or prevented by redesigning organizational structure and work-flow. A general strategy would be to move towards as much decentralization as possible so that most of the disputes can be settled at the lower levels in the organization, and faster too.

Since interdependency is one of the major causes of conflict, it is necessary to identify and clarify poorly defined and poorly arranged interdependencies or to make these adequately understood and reliable. This can be achieved through unifying the work-flow. This work-flow can be designed either to increase the interdependencies or to eliminate them entirely. Increased interdependencies can be achieved through more frequent contacts and improved coordinating mechanisms. This would make the two interdependent units act as a single unit, thus eliminating the cause of conflict. The other extreme could be to make the two units totally independent of one another; for example, in the case of units building an automobile engine, instead of an assembly line operation in which each person or unit is involved in sequential assembly so that each unit depends upon the work of the previous units, each major unit can work on the entire engine at the same time.

However, these extremes are not in common practice. More often, the strategy would be to reduce the interdependence between individuals or groups. A common

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approach to do that is by '*buffering*'. Buffering requires that sufficient inventories be kept in hand between interrelated units so that they always have the materials to work with thus reducing their interdependency. Another cause of conflict, is the undefined, unclear and ambiguous job expectation. It is important to clarify what each individual and each subunit is expected to accomplish. This would include authority-responsibility relationship and a clear line of hierarchy. In addition, policies, procedures and rules should be clearly established and all communication channels must be kept open so that each person knows exactly what role he has to play in the hierarchical structure. This would avoid situations in which none of the two units does the job because each thought the other was supposed to do or both units do the same job thus duplicating efforts due to misunderstanding. Thus, if each subordinate is fully aware of his responsibility, then such problems would not occur.

How to solve conflict arising due to competition for scarce resources? Conflicts will occur whenever the wants and needs of two or more parties are greater than the sum of the firm's resources available for allocation. These resources may be in the form of a pay raise, promotion, office space, office equipment and so on. This conflict can be reduced by planning ahead about the proper distribution of such resources, instead of making haphazard and last minute allocations.

The conflict between different departments may be managed by establishing liaison. Liaison officers are those who are neutral in their outlook and are sympathetic to both parties and kind of 'speak the language' of both groups. They do not have a vested interest in any of these groups. According to studies conducted by Sykes and Bates, it was shown that in one company where there was evident conflict between sales and manufacturing, which are interdependent units, the problem was solved by establishing a demand analysis and sales order liaison office. The liaison group handled all communication for sales and resolved issues such as sales requirements, production capacity, pricing and delivery schedules.

Since one of the major causes of conflict is lack of proper knowledge and facts about how other people think and act, it may be a good idea to let the individuals work with different groups so that they know each other better and understand each other better. Care should be taken to ensure that these individuals are technically capable of fitting in these various groups. This mutual understanding will result in trust and respect thus reducing the likelihood of conflict. This understanding can also be achieved by serving as members of the various committees. As individuals from various work units get to know each other better through the membership in the same committee, it leads to increased tolerance and understanding of different viewpoints as well as a realization that basically all units are pursuing similar objectives and same overall goal.

Stimulating conflict

It has been pointed out earlier that under certain circumstances, conflict is necessary and desirable in order to create changes and challenges within the organization. In such situations, the management would adopt a policy of conflict stimulation so that it encourages involvement and innovation. How does the manager recognize a situation that is vulnerable to conflict stimulation? Some of the factors for creating conflict are: too much satisfaction with the status quo, low rate of employee turnover, shortage of new ideas, strong resistance to change, friendly relations taking precedence over

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organizational goals and excessive efforts at avoiding conflict. Some of the ways of stimulating conflict as suggested by S.P. Robbins[4] are:

Appoint managers who support change: Some highly authoritative managers are very conservative in their outlook and tend to suppress opposing viewpoints. Accordingly, change-oriented managers should be selected and placed in such positions that encourage innovation and change from the status quo.

Encourage competition: Competition, if managed properly, can enhance conflict which would be beneficial to the organization. Such competition can be created by tying incentives to performance, recognition of efforts, bonuses for higher performance and status enhancement. Such competition and conflict would result in new ideas regarding improving productivity.

Manipulate scarcity: Let the various individuals and groups compete for scarce resources. This would cause conflict and make the individuals and groups do their best in order to fully utilize such resources; for example, one company president felt that the budget allocations to various departments did not reflect changing priorities and accordingly, a zero-based budget system was introduced so that each department had to justify its current budget regardless of the past allocations. This created fierce competition and conflict and resulted in changes in funds allocation that were beneficial to the organization.

Play on status differences: Sometimes, ignoring the senior staff members and giving visible responsibilities to junior members makes the senior staff work harder to prove that they are better than the junior staff members. In one business school, the dean appointed a low-status assistant professor in charge of the curriculum. The senior professors resented having to answer to the junior professor. This caused conflict and in order to assert their superiority, the full professors initiated a series of changes that revitalized the entire MBA programme.

Interpersonal trust building

While there are a number of behavioural as well as organizational factors, as discussed before, that contribute to the existence of conflict, there may be just one single factor that may be highly contributory to reducing that conflict. This factor is 'trust'. Trust is highly intangible but very important in our civilized living. Its presence or absence can govern our inter-personal behaviour to large extent. Our ability to trust has a great impact on our working lives, our family interactions and our achievement of personal and organizational goals.

Since trust is a function of behaviour, such behaviours that lead to defensiveness must be identified and modified. These defensive or aggressive behaviours creat a climate that is conducive to mistrust thus leading to conflict in interpersonal areas. Jack Gibb has identified certain behaviours that he calls 'aggressive' behaviours that should be avoided and certain behaviours which he calls 'supportive' behaviours that tend to reduce defensiveness and conflict and should be promoted.

Dr John K. Stout of the university of Scranton, writing in *Supervisory Management* (February 1984), suggests that these behaviours are not necessarily mutually exclusive, nor should all the aggressive behaviours be avoided under all

circumstances, but in general the supportive behaviour attitudes should be adopted as much as possible. These behaviours are briefly described as follows:

Aggressive versus supportive behaviours

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- ***Evaluative versus descriptive behaviour:*** Performance evaluations based upon emotional judgement and tainted by prejudice and residual anger from any previous encounters destroy trust. Making evaluations always brings in subjective opinions and subjective opinions relate to personal relationship rather than operations and facts. Descriptive attitude, on the other hand, simply describes factual elements that are visible, observable and verifiable, without reading behind the obvious or making judgements about motives and using the correct words to describe these activities builds up a feeling of fairness, equity and trust and this in turn reduces conflict.
- ***Controlling versus problem-oriented behaviour:*** Controlling attitude is highly authoritative and makes the subordinates feel like machines rather than human beings. The contribution of subordinates is limited to what the controller allows and thus stifles creativity, leading to resentment and conflict.

  Problem-oriented bahaviour, on the contrary, looks for solutions in which all can participate. This will result in new answers and unique opportunities and this approach implies mutuality that builds dedication and commitment.
- ***Using a strategy versus spontaneous behaviour:*** A **strategy** is a carefully structured set of directions that gives the management a tool for maneuverability so that it can manipulate and gear others towards a predetermined objective and this may be resented by subordinates since they fear loss of autonomy.

  Spontaneous interactions, on the other hand, are open, free flowing and result in open and honest communications in exploring each other's needs and viewpoints, exchanging information and ideas and developing a work environment of mutual trust and caring.
- ***Neutral versus empathetic behaviours:*** Neutral behaviour, though advisable in many situations, is considered as one of indifference and non-caring. All of us need friendship, respect and affection so we always want others to be on our side. Accordingly, the attitude of neutrality seems so impersonal that it is detrimental to the feelings of trust.

  Empathy by contrast is the natural desire to get involved with other people, to share their feelings and emotions, to be interested in their needs and problems, to care and to understand them and their beliefs and attitudes and to be sincere and friendly. In this 'me too' environment, a friendly relationship is always welcome.
- ***Superiority versus equality behaviour:*** Feelings of superiority based upon rank, prestige, power and authority are highly threatening to others and if this power is openly exhibited in talk and actions, it creates not only envy but also resentment. For example, the presence of a policeman at your door creates an initial fear because of the power and authority assigned to the police force.

  Exhibiting equality, on the contrary, enhances interpersonal trust. We always feel more comfortable in the company of our own age group. A sense of equality

Strategy: A carefully structured set of directions that gives the management a tool for maneuverability

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reduces the complex of inferiority or complex of superiority, both of which are detrimental to the environment of trust.

- ***Dogmatic versus open-minded behaviour:*** A dogmatic person is one who is set in his own ways and is highly opinionated and does not leave any ground for cultivating genuine interaction with others because genuine interaction is based upon 'give and take' attitude that a highly dogmatic person does not possess. As a result, the relationships remain superficial and trust is shallow, if any.

The open-minded individual, on the other hand, is adventurous, takes risks and is willing to experiment with new ideas and thoughts. In most bargaining and negotiating sessions, we are always advised to 'keep our minds open', so that we are receptive to any idea for discussion and adaptation. An open-minded person is like an 'open book' and is highly predictable resulting in respect and trust.

These types of supportive behaviours on the part of management prevent conflict to a large degree and help in resolving conflict if it develops, in a mutually beneficial way. This is a win-win situation in which all parties come out as winners. In order to achieve this situation, the management can initiate a number of steps. First, the management must create a social environment in the work situation that is conducive to mutual problem solving. This is fundamental to creating trust among people and specially trust among workers for the management. This would involve open channels of communication, respect for each other's views and an open-minded attitude on the part of management. Secondly, all efforts should be made to make the parties concerned sensitive to each other's attitudes, values and needs. This, according to Nichols and Steven, can be achieved through 'reflective listening' in which the listener is made to repeat what the speaker has said in order to make sure that he has fully understood the speaker's message before speaking himself. This creates a clear understanding of one's opinions and beliefs and this type of clear and properly understood communication leads to respect and trust. Thirdly, the problem causing the conflict can be redefined or revised in such a manner that it becomes a common problem for both parties rather than making it a 'win-lose' situation where one party wins and the other loses. For example, the problem between sales and production can be redefined as a problem of how to best serve the customer, to which both parties have a concern for, making it a problem to be mutually solved. Finally, only such solutions should be accepted that are acceptable to all concerned parties. This is considered to be the best way to 'manage' conflict.

Intra-group conflict

Prevention of intra-group conflict depends on the extent to which the team associates are capable in identifying, managing and navigating disputes. Every group member needs to be coached and trained in conflict management so that it enables the use of effective listening, clear exchange of ideas and effectual feedback loops that encourage growth rather than reprove errors. Some intra-group conflicts require administration from an external third outfit that imparts guidance and input during group conflicts. In the event that an intra-group conflict fails to be resolved within the group, a senior may decide to disband the group to prevent additional losses to both, efficiency and morale.

Check Your Progress

7. What do you understand by interpersonal conflicts?
8. How do behavioural conflicts occur?
9. How is the compromise in a conflict reached?

6.6 QUALITY CIRCLE: MEANING, OBJECTIVES AND TECHNIQUES

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A **quality circle** (QC) is a group of employees that meets regularly to solve problems affecting its work area. The ideal size of the group is six to eight members. The size should not be too big as it prevents members from actively interacting and meaningfully contributing to each meeting. A quality circle generally recommends solutions for quality which may be implemented by the management. The main features of a quality circle are as follows:

Quality circle: A group of employees that meets regularly to solve problems affecting its work area

- A quality circle is a voluntary group.
- Members meet at periodic intervals to discuss quality-related activities.
- A quality circle has its own terms of reference and offers recommendations to management for implementation.
- Members of a quality circle vary between six to eight in number and they generally belong to a particular work area.
- The ultimate purpose of a quality circle is to improve organizational functioning.

Objectives of quality circle

- Contributes to the improvement and development of the organization.
- QC provides the opportunity and a forum to realise and satisfy people's needs at the workplace.
- QCs help to build a happy, worthwhile place to work.
- It promotes better understanding and thereby creates cordial industrial relations.

Pitfalls or problems in quality circles

- The basic problem in QC is the absence of the right kind of attitude both among managers as well as among workers. Managers may feel that QCs dilute their authority and importance.
- Delay in implementation of suggestions given by QCs may affect their operation.
- Non-members may sometimes pose problems to the operation and functioning of QCs.
- In the Indian context, there may be problems in organizing QCs owing to the low level of education and lack of leadership abilities among workers.
- There may be operational problems like members not being permitted to hold meetings during office hours, irregularity of meetings, etc.

Advantages of quality circles

- Generation of creative ideas
- Improvement in productivity
- Better teamwork
- Higher motivation
- Development of problem solving skills

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Quality circle techniques: different stages

Started in Japan in the early 1960s, QCs have spread all over the world. Quality Circles became extremely popular in the 1980s, particularly in the aerospace, automobile, steel and consumer goods industries. The main topics of discussion in most QCs are related to quality, but they also consider other issues such as cost, safety and efficiency. QC members identify a problem, study it and present their recommendations for change and improvement to a committee.

Conditions necessary for making quality circles effective

1. Top management support
2. Education and training of managers and workers
3. Timely implementation of ideas generated by quality circles
4. Sharing gains in productivity with workers
5. Facilities for meeting and discussions
6. Regular monitoring of working of quality circles

- Industrial democracy is an expression weighed down with extreme confusion, and philosophical implications. The significance ascribed to this concept has ranged from suggestion box methods to workers' control in industry.
- Workers' participation, on the other hand, may be used to define numerous procedures and exercises for realizing a greater extent of employee influence in individual enterprises and workplaces.
- Organization Development is a planned endeavour, across the organization and administered by the higher management, to enhance the organization's efficacy and fitness through organized interventions in the organization's procedures, using behavioral-science know-how.
- Employee welfare is a wide-ranging expression that combines a variety of services, benefits and amenities provided to employees by the employers.
- A Quality Circle (QC) is a group of employees that meets regularly to solve problems affecting its work area. The ideal size of the group is six to eight members.

Table 6.3 shows the phases in the life of a QC and the problems encountered at each stage.

Table 6.3 *Phases in the Life of a QC Programme*

	Phase	*Activity*	*Destructive forces*
1.	Start-up	Publicise, obtain funds and volunteers, train	Low volunteer rate, inadequate funding, inability to learn group process and problem-solving skills
2.	Initial problem solving	Identify and solve problems	Disagreement on Problems
3.	Presentation and approval of initial suggestions	Present and have initial suggestions accepted	Resistance by staff groups and middle management, poor presentation and suggestions because of limited knowledge

Check Your Progress

10. What is the function of a quality circle?
11. What are the advantages of quality circles?

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4.	Implementation of solutions	Relevant groups act on suggestions	Prohibitive, resistance by group that must implement
5.	Expansion and continued problem solving	Form new groups, old groups continue	Raised aspirations, reappearance of problems, expense of parallel organization, savings not realised and rewards wanted.

***Source*:** Aswathappa, K. 2005. *Organizational Behaviour*, Sixth edition. Mumbai: Himalaya Publishing House, p. 358.

6.7 SUMMARY

Some of the important concepts discussed in this unit are:

- In an industrial plant, the health of the employees working there plays a vital role in the production. If the workers are not in a good health, they will not be able to give good output and this will directly affect the production.
- According to the Factories Act, industrial accident is 'an occurrence in an industrial establishment causing bodily injury to a person which makes him unfit to resume his duties in the next 48 hours'.
- The Factory Act provides 20 different sections on obligatory safety measures.
- The Employees State Insurance Act, 1948 (amended in 1951), introduced a scheme of compulsory health insurance and provides, in the first instance, for certain benefits in the event of sickness, maternity and employment injury to workmen employed in or in connection with the work of non-seasonal factories.
- Counselling is essential for effectiveness in managing human resources. Specifically, it forms a prerequisite to perform the preceding personnel functions of performance appraisal, promotion, transfer and separation.
- The need for counselling stems from the complexity of human beings.
- Counselling performs one or more of the following six functions: (*i*) advice, (*ii*) reassurance, (*iii*) communication, (*iv*) release of emotional tension, (*v*) clarified thinking, and (*vi*) reorientation.
- Depending upon the extent of direction provided by the counsellor to a counsellee, Davis classifies counselling in three forms: directive, non-directive and cooperative.
- Conflict must be distinguished from competition, even though sometimes intense competition leads to conflict. Competition is directed towards obtaining a goal and one group does not interfere with the efforts of another group while conflict is directed against another group and actions are taken to frustrate the other group's actions towards goal achievement.
- Interpersonal conflict involves conflict between two or more individuals and is probably the most common and most recognized conflict.

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- Inter-group conflicts are not so much personal in nature, as they are due to factors inherent in the organizational structure.
- The greater the trust among the members of the unit, the more honest and open the communication among them would be.
- The structure-based conflicts are built around organizational environments and can be resolved or prevented by redesigning organizational structure and work-flow.
- A quality circle (QC) is a group of employees that meets regularly to solve problems affecting its work area. The ideal size of the group is six to eight members. The size should not be too big as it prevents members from actively interacting and meaningfully contributing to each meeting.
- Quality Circles became extremely popular in the 1980s, particularly in the aerospace, automobile, steel and consumer goods industries.

6.8 ANSWERS TO 'CHECK YOUR PROGRESS'

1. According to the National Safety Council USA, accident prevention depends on the following three E's.
   - Engineering – the job should be engineered for safety.
   - Employees – employees should be educated in safe procedure and
   - Enforcing safety – safety rules should be properly enforced.
2. Occupational diseases usually develop over an extended period of time. They are slow and generally cumulative in their effect. Occupational diseases are the result of constant exposure to the influence of toxic substances of micro-organisms, of air-borne contaminants and stress-producing elements.
3. Section 21 of the Factory Act, 1948 provides that every dangerous part of every machinery shall be securely fenced by safeguards of substantial construction which shall be constantly maintained and kept in position while the parts of machinery they are fencing are in motion or in use.
4. For counseling to be successful, there must be an understanding on the part of the employee (counselee), while the other person (counsellor) must come forward to facilitate it.
5. The functions of counseling are (*i*) advice, (*ii*) reassurance, (*iii*) communication, (*iv*) release of emotional tension, (*v*) clarified thinking and (*vi*) reorientation.
6. Because of its focus on the counsellee rather than on the counsellor, non-directive counselling is also called client-centred counselling.
7. Interpersonal conflicts involve conflict between two or more individuals and are probably the most common and most recognized conflicts.

8. Behavioural conflicts arise out of human thoughts and feelings, emotions and attitudes, values and perceptions and reflect some basic traits of a personality. Thus some people's values or perceptions of situations are particularly likely to generate conflict with others.
9. A compromise in the conflict is reached by balancing the demands of the conflicting parties and bargaining in a 'give and take' position to reach a solution.
10. A quality circle generally recommends solutions for quality which may be implemented by the management.
11. The advantages of quality circles are as follows:
    - Generation of creative ideas
    - Improvement in productivity
    - Better teamwork
    - Higher motivation
    - Development of problem solving skills

6.9 QUESTIONS AND EXERCISES

Short-Answer Questions

1. What are the causes of industrial accidents?
2. What are the safety provisions under the Factory Act, 1948?
3. What are practical considerations in counseling?
4. Differentiate an interpersonal conflict from an inter-group conflict.
5. Identify the measures that need to be taken to prevent industrial conflicts.
6. Differentiate between evaluative behaviour and supportive behaviour.
7. What are the main characteristics of a quality circle?

Long-Answer Questions

1. Explain the health-related provisions in the Factory Act, 1948.
2. Explain how the Employees' State Insurance Act, 1948 and the Maternity Benefit Act, 1961 provide social security to employees.
3. Discuss the features of various types of counseling.
4. What are the various processes of non-directive counselling? Discuss.
5. Describe the mechanisms developed for managing various types of conflicts.
6. Identify the various phases in the life cycle of a quality circle. Also find out the problems encountered at each phase.

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6.10 REFERENCES

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MODEL QUESTION PAPER

MBA Degree Examination

Industrial Relations Management

Time: 3 Hours **Maximum: 100 Marks**

PART A (5 × 8 = 40 marks)

Answer any FIVE of the following:

1. Discuss the principles of good industrial relations.
2. What are the legal dimensions of industrial relations?
3. List the characteristics of various central trade unions in India.
4. List the features of code of conduct and code of discipline.
5. What is the meaning of discipline? What causes of employee indiscipline?
6. Discuss briefly how the different levels of participation work.
7. List the various communication barriers and briefly discuss the methods of overcoming them.
8. List the important social security legislations in India.

PART B (4 × 15 = 60 marks)

Answer any FOUR of the following:

9. Explain the various approaches to industrial relations.
10. Discuss how Articles 39, 41, 42, 43 and 43-A are the 'magna carta' of industrial jurisprudence in the Indian context
11. Discuss why the period 1918-1924 is described as the era of formation of modern trade unions in India.
12. Discuss the various stages in the settlement of industrial disputes.
13. What are the three requisites of a sound primary compensation structure? Discuss.
14. Explain the concepts and features of employee training.
15. Identify and discuss the measures being taken in India to manage industrial conflicts.