KLE LAW ACADEMY BELAGAVI

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STUDY MATERIAL

for

LABOUR LAW I

Prepared as per the syllabus prescribed by Karnataka State Law University (KSLU), Hubballi

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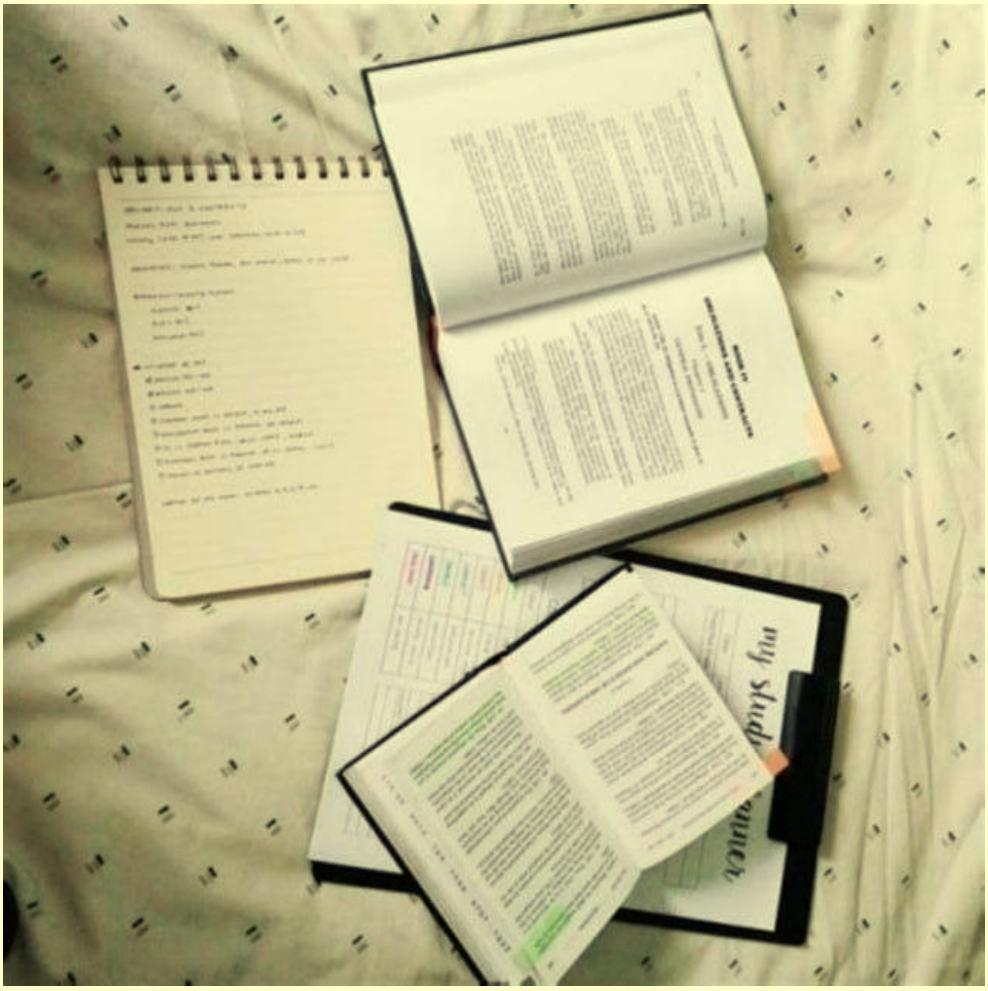

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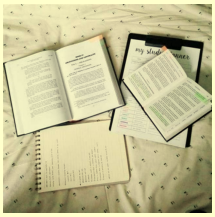

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This Study Material is prepared by me in consultation with Principal by reading the following reference books mentioned below, for more and further reading the reader can refer these books.

Books Referred:

- Malhotra O. P. – Law of Industrial Disputes, Vol. I and II.
- S C Srivastava, Industrial Relations and Labour Laws
- Dr V G Goswami Labour Insdustrial Laws
- S. N Mishra - Labour Laws S. C. Srivastava - Social Security and Labour Laws.
- G Ramanujam, Industrial Labour Movement
- P L Malik, Industrial Law
- Mamoria and Memoria, Dynamic of Industrial Relations
- First National Labour Commission Report, 1969
- Second National Labour Commission Report, 2002
- International Labour Conventions and Recommendations.

Bare Acts:

- The Trade Unions Act,1926
- The Industrial Disputes Act, 1947
- The Industrial Disputes Act, 1947
- The Employees Standing Orders Act, 1946
- The Employees Compensation Act, 1923
- The Employers State Insurance Act, 1948
- The Payment of wages Act,1936
- The Factories Act, 1948

LABOUR LAW-I

UNIT-I:

Historical aspects - Master and Slave Relationship, Trade Unionism in India and UK, Enactment of the Trade Unions Act, 1926, ILO Conventions relating to Trade Unions and relevant Constitutional provisions. A bird's eye view of the Act- Definitions - Trade Union, Trade Dispute, etc. Provisions relating to registration, withdrawal and cancellation of registration Funds of Trade Union, Immunities, problems of Trade Union, Amalgamation of Trade Union, Recognition of Trade Unions - Methods, need and efforts in this regard, Collective Bargaining - Meaning, methods, status of collective bargaining settlements, collective bargaining and liberalization.

UNIT -II:

Historical Background and Introduction to the Industrial Disputes Act, 1947- Definitions - Industry, Workman, Industrial Dispute, Appropriate Government, etc, - Authorities/Industrial Dispute resolution machinery - Works Comrnittee, Conciliation and Board of Conciliation - powers and Functions, court of Inquiry, Grievance settlement Authority,

Voluntary Arbitration Li/S 10-4, Compulsory Adjudication- Government's power of reference U/S- l0 - Critical analysis with reference to decided cases. Compulsory Adjudication- Composition, Qualification, Jurisdiction, powers of adjudication authorities - Award and Settlement - Definition, Period of operation, binding nature and Juridical Review of award.

UNIT –III:

Law relating to regulation of strikes and lockouts- Definition of strikes and lockouts' Analysis with reference to Judicial interpretations, Regulation U/Ss 22,23,10-A(4A), and 10 (3) Illegal strikes and lockouts, penalties. - Regulation of Job losses- concepts of Lay-off' Retrenchment, closure and Transfer of undertakings with reference to statutory definition and Judicial interpretations - Regulation of job losses with reference to the provisions of chapter V-A and V-B of the ID Act, l947 - Regulation of managerial prerogatives - Sections 9A, 1lA, 33 and 33A of ID Act, 1947, Certified Standing orders - Meaning and Procedure for certification' certifying officers- Powers and Functions etc.

UNIT-IV:

Concept and Importance of Social Security - Influence of I'LO' - Constitutional Mandate, The Employees Compensation Act, 1923 - Definitions - employee, employer, dependent, partial disablement, total disablement, etc. - Employer's liability for compensation -Conditions and Exceptions - Procedure for claiming compensation. Computation of Compensation, Commissioner- Jurisdiction, Powers etc.

The Employees State Insurance Act, 1948 - Definitions - Employment injury, Contribution, Dependent, Employee, Principal Employer etc. Employees State Insurance Funds- Contribution, Benefits available - Administrative Mechanism - ESI Corporation, Standing Committee, Medical Benefits Council - Composition, Powers, Duties - Adjudication of Disputes, E.S.I Courts. Comparative analysis of the ESI Act, 1948 with the Employees' Compensation Act, 1923

UNIT-V:

The Payment of wages Act, 1936 - Definitions - employed person, factory, industrial and other establishment, wages, etc. – Deductions - Authorities - Inspectors and Payment of Wages Authority.

The Factories Act, 1948 - Definitions - factory, manufacturing process, occupier' worker, hazardous process, etc. - Provisions of the Factories Act relating to health, safety and welfare of workers - provisions relating to Hazardous process - provisions relating to working conditions of employment - Working hours, Weekly leave, Annual leave facility, Provisions relating to regulation of employment of women, children and young persons.

UNIT-I

LAW RELATING TO TRADE UNION IN INDIA

Introduction:

The law relating to labour and employment in India is primarily known under the broad category of "Industrial Law". Industrialization is considered to be one of the key engines to support the economic growth of any country. The commence of industry and its growth is not a venture of the employer alone; yet it involves the hard work and tough grind of each and every stakeholder of the industry including the labourers, supervisors, managers and entrepreneurs. With the initiation of the concept of welfare state in the early realm of independence of our country, various legislative efforts have made their first move in the direction of welfare, equitable rights, social justice, social equity and equitable participation of the labour as a stakeholder at parity. A plethora of labour laws have been established to ensure elevated health, safety, and welfare of workers; to protect workers against oppressive terms as individual worker is economically weak and has little bargaining power; to encourage and facilitate the workers in the organization; to deal with industrial disputes; to enforce social insurance and labour welfare schemes and alike.

Labour laws are the one dealing with employment laws in any organization – whether it is a manufacturing organization or trading organization or shops and establishment. The labour laws address the various administrative rulings (such as employment standing orders) and procedure to be followed, compliance to be made and it addresses the legal rights of, and restrictions on, working people and their organizations. By and large the labour law covers the industrial relations, certification of unions, labour management relations, collective bargaining and unfair labour practices and very importantly the workplace health and safety with good environmental conditions. Further the labour laws also focus on employment standards, including general holidays, annual leave, working hours, unfair dismissals, minimum wage, layoff procedures and severance pay and many other issues related to employer and employee and the various compliance requirements.

The labour laws derive their origin, authority and strength from the provisions of the Constitution of India. The relevance of the dignity of human labour and the

need for protecting and safeguarding the interest of labour as human beings has been enshrined in Chapter-III (Articles 16, 19, 23 & 24) and Chapter IV (Articles 39, 41, 42, 43, 43A & 54) of the Constitution of India keeping in line with Fundamental Rights and Directive Principles of State Policy. Labour law reforms are an ongoing and continuous process and the Government has been introducing new laws and amending the existing ones in response to the emerging needs of the workers in a constantly dynamic economic environment. Labour is a subject in the Concurrent List where both the Central & State Governments are competent to enact legislation subject to certain matters being reserved for the Centre.

Historical aspects: Master and Slave Relationship

Since the Industrial Revolution, the law and practice of capital-labour relationship which is the most important aspect of master and servant relationship have undergone a great evolution and for the proper understanding of the significance and development of industrial Jurisprudence, a resume of this evolution is very essential.

During the early stage of capitalism, the relationship between the capitalist and the labourer was governed by the principle of master and slave. According to this principle, the capitalist was a man and the labour was a thing. The former, therefore, could not confer on the latter nor could the latter contract from the former any rights. The capitalist did not employ the labourer; either he bought him or got him. The relationship between them was based on coercion and not on free will. In the language of law, it was status and not contract that determined their relationship.

Later on, when the labourer's position improved from slave to serf, he could contract few rights. But even then, the capitalist retained most of his unrestricted coercive powers over him. As a serf, the labourer was neither an unfree slave nor a free servant; he was rather a half slave and half servant. It was predominantly status, again, that determined the relationship between the labourer as a serf and the capitalist.

In the next stage, the capital-labour relationship came to be based on contract instead of on status. The relationship between the capitalist and the labourer was now that of master and servant. They were, at least in theory, free to acquire rights from

and impose duties upon each other by voluntary mutual contract; though in practice the freedom was false. The then prevailing state of policy of laissez faire i.e. of letting the bargain between the capitalist and the labourer be what they liked in combination with the superior social and economic position of the capitalist, rendered the freedom of contract meaningless.

In an industrial era, now the evolution of capital labour relationship is marked by the recognition of two aspects, namely-

(i) The existence of two distinct social groups or classes i.e. Capitalist and Labourers, each possessing a different social and economic position; and

(ii) The necessity of State intervention in capital-labour relationship for protecting and balancing the contracting claims of these groups.

The enhancement of industrial laws in particular, and State support to trade unionism and collective bargaining in general, are the important characteristics of the new basis of capital-labour relationship. The new capital-labour relationship is still that of master and servant and is based on the freedom of contract, but unlike in the past, the freedom is now no more the individual freedom of a labourer, but is the collective freedom of a group or union of labourers and the contract is no more an individual contract between the capitalist and the labourer but is 'collective agreement' between a group or class or union of labourers on the one hand and the capitalist or group of capitalists on the other. In short, the labourer is now no more a condemned slave, neither an unfree serf nor a submissive servant, but is a free member of a group or class or union of labourers now known by the name 'employee' or 'worker'. However, this recognized right assuming different dimensions with the changing needs of the State and employer.

The Nature of Master and Servant Relationship

A servant is one who works for another individual, known as the master, with or without pay. The master and servant relationship only arises when the tasks are performed by the servant under the direction and control of the master and are subject to the master's knowledge and consent. Advocate S. R. Samant observed that: "The words master and servant are suggestive of the ideas of domination and submission hidden behind them. According to the settled law of master and servant, the master

holds authority over the servant and the servant owes obeyance to the master. In other words, the servant is under the control and bound to obey the orders of the master. The master is the superior of the servant and the servant is the inferior of the master. The so called equality of persons before the law is conspicuous by absence in the master and servant relation. The masters economic and social might determine his legal rights. The strong is never wrong and the weak must ever be meek is the maxim of the master and servant law. The master and the servant are truly the ruler and the ruled".

In recent times of democratic order and social justice, however, the words master and servant have almost fallen out of use and new ones like manager and worker or employer and employee have taken their place. No doubt, this is in conformity with the great social revolution, sometimes styled as the "New Industrial Revolution" or the "Second Industrial Revolution" that is taking place in the field of industrial relations. This transformation of words master and servant is certainly significant in that the new words no more smell at least in theory of the ideas of domination and submission, unlike their predecessors. Taken at their dictionary meaning, these new words are truly descriptive of the functions rather than the relations of the master and the servant.

But though outwardly, the new words possess dignity and respect, it is quite evident after a little reflection that the transformation of the words is more apparent than real as regards the actual facts. They are certainly changed in point of form, but they remain more or less the same in substance. There is no improvement in the relationship between the employer and the employee formerly known as the master and the servant which ought to have followed the improvement in their nomenclature. The transformation is incomplete giving rise to a problem known as the human relations problem.

The cherished objectives of harmonious and amicable relations between the employer and the workmen could not in these circumstances be achieved within the framework of the then prevailing juristic thought, legal principles or legal traditions; (it called for altogether new approach, based on new legal thought and philosophy so that new legal traditions could come up so as to pave the way for social justice and for an equitable distribution of profits and benefits accruing from the industry between

the industrialist and the workers), which alone could afford real protection to the workers against harmful effects to the health, safety and morality rather than mere compliance with the contract of employment.

Thus, the need for Industrial Jurisprudence was imminent and imperative; it was a sociological necessity so that the dominance of the laissez faire based as it was upon the so called natural rights of the individual could bid a goodbye.

Constitution and Labour Laws

The Constitution of a country is the fundamental law of the land on the basis of which all other laws are made and enforced. Every organ of the state, be it the executive or the legislative or the judiciary, derives its authority from the constitution and there is no authority, no department or branch of the State, which is above or beyond the Constitution or has powers unfettered and unrestricted by the Constitution.

Thus, a Constitution is the supreme or fundamental law of the country which not only defines the framework of the basic political principles, but also establishes what the different government institutions should do in terms of procedure, powers and duties. A Constitution if the vehicle of a nation's progress. The Constitution is the supreme law of the country and it contains laws concerning the government and its relationships with the people.

The relevance of the dignity of human labour and the need for protecting and safeguarding the interest of labour as human beings has been enshrined in Chapter-III (Articles 16, 19, 23 & 24) and Chapter IV (Articles 39, 41, 42, 43, 43A & 54) of the Constitution of India keeping in line with Fundamental Rights and Directive Principles of State Policy. The Labour Laws were also influenced by important human rights and the conventions and standards that have emerged from the United Nations. These include right to work of one's choice, right against discrimination, prohibition of child labour, just and humane conditions of work, social security, protection of wages, redress of grievances, right to organize and form trade unions, collective bargaining and participation in management.

Under the Constitution of India, Labour is a subject in the Concurrent List and, therefore, both the Central and the State governments are competent to enact legislations subject to certain matters being reserved for the Centre.

The extent of state control or intervention is determined by the stage of economic development. In a developed economy, work stoppages to settle claim may

not have much impact, unlike in developing economy. Countries like the U.S. and England, etc. with advanced and free market economy only lay down bare rules for observance of employers and workers giving them freedom to settle their disputes. In the U.S., States intervention in industrial dispute is eliminated to actual or threatened workers' stoppages that may imperil the national economy, health or safety.

However, in a developing economy, the States rules cover a wider area of relationship and there is equally greater supervision over the enforcement of these rules. This is emphatically so in developing countries with labour surplus. It is a concern of the state to achieve a reasonable growth rate in the economy and to ensure the equitable distribution thereof. This process becomes more complex in a country with democratic framework guaranteeing fundamental individual freedoms to its citizens. Hence, the State in a developing country concerns itself not only with the content of work rules but also with the framing of rules relating to industrial discipline, training, and employment.

The founding fathers of democratic Constitution of India were fully aware about these implications while they laid emphasis to evolve a welfare state embodying federal arrangement. Entries about labour relations are represented in all the three lists in the Constitution. Yet most important ones come under the Concurrent list. These are industrial and labour disputes, trade unions and many aspects of social securities and welfare like employer's' liability, employees' compensation, provident fund, old age pensions, maternity benefit, etc. Thus, the Industrial Disputes Act, 1947, the Minimum Wages Act, 1948, the Employees' State Insurance Act, 1948, etc. come under the concurrent list. Some States have enacted separate amendment Acts to some of the above legislations to meet local needs. Such amendments are recommended either with the assent of the President of India or by promulgating rules pursuant to the powers delegated by the Central Act. Under the rule making powers delegated by the Centre, the States have often been able to adopt Central Act to local needs without the President's assent. The Central acts often delegate such powers. For example, Section 38 of the Industrial Disputes Act delegates to the appropriate government, which in many is the State Government, the power to promulgate such rules as may be needed for making the Act effective.

Similarly, Section 29 and Section 30 of the Minimum Wages Act and Section 26 of the Payment of Wages Act delegated the rule making power to the State. In pursuance to this, several States have promulgated separate minimum wages rules and

payment of wage rules. The Factories Act also contains similar provisions and they have been similarly availed of.

Further, the goals and values to be secured by labour legislation and workmen have been made clear in Part IV, Directive Principles of the State Policy of the Constitution. Thus, the State shall secure a social order for the promotion of welfare of the people and certain principles of policy should be followed by the State towards securing right to adequate means of livelihood, distribution of the material resources of the community to subserve the common good, prevention of concentration of wealth via the economic system, equal pay for equal work for both men and women, health and strength of workers including men, women and children are not abused, participation of workers in management of industries, just and humane conditions of work and that childhood and youth are protected against exploitation against exploitation and against moral and material abandonment.

By and large industrial and labour legislations have been directed towards the implementation of these directives. Factories Act, 1948, ESI Act, 1948, Employees' Compensation Act, 1923 are focused to the regulation of the employment of the women and children in factories, just and humane conditions of work, protection of health and compensation for injuries sustained during work. Minimum Wages Act, 1948 and the Payment of Wages Act, 1936 regulate wage payment. Payment of Bonus Act, 1965 seeks to bridge the gap between the minimum wage and the living wage. However, the directives relating to distribution of wealth, living wages, equal pay for equal work, public assistance, etc. have not been generally implemented as yet.

TRADE UNIONS ACT, 1926

Trade Union Movement in India is not a new idea. From the Marxian to the Gandhian, move violently to non violence, howlingness to achievement Trade Union Movement has been gradually developed till date. It is mentionable that, in industrially developed countries, there are every Trade Unionism in the fields of Agriculture, Industry, Bus and Lorry, Handy Workers and Labours, and Edu-Professionals etc. Their Trade Unionism had made a great impact on the social, political and economic life, while in India; Trade Unionism can be seen only in the field of Industrial area. As long as history of human society various conflicts between workers group and employers group have been lasting in the form of strike, gherao,

lock out, pen down etc against exploitation. To make people strengthen in a democratic way to asset their demands over their contribution to an organization, people associate themselves in a group and constitute a Union for common welfare. Thus Trade Union is an instrument of defence formed by employees against exploitations to protect themselves from economic as well as social interests. This is a complex institution with a numerous facts like social, economic, political and psychological. Trade Union provides services as an agent of workers and working classes at large. In this epistle thought on Trade Union Movement in India, a brief discussion is made on stipulations in relation to Trade Unionism.

The need for Trade Unionism:

The need for Trade Unionism since the human set up has been felt necessary in the following ways-

a) To provide job security to the workers group working in different industries.
b) To safe guard workers common interest.
c) To bring the situation in participation of decision making.
d) To communicate better industrial relation among workers, employers and system groups.
e) To bring an industrial relation with win-win- situation through collective bargaining with the union leaders' representativeness.

Gandhiji comments, Trade Union movement as a reformist and economic organization and considers capital and lobour are equally parts and parcels of an organization.(Known as Sorvodya)

History of Trade Union Movement in India:

In India, Trade Union movement has been considered as the product of industrial development since the First World War 1914-18. Before the time Indian workers were poor and did not have strong union to effort legal fight against any exploiters. At that time they used to follow the guidelines of Government of India's Factory Act 1881 which was not perfect to protect the interests of employees. The system of collective bargaining was totally absent. In several industries, the workers went on strikes every now and then to secure wage increase. In that mean time, Labour leader Narayan Meghaji Lokkande led a labour movement and formed

"Bombay Mill Hands Association" and succeeded a weekly holiday system for Bombay Mill Owners Association.

In 1918 Trade Union Movement in India became more organized and formed varieties of unions e.g. Indian Collie or Employees Association, Indian Seamen's' Union, Railway Men's Union, Port Trust Employees Union etc. Meanwhile Gandhiji formed The Textile Labour Association in 1920 for fulfilling the demands of spinners and weavers society. More over the different labour unions and their representatives from all over India met in Bombay in 1920 and established the All India Trade Union Congress (AITUC) led by Lala Lajpat Rai.

With the days passed, Trade Union Movement in India gradually strengthened and became national figure in leading of periodic strikes, Gherao, picketing and boycotts etc in contrary of different work fields for prevention and settlement of industrial disorders. The historic background of Bombay Mill Case of 1920 over which Madras High Court witnessed Madras Labour Union forbidding by an interim injunction against The Laborers' strike which was pondered about some necessary legislation for protecting the sustained Trade Union in India.

As a result Mr. N.M. Joshi, the then General Secretary of All India Trade Union Congress moved a resolution in the Central Legislative Assembly in 1921 recommending the Government to introduce legislation for the registration and protection of Trade Union's existence in India. The resolution was strongly protested by Bombay Mills Owners and it took a long bed rest on the table of the Central Legislative Assembly.

While in the year of 1924, many communist leaders were arrested and prosecuted against aggressive and lengthy strikes. From the period numbers of Indian working classes including Peasants Party united and demanded Indian government through the AITUC to pass an act to protect the interest of all India workers group which results The Trade Union Act 1926 in India. More over different situations in different times formed many Unions and Federations, which of some are All India Trade Union Congress 1920, Red Trade Union Congress 1931**,** National Federation of Labour 1933 Red Trade Union Congress merged with AITUC in 1935 and Indian Federation of Labour 1941 etc.

The importance of the formation of an organized trade union was realized by nationalist leaders like Mahatma Gandhi who to improve the employer and worker relationship gave the concept of trusteeship which envisaged the cooperation of the workers and employers. According to the concept, the people who are financially sound should hold the property not only to make such use of the property which will be beneficial for themselves but should make such use the property which is for the welfare of the workers who are financially not well placed in the society and each worker should think of himself as being a trustee of other workers and strive to safeguard the interest of the other workers.

Many commissions also emphasized the formation of trade unions in India for eg. The Royal Commission on labour or Whitley commission on labour which was set up in the year 1929-30 recommended that the problems created by modern industrialization in India are similar to the problems it created elsewhere in the world and the only solution left is the formation of strong trade unions to alleviate the labours from their miserable condition and exploitation.

The Eighteenth Session of the All-India Trade Union Congress led by Suresh Chandra Banerjee, President of the Congress, was held at Bombay on 28 and 29 September 1940; The session constituted a landmark in the history of the Indian Trade Union Movement is that it witnessed the restoration of complete unity in Indian Trade Union from the merging of the National Trades Union Federation in the All-India Trade Union Congress.

A Tripartite Labour Conference was convened in 1942 to provide common platform for discussion between employees and employers. Indian National Trade Union Congress (INTUC) was formed in 1947 to settle the industrial disputes in democratic and peaceful methods. Moreover, the Indian Federation of Labour formed in 1949, Hind Mazdoor Sabha in 1948 and United Trade Union Congress formed in 1949 in the national level and recognized by the government of India as to serve national and International conference. Trade Union Movement does not delimit its operation within Bombay vicinity nor Delhi only. With the passage of time the movement spreads all across the country and convenient groups welcome the organism of Trade Union Movement from different parts of India. In state of Assam, the garden men’s forum, Assam Chah Mazdoor Sangha, claims for their minimum

wages from their employers according to the rules of The Plantation Labour Act, 1951, which regulates the wages of tea-garden workers, their duty hours and the amenities, states that the management is supposed to provide housing, drinking water, education, health care, child care facilities, accident cover and protective equipment.

ILO Conventions relating to trade Unions and Constitutional Provision:

International Labour Organisation (ILO) is the most important organisation in the world level and it has been working for the benefit of the workers throughout the world. It was established in the year 1919. It is a tripartiate body consisting of representatives of the Government, Employer, workers. It functions in a democratic way by taking interest for the protection of working class throughout the world.

It is also working at the international level as a 'saviour of workers' 'protector of poor' and it is a beacon light for the change of social justice and social security. The I.L.O examines each and every problem of the workers pertaining to each member country and discusses thoroughly in the tripartiate body of all the countries. The I.L.O passes many Conventions and Recommendations on different subjects like Social Security, Basic Human Rights, Welfare Measures and Collective Bargaining. On the basis of Conventions and Recommendations of I.L.O. every country incorporates its recommendations and suggestions in its respective laws.

The idea of protecting the interest of the labour against the exploitation of capitalists owes its origin to the philanthropic ideology of early thinkers and philosophers, and famous among them is "Robert Owen" who being himself an employer took interest in regulating hazardous working conditions of the workers and also in human conditions under which the workers were being crushed underneath the giant wheels of production.

Aims of the International Labour Organisation:

The principle aim of the I.L.O is the welfare of labour as reaffirmed by the Philadelphia Conference of 1944 under the Philadelphia Declaration, on which the I.L.O. is based

1. Labour is not a commodity;

2. Freedom of expression and of association are essential to sustained progress;
3. Poverty anywhere constitutes danger to prosperity everywhere; and
4. The war against want requires to be carried on with unrelenting vigour within each nation, and by continuous and concerted international effort in which the representatives of workers and employers, employing equal status with those of governments, join with them in free discussion and democratic decision with a view to the promotion of the common welfare.

International Labour Standards on Freedom of Association:

The principle of freedom of association is at the core of the ILO's values: it is enshrined in the ILO Constitution (1919), the ILO Declaration of Philadelphia (1944), and the ILO Declaration on Fundamental Principles and Rights at Work (1998). It is also a right proclaimed in the Universal Declaration of Human Rights (1948). The right to organize and form employers' and workers' organizations is the prerequisite for sound collective bargaining and social dialogue. Nevertheless, there continue to be challenges in applying these principles: in some countries certain categories of workers (for example public servants, seafarers, workers in export processing zones) are denied the right of association, workers' and employers' organizations are illegally suspended or interfered with, and in some extreme cases trade unionists are arrested or killed. ILO standards, in conjunction with the work of the Committee on Freedom of Association and other supervisory mechanisms, pave the way for resolving these difficulties and ensuring that this fundamental human right is respected the world over.

1. **Freedom of Association and Protection of the Right to Organize Convention, 1948:**

This Convention provides that workers and employers shall have the right to establish and join organizations of their own choosing without previous authorization. The public authorities are to refrain from any interference which would restrict the right to form organization or impede its lawful exercise. These organizations shall not be liable to be dissolved or suspended by administrative authority. It also provides protection against act of anti-union discrimination in respect of their employment. This convention has been ratified by Albania, Argentina, Austria, Belgium, Brazil,

Byelorussia, Cuba, Denmark, Dominican Republic, Finland and France. Federal Republic of Germany and India have not ratified this particular convention.

As regards the Trade Unions Act, 1926, it limits the number of outsiders in the executive of a trade union. Further there is restriction on outsiders in the federations of Government servants who cannot affiliate themselves with any central federations of workers. Also, the Government in public interest can forego any association or trade union and detain or arrest a trade union leader under the Essential Services Act, 1967 , the Preventive Detention Act, 1950, the Maintenance of Internal Security Act, 1971 Likewise the Code of discipline in industry, although non-legal and non-statutory, one regulates the organization of constitution of India itself, while guaranteeing freedom in public interest and public good. These laws and practice on trade unions do not conform to the requirements of the convention.

2. **Right to Organize and Collective Bargaining Convention, 1949**

This fundamental convention provides that workers shall enjoy adequate protection against acts of anti-union discrimination, including requirements that a worker not join a union or relinquish trade union membership for employment, or dismissal of a worker because of union membership or participation in union activities. Workers' and employers' organizations shall enjoy adequate protection against any acts of interference by each other, in particular the establishment of workers' organizations under the domination of employers or employers' organizations, or the support of workers' organizations by financial or other means, with the object of placing such organizations under the control of employers or employers' organizations. The convention also enshrines the right to collective bargaining.

3. **Workers' Representatives Convention, 1971**

Workers' representatives in an undertaking shall enjoy effective protection against any act prejudicial to them, including dismissal, based on their status or activities as a workers' representative or on union membership or participation in union activities, in so far as they act in conformity with existing laws or collective agreements or other jointly agreed arrangements. Facilities in the undertaking shall be afforded to workers' representatives as may be appropriate in order to enable them to carry out their functions promptly and efficiently.

4. **Rural Workers' Organizations Convention, 1975**

All categories of rural workers, whether they are wage earners or self-employed, shall have the right to establish and, subject only to the rules of the organization concerned, to join organizations, of their own choosing without previous authorization. The principles of freedom of association shall be fully respected; rural workers' organizations shall be independent and voluntary in character and shall remain free from all interference, coercion or repression. National policy shall facilitate the establishment and growth, on a voluntary basis, of strong and independent organizations of rural workers as an effective means of ensuring the participation of these workers in economic and social development.

Freedom of Association and Constitution of India:

Article 19(1)(c) of the Constitution of India, 1950 which envisages fundamental right to freedom of speech and expression also guarantees the country's citizens the right "to form associations or unions" including trade unions. The right guaranteed in Article 19(1) (c) also includes the right to join an association or union. This right carries with it the right of the State to impose reasonable restrictions. Furthermore, it has been established that the right to form associations or unions does not in any manner encompass the guarantee that a trade union so formed shall be enabled to engage in collective bargaining or achieve the purpose for which it was formed. The right to recognition of the trade union by the employer was not brought within the purview of the right under Article 19(1)(c) and thus, such recognition denied by the employer will not be considered as a violation of Article 19(1)(c). The various freedoms that are recognized under the fundamental right, Article 19(1)(c), are

1. The right of the members of the union to meet,
2. The right of the members to move from place to place,
3. The right to discuss their problems and propagate their views, and
4. The right of the members to hold property.

Objectives of Trade Union Act:

Trade union is a voluntary organization of workers relating to a specific trade, industry or a company and formed to help and protect their interests and welfare by collective action. Trade unions are the most suitable organizations for balancing and

improving the relations between the employees and the employer. They are formed not only to cater to the workers' demand, but also for imparting discipline and inculcating in them the sense of responsibility. They aim to:-

1. Secure fair wages for workers and improve their opportunities for promotion and training.
2. Safeguard security of tenure and improve their conditions of service.
3. Improve working and living conditions of workers.
4. Provide them educational, cultural and recreational facilities.
5. Facilitate technological advancement by broadening the understanding of the workers.
6. Help them in improving levels of production, productivity, discipline and high standard of living.
7. Promote individual and collective welfare and thus correlate the workers' interests with that of their industry.
8. to take participation in management for decision-making in connection to workers and to take disciplinary action against the worker who commits in-disciplinary action.

Definition of Trade Union:

Sec 2 (h) states that "Trade Union" means any combination, whether temporary or permanent, formed primarily for the purpose of regulating the relations between workmen and employers or between workmen and workmen, or between employers and employers, or for imposing restrictive conditions on the conduct of any trade or business, and includes any federation of two or more Trade Unions.

Important elements of Trade Union:

1. There must be combination of workmen and employers;
2. There must be trade or business; and
3. The main object of the Union must be to regulate relations of employers and employees or to impose restrictive conditions on the conduct of any trade or business.

In Rangaswami V. S Registrar of Trade Unions, in the Raj Bhavan at Guindy, a number of persons are employed in various capacities such as household, staff, peons, chauffers, tailors, carpenters, maistries, gardeners, sweepers etc. There are also

gardeners and maistries employed at the Raj Bhavan at Ootacamund. Those persons are employed for doing domestic and other services and for the maintenance of the Governor's household and to attend to the needs of the Governor, the members of his family, staff and State guests. When employees applied for the registration of trade union, the registrar had rejected their application on the ground that, Raj Bhavan not comes under the meaning of trade and business. The petition has been field seeking to set aside the order of the Registrar of Trade Unions, Madras refusing to register the union of employees of the Madras Raj Bhavan as a trade union under the Trade Unions Act.

Supreme Court rejecting the petition, held that, even apart from the circumstance that a large section of employees at Raj Bhavan are Government servants who could not form themselves into a trade union, it cannot be stated that the workers are employed in a trade or business carried on by the employer. The services rendered by them are purely of a personal nature. The union of such workers would not come within the scope of the Act, so as to entitle it to registration there under.

The term "trade union" as defined under the Act contemplates the existence of the employer and he employee engaged in the conduct of a trade or business. The definition of the term "workmen" in Sec. 2 (g) would prima facie indicate that it was intended only for interpreting the term "trade dispute". But even assuming that that definition could be imported for understanding the scope of the meaning of the term "trade union" in S. 2 (h), it is obvious that the industry should be one as would amount to a trade or business, i.e., a commercial undertaking. So much is plain from the definition of the term "trade union", itself. I say this because the definition of "industry" in the Industrial Disputes Act is of wider significance. Section 2 (j) of the Industrial Disputes Act which defines "industry" states its meaning as “any business, trade undertaking, manufacture or calling of employers and includes any calling, services, employment, handicraft or industrial occupation or avocation of workmen."

In Tamil Nadu NGO Union v. Registrar, Trade Unions, in this case Tamil Nadu NGO Union, which was an association of sub magistrates of the judiciary, tahsildars, etc., was not a trade union because these people were engaged in sovereign and regal functions of the State which were its inalienable functions. In GTRTCS and Officer’s Association, Bangalore and others vs Asst. Labor Commissioner and

anothers, in this case the definition of workmen for the purpose of Trade Unions is a lot wider than in other acts and that the emphasis is on the purpose of the association rather than the type of workers and so it is a valid Trade Union.

Definition of Trade Dispute:

"trade dispute" means any dispute between employers and workmen, or between workmen and workmen, or between employers and employers which is connected with the employment or non-employment, or the terms of employment or the conditions of labor, of any person, and "workmen" means all persons employed in trade or industry whether or not in the employment of the employer with whom the trade dispute arises;

Procedures for the Registration of Trade Unions:

The main object of the Trade Unions Act, 1926 is to provide machinery for registration and regulation of Trade Unions. Although registration of a trade union is not mandatory, it is advisable to register the trade unions as the registered trade unions are entitled to get several benefits, immunities and protection under the act. There are specific rights and privileges conferred on the members of the registered trade unions. The members of the registered trade unions are entitled to get protection, immunity and certain exceptions from some civil and criminal liabilities. A trade union can only be registered under the Trade Unions Act, 1926**.**

Trade union Act, 1926 not provides compulsory registration. However, there are certain disadvantages of non registration. Therefore it is better to register the trade union. The following is the procedure for registration of trade union.

Appointment of Registrar:

Section 3 of the Trade Union Act, 1926 empowers the appropriate Government to appoint a person to be a registrar of Trade Unions. The appropriate Government is also empowered to appoint additional and Deputy Registrars as it thinks fit for the purpose of exercising and discharging the powers and duties of the Registrar. However, such person will work under the superintendence and direction of the Registrar. He may exercise such powers and functions of Registrar with local limit as may be specified for this purpose.

Mode of registration:

Sec 4 of the Act states that, any seven or more members of a Trade Union may, by subscribing their names to the rules of the Trade Union and by otherwise complying with the provisions of this Act with respect to registration, apply for registration of the Trade Union under this Act. However, no Trade Union of workmen shall be registered unless at least ten per cent. or one hundred of the workmen, whichever is less, engaged or employed in the establishment or industry with which it is connected are the members of such Trade Union on the date of making of application for registration.

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

Where an application has been made under sub-section (1) of Sec 4 for the registration of a Trade Union, such application shall not be deemed to have become invalid merely by reason of the fact that, at any time after the date of the application, but before the registration of the Trade Union, some of the applicants, but not exceeding half of the total number of persons who made the application, have ceased to be members of the Trade Union or have given notice in writing to the Registrar dissociating themselves from the applications.

The Supreme Court in Tirumala Tirupati Devasthanam held that, any group of employees may be registered as a trade union under the Act for the purpose of regulating the relations between them and their employer or between themselves. It would be apparent from this definition that any group of employees which comes together primarily for the purpose of regulating the relations between them and their employer or between them and other workmen may be registered as a trade union under the Act.

Application for registration:

Application for registration must be submitted in the prescribed format. Sec 5 provides that, every application for registration of a Trade Union shall be made to the

Registrar, and shall be accompanied by a copy of the rules of the Trade Union and a statement of the following particulars, namely:

1. the names, occupations and addresses of the members making the application;
2. in the case of a Trade Union of workmen, the names, occupations and addresses of the place of work of the members of the Trade Union making the application;
3. the name of the Trade Union and the address of its head office; and
4. the titles, names, ages, addresses and occupations of the 4 office-bearers of the Trade Union.

Where a Trade Union has been in existence for more than one year before the making of an application for its registration, there shall be delivered to the Registrar, together with the application, a general statement of the assets and liabilities of the Trade Union prepared in such form and containing such particulars as may be prescribed.

Provisions to be contained in the rules of a Trade Union:

Every application must accompany the rules of trade union that has been provided under Sec 6 of the Act. A Trade Union shall not be entitled to registration under this Act, unless the executive thereof is constituted in accordance with the provisions of this Act, and the rules thereof provide for the following matters, namely:

a) the name of the Trade Union;
b) the whole of the objects for which the Trade Union has been established;
c) the whole of the purposes for which the general funds of the Trade Union shall be applicable, all of which purposes shall be purposes to which such funds are lawfully applicable under this Act;
d) the maintenance of a list of the members of the Trade Union and adequate facilities for the inspection thereof by the office-bearers and members of Trade Union;
e) the admission of ordinary members who shall be persons actually engaged or employed in an industry with which the Trade Union is connected, and also the admission of the number of honorary or temporary members as office-bearers required under section 22 to form the executive of the Trade Union;

f) the payment of a minimum subscription by members of the Trade Union which shall not be less than—
   i. one rupee per annum for rural workers;
   ii. three rupees per annum for workers in other unorganized sectors; and
   iii. twelve rupees per annum for workers in any other case;
g) the conditions under which any member shall be entitled to any benefit assured by the rules and under which any fine or forfeiture may be imposed on the members;
h) the manner in which the rules shall be amended, varied or rescinded;
i) the manner in which the members of the executive and the other office-bearers of the Trade Union shall be elected and removed;
j) the duration of period being not more than three years, for which the members of the executive and other office-bearers of the Trade Union shall be elected;
k) the safe custody of the funds of the Trade Union, an annual audit, in such manner as may be prescribed, of the accounts thereof, and adequate facilities for the inspection of the account books by the office-bearers and members of the Trade Union; and
l) the manner in which the Trade Union may be dissolved.

Power to call for further particulars and to require alteration of name:

Under Sec 7 of the Act, the Registrar has power to call for further information for the purpose of satisfying himself that any application complies with the provisions of section 5, or that the Trade Union is entitled to registration under section 6, and may refuse to register the Trade Union until such information is supplied.

It further states that, if the name under which a Trade Union is proposed to be registered is identical with that by which any other existing Trade Union has been registered or, in the opinion of the Registrar, so nearly resembles such name as to be likely to deceive the public or the members of either Trade Union, the Registrar shall require the persons applying for registration to alter the name of the Trade Union stated in the application, and shall refuse to register the Union until such alteration has been made.

Registration:

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

Certificate of registration:

Sec 9 of the Act empowers the Registrar, on registering a Trade Union under section 8, shall issue a certificate of registration in the prescribed form which shall be conclusive evidence that the Trade Union has been duly registered under this Act.

Minimum requirement about membership of a Trade Union:

Sec 9-A provides that, a registered Trade Union of workmen shall at all times continue to have not less than ten percent or one hundred of the workmen, whichever is less, subject to a minimum of seven, engaged or employed in an establishment or industry with which it is connected, as its members.

Cancellation of registration:

A certificate of registration of a Trade Union may be withdrawn or cancelled under Sec 10 of the Act, by the Registrar

1. on the application of the Trade Union to be verified in such manner as may be prescribed;
2. if the Registrar is satisfied that the certificate has been obtained by fraud or mistake, or that the Trade Union has ceased to exist or has willfully and after notice from the Registrar contravened any provision of this Act or allowed any rule to continue in force which is inconsistent with any such provision, or has rescinded any rule providing for any matter provision for which is required by section 6;
3. if the Registrar is satisfied that a registered Trade Union of workmen ceases to have the requisite number of members:

Registrar to the Trade Union shall give a previous notice of two months in writing specifying the ground on which he proposed to withdraw or cancel the certificate of registration otherwise than on the application of the Trade Union.

Appeal:

Any person aggrieved by any refusal of the Registrar to register a Trade Union or by the withdrawal or cancellation of a certificate of registration may, within such period as may be prescribed, appeal under Sec 11 of the Act,

a) where the head office of the Trade Union is situated within the limits of a Presidency town to the High Court, or
b) where the head office is situated in an area, falling within the jurisdiction of a Labour Court or an Industrial Tribunal, to that Court or Tribunal, as the case may be;
c) where the head office is situated in any area, to such Court, not inferior to the Court of an additional or assistant Judge of a principal Civil Court of original jurisdiction, as the appropriate Government may appoint in this behalf for that area.

The appellate Court may dismiss the appeal, or pass an order directing the Registrar to register the Union and to issue a certificate of registration under the provisions of section 9 or setting aside the order or withdrawal or cancellation of the certificate, as the case may be, and the Registrar shall comply with such order.

Advantages of registration of trade Union:

A trade union enjoys the following advantages after registration under sec 13, namely

a) A trade union after registration becomes a body corporate
b) It gets perpetual succession and common seal
c) It can acquire and hold both movable and immovable property
d) It can enter into a contract
e) It can sue and be sued in its registered name

Objects on which general funds may be spent:

Sec 15 provides the objects on which general fund may be spent. The general funds of a registered Trade Union shall not be spent on any other objects than the following, namely:—

1. the payment of salaries, allowances and expenses to office-bearers of the Trade Union;
2. the payment of expenses for the administration of the Trade Union, including audit of the accounts of the general funds of the Trade Union;
3. the prosecution or defence of any legal proceeding to which the Trade Union or any member thereof is a party, when such prosecution or defence is undertaken for the purpose of securing or protecting any rights of the Trade Union as such or any rights arising out of the relations of any member with his employer or with a person whom the member employs;
4. the conduct of trade disputes on behalf of the Trade Union or any member thereof;
5. the compensation of members for loss arising out of trade disputes;
6. allowances to members or their dependants on account of death, old age, sickness, accidents or unemployment of such members;
7. the issue of, or the undertaking of liability under, policies of assurance on the lives of members, or under policies insuring members against sickness, accident or unemployment;
8. the provision of educational, social or religious benefits for members (including the payment of the expenses of funeral or religious ceremonies for deceased members) or for the dependants of members;
9. the upkeep of a periodical published mainly for the purpose of discussing questions affecting employers or workmen as such;
10. the payment, in furtherance of any of the objects on which the general funds of the Trade Union may be spent, of contributions to any cause intended to benefit workmen in general, provided that the expenditure in respect of such contributions in any financial year shall not at any time during that year be in excess of one-fourth of the combined total of the gross income which has up to that time accrued to the general funds of the Trade Union during that year and of the balance at the credit of those funds at the commencement of that year.

Constitution of a separate fund for political purposes:

A registered Trade Union may constitute a separate fund, from contributions separately levied for or made to that fund, from which payments may be made, for the promotion of the civic and political interests of its members, in furtherance of any of the objects specified in sub-section (2).

Sub Sec (2) of sec 16 provides the following object on which political fund may be spent, namely

1. the payment of any expenses incurred, either directly or indirectly, by a candidate or prospective candidate for election as a member of any legislative body constituted under the Constitution or of any local authority, before, during, or after the election in connection with his candidature or election; or
2. the holding of any meeting or the distribution of any literature or documents in support of any such candidate or prospective candidate; or
3. the maintenance of any person who is a member of any legislative body constituted under the Constitution or for any local authority; or
4. the registration of electors or the selection of a candidate for any legislative body constituted under the Constitution or for any local authority; or
5. the holding of political meetings of any kind, or the distribution of political literature or political documents of any kind.

Contribution to political fund is not compulsory:

The subscription to a trade union for political funds is only voluntary. Sec 16 (3) provides that, If a member does not contribute to the political fund, he will be under no disadvantage or disability but in respect of control and management of this fund. He cannot be excluded in any way from the benefits of the trade union nor can any condition be imposed for his admission to the trade union.

Immunities/Privileges of a Registered Trade Union:

In the case of Buckinghum and Carnatic Mills, the employers were awarded damages and the unions were held responsible for illegal conspiracies. The Trade Unions Act, 1926 has made provisions for the members and office-bearers of a

registered trade union from criminal and civil conspiracies during the strikes and causing any financial loss to the employer.

Workmen's Right to sell his labour at his own price, and the employer's right to determine the terms and conditions on which he would get the work done, have seldom been absolute. In former days. statutes fixing wages prohibited labour to claim more. In modem times, minimum standard legislations prohibit employers to pay less.

The repeal of mediaeval statutes opened the theoretical possibility of free bargaining between workmen and employers (subject, of course, to the provisions of the minimum standard statutes). If the terms of employment were not satisfactory, the worker could withdraw his labour until the employer paid more. Ifthe terms were too onerous, the employer could suspend the work until the workmen accepted less. But, in practice, mechanization of industries which took away the importance of their craftsmanship, surplus labour market which made alternative cheap labour available, the statutes penalizing breach of contract under which workmen except on pain of imprisonment, agitated for better terms. and the overall economic superiority of employers heavily tilted the bargaining power in favour ofthe employer and the workmen became helpless participants.

Under the circumstances, it was natural for the working class to combine together to retrieve their lost position. But the Act of combination invited the application of the concept of conspiracy to labour management relations and although the law did not make any distinction between employers and workmen as such. the element of combination made labourers the worst sufferers. Further, in an era which was fast moving from status to contract, the workmen's "protest" also invited the application of the common law doctrine of restraint of trade. By the time law courts refined the "objectives" and the "means" tests to protect protest movement from conspiracy and disentangled labour management relations from the concept of restraint of trade, the community itself had intervened to protect labour from the hazards of the aforesaid common law doctrines. But, the passage of time and resulting experience made it equally clear that the community could not altogether ignore strikes and lock-outs. Quite apart from the economic aspects, and law and order which in themselves were important, the health and welfare of the people depended on the smooth running of industries.

Until 1926, unions of workers indulging in strike and causing financial loss to management were liable for illegal conspiracies. For instance in Buckingham and Carnatic Mills the unions were held liable for illegal conspiracies and employers were awarded damages. It was only in 1926 that the Trade Unions Act, 1926 immunizes trade union activity, from restraint of trade and conspiracy. But these provisions are of pre constitutional era. These statutory provisions must now be considered in the light of the Constitutional guarantees of the right to freedom of speech and expression, to assemble peaceably, to form associations and unions, to practice any profession and to carry on any occupation, trade or business, and grants protection against economic exploitation.

Let's examine the nature and scope of the immunity afforded to the members and office-bearers of registered trade union from civil and criminal conspiracies and restraint of trade under the Trade Unions Act, 1926.

1. **Immunity From Criminal Conspiracy**

Section 17 of the Trade Unions Act, 1926 seeks to insulate trade unions activity from liability for criminal conspiracy. It states that, no office-bearer or member of a registered Trade Union shall be liable to punishment under sub-section (2) of Section 120-B of the Indian Penal Code in respect of any agreement made between the members for the purpose of furthering any such object of the Trade Union as is specified in Section 15, unless the agreement is an agreement to commit an offence.

The immunity is, however, available only:

(i) to office-bearers and members of registered trade unions;

(ii) for agreement;

(iii) which further any such trade union object as is specified in section 15 of the Act; and

(iv) which are not agreements to commit offences.

The last of the limitations on the scope of the immunity granted by section 17 of the Trade Unions Act, 1926 raises an issue relating to the very nature of the immunity. Section 120-A of the Indian Penal Code defines criminal conspiracy to mean: (i) an agreement between two or more persons to commit an offence, t.e., in general," an act which is punishable under the Indian Penal Code or any other law for

the time being in force; and (ii) an overt act done in pursuance of an agreement between two or more persons to do an illegal act or to do a legal act by illegal means. The Indian Penal Code defines the word "illegal" to include, inter alia, everything which is prohibited by law, or which furnishes ground for a civil action.

Since workman's use of instruments of economic coercion in an industrial dispute involve breach of contract and 'frequently injury to the property right of the employer both of which are actionable, use of the instruments of economic coercion amounts to an illegal act within the meaning of section 120-A read with section 43 of the Indian Penal Code. However, section 18 of the Trade Unions Act, inter alia. provides: No suit or other legal proceeding shall be maintainable in any. Civil Court against any registered Trade Union or any office bearer or member thereof in respect of any act 'done in contemplation or furtherance of a trade dispute to which a member of the Trade Union is a party on the ground only that such act induces some other person to break a contract of employment, or that it is in interference with the trade, business or employment of some other person or with the right of some other person to dispose of his capital or of his labour as he wills.

Thus, under Section 17 the breach of contract and injury to employers property right cease to be actionable and. therefore, does not amount to criminal conspiracy" as defined in section 120-A read with section 43 of the Indian Penal Code. A question, therefore, arises as, what is the criminal liability in respect of which Section 17 of the Trade Unions Act, 1926 grants immunity? In considering the matter it is relevant to note that section 17 does not grant charter of liberty to commit an offence, which is punishable with death, life imprisonment or rigorous imprisonment for a term of two years or more. In fact as the last words of the section 17 of the Trade Union Act, 1926 indicate that it does not insulate agreement to commit any offence whatsoever. Perhaps the immunity is confined to agreement between two or more persons to do or cause to be done, acts which are prohibited by law but which neither amounts to an offence nor furnishes ground for civil action.

Breach of contract does give rise to a civil cause of action, therefore, under section 43 of the Indian Penal Code an agreement to commit breach of contract through withdrawal of labour as an instrument of economic coercion in an industrial dispute, is a criminal conspiracy. Further, so long as any law declares withdrawal of

labour in breach of contract to be an offence of a member of the consenting party takes any step to encourage, abet, instigate, persuade, incite or in any manner act in furtherance of the objective, the crime of criminal conspiracy would have been committed. Finally, since criminal conspiracy is a substantive offence punishable under section 120-B of the Indian Penal Code it is doubtful if Section 17 grants immunity at all.

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

The Calcutta High Court in Jay Engineering Works Ltd. v. Staff while interpreting the provisions of section 17 of the Trade Unions Act, 1926 held that, no protection is available to the members of a trade union for any agreement to commit an offence. When a group of workers, large or small, combined to do an act for the purpose of one common aim or object it must be held that there is an agreement among the workers to do the act and if the act committed is an offence, it must similarly be held that there is an agreement to commit an offence.

2. **Immunity From Civil Actions**

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

i. No suit or other legal proceeding shall be maintainable in any civil court against any registered trade union or any officebearer or member thereof in respect of any act done in contemplation or furtherance of a trade dispute to which a member of the trade union is a party on the ground only that such act induces some other person to break a contract of employment, or that it is in

interference with the trade business or employment ofsome other person or with the right ofsome other person to dispose of his capital or his labour as he wills.

ii. A registered trade union shall not be liable in any suit or other legal proceeding in any civil court in respect of any tortuous act done in contemplation or furtherance of a trade dispute by an agent of the trade union if it is proved that such person acted without the knowledge of, or contrary to express instructions given by the executive of the trade unions

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

In Rohtas Industries Staff Union v. State of Bihar, certain workmen went on an illegal and unjustified strike at the instance of the union. A question arose whether the employers have any right of civil action for damages against the strikers. The arbitrator held that the workers who participated in an illegal and unjustified strike, were jointly and severely liable to pay damages. On a writ petition the Patna High Court quashed the award of the arbitrator and held that employers had no right of civil action for damages against the employees participating in an illegal strike within the meaning of section 24 of the Industrial Disputes Act, 1947. From this decision it is evident that section 18 grants civil immunity in case of strike by the members of the trade union. On appeal, the Supreme Court affirmed the judgment of the high court on the ground that the claim for compensation and the award thereof in arbitration proceedings were invalid and such compensation for loss of business was not a dispute or difference between the employers and the workmen which was connected with the employment or non-employment or terms of employment or with the condition of labour of any person. The Supreme Court found itself not obliged to decide the question as to whether the Patna High Court was right in relying on section I8 of the Act to rebuff the claim for compensation because the learned judges of

In Jay Engineering Works v, Staff the Calcutta High Court was invited to consider the question whether the protection under sections 17 and 18 of the Trade Unions Act can be availed of where workers resort to gherao. The net result of the

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

The Calcutta High Court once again in Reserve Bank of India v. Ashis held that in oder to secure immunity from civil liability under section 18 inducement or procurement in breach of employment in furtherance of trade dispute must be by lawful means and not by means which would be illegal or wrong under any other provisions of the law. The Madras High Court in Sri Ram Vilas Service Ltd. v. Simpson Group Company Union held that it was not within the purview of the high court to prevent or interfere with the legitimate rights of the labour to pursue their agitation by means of a strike so long as it did not indulge in acts unlawful and tortious.

In Indian Newspapers (Bom) Pvt. Ltd. v. T.M. Nagarajan the Delhi High Court held that when there are allegations of violence made by the management in the plaint supported by documents then prima facie a suit would be maintainable and the protection of section 18 of the Trade Unions Act, 1926 would not be available. The fact whether any act of violence was committed or not would be decided in the suit.

In Ahmedabad Textile Research Association v. ATIRA Employees Union a Division Bench of the Gujarat High Court held that it is not within the purview of the civil court to prevent or interfere with the legitimate rights of the workmen to pursue their demands by means of strike or agitation or other lawful activities so long as they do not indulge in acts unlawful, tortious and violent. The court further held that any

agitation by the workmen must be peaceful and not violent. Any concerned movement by workmen to achieve their objectives is certainly permissible even inside the industrial establishment.

3. **Enforceability of Agreements:**

Section 19 grants protection to the agreements (between the members of a registered trade union) whose objects are in restraint of trade notwithstanding anything contained in any other law for the time being in force declaring such agreements to be void or voidable.

Problems of trade Union:

Following are some of the problems that are faced by trade unions in India, namely

1. **Multiplicity of unions:** Unlike the developed countries of the world (like U.K. and U.S.A) the number of unions is relatively large in India. A number of unions exist in one industrial unit. The rival unions sometimes do more harm to the workers than good.
2. **Absence of union structure:** The structure of the trade union may be a craft union, industrial union or the general union. A craft union is a union of workers representing particular skills such as electricians. When all the workers of an industry become members of the union, it is known as industrial union. A general union on the other hand covers various types of workers working in the different industries. In India, there is an absence of craft union. National commission on labour has recommended the formation of industrial unions and industrial federations.
3. **Limited membership:** The membership of the trade unions in India is very less. A trade union cannot become strong unless it can enroll large number of workers as its members.
4. **Scarcity of finances:** The main problem faced by trade unions in India is the paucity of financial resources. Fragmentation necessarily keeps the finances of the union very low. The membership fees paid by the members are very nominal. For this reason it is not possible for the union to take up welfare activities for its members.

5. **Small size:** On account of the limited membership, the size of the unions in India is very small. About 70 to 80% of the unions have less than 500 members.
6. **Lack of unity:** The major weakness of the trade union movement in India is the lack of unity among the various unions existing in India at present. The labour leaders have their own political affiliations. They use labour force for achieving their political gains rather than concentrating on the welfare of the workers.
7. **Lack of trained workers:** The workers in India are uneducated and untrained. The politicians, who are least concerned with the welfare of the workers, become their leaders. Backwardness of the workers and their fear of victimisation keep them away from union activities.
8. **Political dominance:** It is very unfortunate for the workers that all trade unions in India are being controlled by political parties. In order to achieve their political ends, they exaggerate workers' demands and try to disturb the industrial peace of the country.
9. **Hostile attitude of employers:**The employers have their own unions to oppose the working class. According to M. M. Joshi "They first try to scoff at it, then try to put it down; lastly if the movement persists to exist, they recognise it". In order to intimidate the workers, employers use many foul means which go to the extent of harassing the leaders by black-listing them or threatening them through hired goondas.

Certain other reasons which also make the union movement weak are

a) recruitment of workers through the middlemen who do not allow these persons to become members of the union
b) workers in India come from different castes and linguistic groups it affects their unity
c) unions least care for the welfare activities of their members.

The weak position of the Trade Unions in the country stands in the way of the healthy growth of the device of collective bargaining for the achievement of workers' aims. It is one of the principal reasons that adjudication rather than negotiation has to be applied for the settlement of industrial disputes.

It is incumbent on the part of all concerned with the welfare of the workers to make the trade unions strong and effective for the purposes for which they are formed. A strong union is good for the workers, the management, as well as for the community.

Amalgamation of Trade Unions:

Sec 24 provides that, any two or more registered Trade Unions may become amalgamated together as one Trade Union with or without dissolution or division of the funds of such Trade Unions or either or any of them, provided that the votes of at least one-half of the members of each or every such Trade Union entitled to vote are recorded, and that at least sixty per cent. of the votes recorded are in favour of the proposal.

Notice of change of name or amalgamation:

Sec 25 provides that, notice in writing of every change of name and of every amalgamation signed, in the case of a change of name, by the Secretary and by seven members of the Trade Union changing its name, and in the case of an amalgamation, by the Secretary and by seven members of each and every Trade Union which is a party thereto, shall be sent to the Registrar and where the head office of the amalgamated Trade Union is situated in a different State, to the Registrar of such State.

Recognition of Trade Union:

There is no specific provision for the recognition of the trade unions under the Trade Unions Act, 1926. Hence, recognition is a matter of discretion in the hands of the employer. Provisions for the recognition of trade unions were included in the Trade Union (Amendment) Act, 1947, but the act has not been implemented. The Trade Union Bill, 1950 also provided for recognition of trade union (based on the largest membership among the existing trade unions), but the bill lapsed due to dissolution of parliament.

Recognition of Central Trade Unions

The Central Government gives recognition to Trade Union as Central Trade Union for the purpose of representing in the International Labour Organizations and International Conferences, if such trade union fulfils the following conditions:

a) The Union has a minimum of five lakhs membership as on March, 1997.
b) The Union must have members from at least four states,
c) The Union must have a membership at least in four industries.

The Central Chief Labour Commissioner is authorized to verify the fulfillment of above conditions.

Collective Bargaining:

The term "Collective Bargaining" was used by Beatrice Webb in 1897 for the first time in his famous book "Industrial Democracy". Collective Bargaining means negotiation between the employer and workers to reach agreement on working conditions and other conflicting interests of both sides (employer and workers).

In simple words, collective bargaining means bargaining between an employer or group of employers and a bonafide labour union. There are few advantages and disadvantages of collective bargaining.

Advantages:

1. Collective Bargaining imposes an obligation on both parties to the dispute and creates a specific code of conduct for parties to the process.
2. The parties to the dispute undertake not to resort to strikes or lock-outs, and thus collective bargaining ensures peace and industrial harmony.

Disadvantages:

1. Increase in wages, and extra expenses to provide other amenities to workmen and improvement of working conditions can cause higher cost of production.
2. Political interference in the labour unions during the collective bargaining process increases the chance for adverse effects.

UNIT II

INDUSTRIAL DISPUTES ACT, 1947

Historical background and Introduction to the Industrial Disputes Act, 1947

Industrial disputes are the disputes which arise due to any disagreement in an industrial relation. Industrial relation involves various aspects of interactions between the employer and the employees. In such relations whenever there is a clash of interest, it may result in dissatisfaction for either of the parties involved and hence lead to industrial disputes or conflicts. These disputes may take various forms such as protests, strikes, demonstrations, lock-outs, retrenchment, dismissal of workers, etc.

Industrial Disputes Act, 1947 provides machinery for peaceful resolution of disputes and to promote harmonious relation between employers and workers. The Act is a benign measure which seeks to pre-empt industrial tensions, provide the mechanics of dispute resolutions and set up the necessary infrastructure so that the energies of partners in production may not be dissipated in counterproductive battles and assurance of industrial may create a congenial climate. The Act enumerates the contingencies when a strike or lock-out can be lawfully resorted to, when they can be declared illegal or unlawful, conditions for laying off, retrenching, discharging or dismissing a workman, circumstances under which an industrial unit can be closed down and several other matters related to industrial employees and employers. Under the Act various Authorities are established for Investigation and settlement of industrial disputes. They are Works Committee; Conciliation Officers; Boards of Conciliation; Court of Inquiry; Labour Tribunals; Industrial Tribunals and National Tribunals. The knowledge of this legislation is a must for the students so that they develop a proper perspective about the legal frame work stipulated under the Industrial Disputes Act, 1947.

The first enactment dealing with the settlement of industrial disputes was the Employers' and Workmen's Disputes Act, 1860. This Act weighed much against the workers and was therefore replaced by the Trade Disputes Act, 1929. The Act of 1929 contained special provisions regarding strikes in public utility services and general strikes affecting the community as a whole. The main purpose of the Act, however, was to provide a conciliation machinery to bring about peaceful settlement of

industrial disputes. The Whitely Commission made in this regard the perceptive observation that the attempt to deal with unrest must begin rather with the creation of an atmosphere unfavourable to disputes than with machinery for their settlement. The next stage in the development of industrial law in this country was taken under the stress of emergency caused by the Second World War. Rule 81-A of the Defence of India Rules was intended to provide speedy remedies for industrial disputes by referring them compulsorily to conciliation or adjudication, by making the awards legally binding on the parties and by prohibiting strikes or lock-outs during the pendency of conciliation or adjudication proceedings and for two months thereafter. This rule also put a blanket ban on strikes which did not arise out of genuine trade disputes.

With the termination of the Second World War, Rule 81-A was about to lapse on 1st October, 1946, but it was kept alive by issuing an Ordinance in the exercise of the Government's Emergency Powers. Then Industrial Disputes Act, 1947 enacted. The provisions of this Act, as amended from time to time, have furnished the basis on which industrial jurisprudence in this country is founded.

OBJECT AND SIGNIFICANCE OF THE ACT

The Industrial Disputes Act, 1947 makes provision for the investigation and settlement of industrial disputes and for certain other purposes. It ensures progress of industry by bringing about harmony and cordial relationship between the employers and employees. Definitions of the words 'industrial dispute, workmen and industry' carry specific meanings under the Act and provide the framework for the application of the Act.

In the case of *Workmen of Dimakuchi Tea Estate v. Dimakuchi Tea Estate*, AIR 1958 S.C. 353, the Supreme Court laid down following objectives of the Act:

(i) Promotion of measures of securing and preserving amity and good relations between the employer and workmen.

(ii) Investigation and settlement of industrial disputes between employers and employers, employers and workmen, or workmen and workmen with a right of representation by registered trade

union or federation of trade unions or an association of employers or a federation of associations of employers.

(iii) Prevention of illegal strikes and lock-outs.

(iv) Relief to workmen in the matter of lay-off and retrenchment.

(v) Promotion of collective bargaining.

This Act extends to whole of India. The Act was designed to provide a self-contained code to compel the parties to resort to industrial arbitration for the resolution of existing or apprehended disputes without prescribing statutory norms for varied and variegated industrial relating norms so that the forums created for resolution of disputes may remain unhampered by any statutory control and devise rational norms keeping pace with improved industrial relations reflecting and imbibing socio-economic justice. This being the object of the Act, the Court by interpretative process must strive to reduce the field of conflict and expand the area of agreement and show its preference for upholding agreements sanctified by mutuality and consensus in larger public interest, namely, to eschew industrial strife, confrontation and consequent wastage (*Workmen, Hindustan Lever Limited v. Hindustan Lever Limited*, (1984) 1 SCC 728).

Important Definitions under Industrial Disputes Act, 1947

Definition of Industry:

Section 2(j) defines industry, industry" means any business, trade, undertaking, manufacture or calling of employers and includes any calling, service, employment, handicraft, or industrial occupation or avocation of workmen.

This definition is in two parts. The first says that industry means any business, trade, undertaking, manufacture or calling of employers and the second part provides that it includes any calling, service, employment, handicraft, or industrial occupation or avocation of workmen. "If the activity can be described as an industry with reference to the occupation of the employers, the ambit of the industry, under the force of the second part takes in the different kinds of activity of employees mentioned in the second part. But the second part standing alone cannot define industry. By the inclusive part of the definition the labour force employed in any industry is made an integral part of the industry for the purpose' of industrial disputes

although industry is ordinarily something which employers create or undertake". However, the concept that "industry is ordinarily something which employers create or undertake" is gradually yielding place to the modern concept which regards industry as a joint venture undertaken by employers, and workmen, an enterprise which belongs equally to both. Further it is not necessary to view definition of industry under Section 2(j) in two parts.

The definition read as a whole denotes a collective which employers and employees are associated. It does not consist either by employers alone or by employees alone. An industry exists only when there is relationship between employers and employees, the former engaged in business, trade, undertaking, manufacture or calling of employers and the latter engaged in any calling, service, employment, handicraft or industrial occupation or avocation. There must, therefore, be an rise in which the employers follow their avocations as detailed in the defamation and employ workmen. Thus, a basic requirement of 'industry' is that the employers must "Be" ""carrying on any business, 'trade, undertaking, manufacture or calling of employers'. There is next much difficulty in ascertaining the meaning of the words business, trade, manufacture, or calling of employers in order to determine whether a particular activity carried on with the co-operation of employer and employees is an industry or not but the difficulties have cropped up in defining the word 'undertaking'.

"Undertaking" means anything undertaken, any business, work or project which one engages in or attempts, or an enterprise. It is a term of very wide denotation have been evolved by the Supreme Court in a number of decisions which But all decisions of the Supreme Court are agreed that an undertaking to be within the definition in Section 2(j) must be read subject to a limitation, namely, that it must be analogous to trade or business.1 Some working principles furnish a guidance in determining what are the attributes or characteristics which will indicate that an undertaking is analogous to trade or business. The first principles was stated by Gajendragadkar, J. in Hospital Mazdoor Sobfefl case as follows :

"As a working principle it may be stated that an activity systematically or habitually undertaken for the production or distribution of goods or for the rendering of material services to the community at large or a part of such community- with, the

help of employees is an undertaking. Such an activity generally involves the co-operation of the employer and the employees; and its object is the satisfaction of material human needs. It must be organized an arranged in a manner in which trade or business is generally organized or arranged. It must not be casual, nor must it be for one's self nor for pleasure. Thus the manner in which the activity in question is organized or arranged, the condition of the co-operation between the employer and the employee necessary for its success and its object to render material service to the community can be regarded as some of the features which are distinctive of activities to which Section 2(j) applies."

In Bangalore Water Supply v. A. Rajappa, a seven Judges' Bench of the Supreme Court exhaustively considered the scope of industry and laid down the following test which has practically reiterated the test laid down in Hospital Mazdoor Sabha case.

Triple Test:

Where there is (i), systematic activity, (ii) organised 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, prima facie, there is an "industry" in that enterprise. This is known as tripple test. The following points were also emphasized in this case:

1. Industry does not include spiritual or religious services or services geared to celestial bliss, e.g., making, on a large scale, prasad or food. It includes material services and things.
2. Absence of profit motive or gainful objective is irrelevant, be the venture in the public, joint, private or other sector.
3. The true focus is functional and the decisive test is the nature of the activity with special emphasis on the employer-employee relations.
4. If the organization is a trade or business-it does not cease to be one because of philanthropy animating the undertaking.

Therefore the consequences of the decision in this case are that professions, clubs, educational institutions co-operatives, research institutes, charitable projects

and other kindred adventures, if they fulfill the triple test stated above cannot be exempted from the scope of Section 2(j) of the Act.

Dominant nature test:

Where a complex of activities, some of which qualify for exemption, others not, involve employees on the total undertaking some of whom are not workmen or some departments are not productive of goods and services if isolated, even then the predominant nature of the services and the integrated nature of the departments will be true test, the whole undertaking will be "industry" although those who are not workmen by definition may not benefit by status.

Exceptions:

A restricted category of professions, clubs, co-operatives and even gurukulas and little research labs, may qualify for exemption if in simple ventures, substantially and, going by the dominant nature criterion substantively, no employees are entertained but in minimal matters, marginal employees are hired without destroying the non-employee character of the unit. If in pious or altruistic mission, many employ themselves, free or for small honorarium or like return, mainly drawn by sharing in the purpose or cause, such as lawyers volunteering to-run a free legal services, clinic or doctors serving in their spare hours in a free medical centre of ashramites working at the bidding of the holiness, divinity or like central personality, and the services are supplied free or at nominal cost and-those who serve are not engaged for remuneration or on the .basis of 'master and servant relationship, then, the institution is not an industry even if stray servants, manual or technical are hired. Such elementary or like undertakings alone are exempt not other generosity, compassion, developmental passion or project.

Sovereign functions, strictly understood, (alone) qualify for exemption, not the welfare activities or economic adventures undertaken by Government or statutory bodies. Even in departments discharging sovereign functions, if there are units which are industries and they are substantially severable, then they can be considered to come within Section It was further observed that : "Undertaking must suffer a contextual and associational shrinkage as explained in D.N. Barterjee v. P.R. Mukherjee, so also, service calling and the like. This yields to the inference that all

organised activities possessing the triple elements abovementioned, although not trade or business, may still be industry provided the nature of the activity,, viz. the employer-employee basis, bears resemblance to what is found in, trade or business. This takes into the fold of "industry" undertaking, callings and services, adventures analogous to the carrying on of trade or business. All features other than the methodology of carrying on the activity, viz., in organizing the co-operation between employer and employee, may be dissimilar. It does not matter if on the employment terms there is analogy".

The Supreme Court in Management of Safdarjung Hospital, Delhi v. Kuldip Singh counter to the principles enunciated in Bangalore Water Supply v. A. Rajappa case and overrule its decision.

Whether Municipal corporation can be regarded as an industry

This question was decided by the court in D.N. Banerjee v. P.R. Mukherjee. In this case the Budge Municipality dismissed two of its employees, Mr. P.C. Mitra, a Head clerk and Mr. P.N. Ghose a Sanitary Inspector on charges for negligence, insubordination and indiscipline. The Municipal Workers Union of which the dismissed employees were members questioned the propriety of the dismissal and the matter was referred to the Industrial Tribunal. The Tribunal directed reinstatement and the award was challenged by the Municipality on the ground that its duties being connected with the local self-government it was not an industry and the dispute was not an industrial dispute and therefore reference of the dispute to the tribunal was bad in law.

The Supreme Court observed that in the ordinary or non-technical sense industry or business means an undertaking where capital and labour co-operate with each other for the purpose of producing wealth in the shape of goods, tools etc. and for making profits. In the opinion of the Court every aspect of activity in which the relationship of master and servant or employer and employees exists or arises does not become an industry It was further observed that 'undertaking' in the first part and industrial occupation or avocation in the second part of Section 2(j) obviously mean much more than what is ordinarily understood by trade or business.

The definition was apparently intended to include within its scope what might not strictly be called a trade or business. Neither investment of capital nor profit making motive is essential to constitute an industry as they are generally, necessary in a business, A public utility service such as railways, telephones, and the supply of power, light or water to the public may be carried on by private companies or business corporations and if these public utility services are carried on by local bodies like a Municipality they do not cease to be an industry, for the reasons stated above Municipal Corporation was held to be an industry.

In Permanand v. Nagar Palika, Dehradun and others the Supreme Court held that the activity of a Nagar Palika in any of its department except those dealing with levy of house tax etc, falls within the definition of industry in U.P. Industrial Disputes Act, 1947.

Whether hospital is an industry:

The question whether hospital is an industry or not has come for determination by the Supreme Court on a number of occasions and the uncertainty has been allowed to persist because of conflicting judicial decisions right from Hospital Mazdoor Sabha case to the Bangalore Water Supply v. A. Rajappa.

In State of Bombay v. Hospital Mazdoor Sabha case, the Hospital MazdoorSabha was a registered Trade Union of the employees of hospitals in the State of Bombay, The services of two of its members were terminated by way of retrenchment' by the Government and the Union claimed their reinstatement through a writ petition. It was urged by the State that the writ application was misconceived because hospitals did not constitute an industry. The group of hospitals were run by the State for giving medical relief to citizens and imparting medical education.

The Supreme Court held the group of hospitals to be industry and observed as follows :

1. The State is carrying on an 'undertaking' within Section 2(j) when it runs a group of hospitals for purpose of giving medical relief to the citizens and for helping to impart medical education.
2. An activity systematically or habitually undertaken for the production or distribution of goods or for the rendering of material services to the

community at large or a part of such community with the help of employees is an undertaking.

3. It is the character of the activity in question which attracts the provisions of Section 2(j), who conducts the activity and whether it is conducted for profit or not make a material difference.
4. The conventional meaning attributed to the words, 'trade and business' has lost some of its validity for the purposes of industrial adjudication...it would be erroneous to attach undue importance to attributes associated with business or trade in the popular mind in days gone by. Hospital run by the Government as a part of its function is not an industry.

Hospitals run by the State of Orissa are places where persons can get treated. they are run as departments of Government. The mere fact that payment is accepted in respect of some beds cannot lead to the inference that the hospitals are run as a business in a commercial way. Primarily, the hospitals are meant as free service by the Government to the patients without any profit motive". But in view of the decision of the Supreme Court in Bangalore Water Supply v. A. Rajappa Dhanrajgiri Hospital case has been overruled and all hospitals fulfilling the test laid down in Bangalore Water Supply case will be industry.

Thus on an analysis of the entire case law up to Bangalore Water Supply case on the subject it can be said that such hospitals as are run by the Government as part of its sovereign functions with the sole object of rendering free service o the patients are not industry. But all other hospitals, both public and private; whether charitable or commercial would be industry if they fulfil the triple test laid down in Bangalore Water Supply v. A. Rajappa.

Whether University and Educational Institutions:

In University of Delhi v. Ram Nath, the respondent Mr. Ram Nath was employed as driver by University College for women. Mr. Asgar Mashih was initially employed as driver by Delhi University but was later on transferred to the University College for women in 1949. The University of Delhi found that running the busess for transporting the girl students of the women's college has resulted in loss. Therefore it decided to discontinue that facility and consequently the services of the above two drivers were terminated.

The order of termination was challenged on the ground that the drivers were workmen and the termination of their services amounted to retrenchment. They demanded payment of retrenchment compensation under Section 25-F of the Act by filing petitions before the Industrial Tribunal. The Tribunal decided the matter in favour of the drivers and hence the University of Delhi challenged the validity of the award on the ground that activity carried on by the University is not industry. It was held by the Supreme Court that the work of imparting education is more a mission and a vocation than profession or trade or business and therefore University is not an industry. But this case has been overruled by the Supreme Court in Bangalore Water Supply case and in view of the triple test laid down in Bangalore Water Supply case even a University would be an industry although such of its employees as are not workmen within the meaning of Section 2(s) of the Act, may not get the desired benefits to which a workman in an industry may be entitled to.

In Brahma Samaj Education Society v. West Bengal College Employees' Association, the society owned two colleges. A dispute arose between the society and non-teaching staff of the colleges. It was pleaded that the society was purely an educational institution and not an industry because there was no production of wealth with the co-operation of labour and capital as is necessary to constitute an industry. The Calcutta High Court observed that our conception of industry has not been static but has been changing with the passage of time. An undertaking which depends on the intelligence or capacity of an individual does not become an industry simply because it has a large establishment. There may be an educational institution to which pupils go because of the excellence of the teachers; such institutions are not industry. On the other hand, there may be an institution which is so organized that it is not dependent upon the intellectual skill of any individual, but is an organization where a number of individuals join together to render services which might even have a profit motive. Many technical institutions are run on these lines. When again we find these institutions also do business by manufacturing things or selling things and thereby making a profit they certainly come under heading of "industry". These being the tests, it is clear that it will be a question of evidence as to whether a particular institution can be said to be an industry or not.

In Osmania University v. Industrial Tribunal Hyderabad, a dispute having arisen between the Osmania University and its employees, the High Court of Andhra

Pradesh, after closely examining the Constitution of the University, held the dispute not to be in connection with an industry. The correct test, for ascertaining whether the particular dispute is between the capital and labour, is whether they are engaged in co-operation, or whether the dispute has arisen inactivities connected directly with, or attendant upon, the production or distribution of wealth.

In Ahmedabad Textile Industry's Research Association v. State of Bombay an association was formed for founding a scientific research institute. The institute was to carry on research in connection with the textile and other allied trades to increase efficiency. The Supreme Court held that "though the association was established for the purpose of research, its main object was the benefit of the members of the association, the association is organised, and arranged in the manner in which a trade or business is generally organised; it postulates cooperation between employers and employees; moreover the personnel who carry on the research have no right in the result of the research. For these reasons the association was held to be "an industry". But a society which is established with the object of catering to the intellectual as distinguished from material needs of men by promoting general knowledge of the country by conducting research and publishing various journals and books is not an industry. Even though it publishes books for sale in market, when it has no press of its own the society cannot be termed even an 'undertaking' for selling of its publication was only an ancillary activity and the employees were engaged in rendering clerical assistance in this matter just as the employees of a solicitor'firm help the solicitors in giving advice and service.

Since University of Delhi v. Ram Nath has been overruled by the Supreme Court in Bangalore Water Supply v. A. Rajappa the present position is that the educational institutions including the university are industry in a limited sense. Now those employees of educational institutions who are covered by the definition of workman under Section 2(s) of the Industrial Disputes Act, 1947 will be treated as workman of an industry.

Is Government Department an industry?

In State of Rajasthan v. Ganeshi lal, the Labour Court had held the Law Department of Government as an industry. This view was upheld by the Single Judge and- Division Bench of the High Court. It was challenged by the State before