5. Un-canalized Discretionary power under Section 10

As already noticed earlier, the discretionary power conferred on the Government is wide and un-canalized. It is true that if an Appropriate Government makes an improper or *malafide* use of this power the aggrieved party can take recourse to writ proceedings under Article 226. But where does all this lead to?. The elusive concepts of social and economic justice would inevitably elude the destitute workers if they are constrained to resort to writ proceedings for every malafide and supercilious act of the Appropriate Government concerning the referring of disputes for adjudication. It is more so in view of the courts repeated pronouncements to the effect that *malafide* is easier to allege than to establish and the onus of proving it is on the person making such allegation.

Therefore, *malafide* being a very tenuous and slippery ground for invoking the jurisdiction of a court, the aggrieved workers will for all practical purposes be left without any remedy for the cause of discretion by the Government. As a result, they would be driven into a position of helplessness, which may result in giving vent to their pent-up anger and spite against the unreasonable callous attitude of their employer as well as that of the Government towards their grievances in the shape of taking recourse to a direct action like strike or sometimes even if an aggrieved party is able to canvass successfully against an improper exercise of reference making power by the Government before a court of law, what would be the outcome of that? On an average a High Court takes 3 to 5 years to dispose of a writ petition. In any case it does not take less than three years for this purpose. If in a particular case, three years are needed to make a reference of dispute for adjudication, how can this be reconciled with the objects of speedy settlement of industrial disputes and dispensation of social justice to the working class as enshrined in the Act.

Right to remedy vis-a-vis discretionary Power

The adjudication machinery has extra-ordinary powers to grant appropriate relief to the workmen, which the ordinary Civil Courts do not have. Further, it is established law that the Civil Courts have no jurisdiction to entertain cases where the enforcement of a right or an obligation relates to those created by the Industrial dispute Act. The Act, in addition to conferring many benefits on workmen in cases of lay off, retrenchment, transfer of ownership or closure of an establishment, now empowers the adjudicators with appellate jurisdiction to interfere with the managerial

discretion to punish a workmen by discharge or dismissal ,which power is considered essential for ensuring the all essential job security of industrial workmen. Therefore, it is absolutely essential that for enforcement of all rights created by the Act and other related laws; the workmen should be able to approach the adjudicatory authorities without the requirement of Government reference.

There is an obvious inconsistency in the policy of the Act, which confers certain crucial rights on workmen and places the enjoyment of these rights at the disposal of the Government which is often the party against whom the rights are sought to be enforced. If the Government refuses to make reference, the aggrieved workmen are left with no remedy except to move the writ Court and very few among the ordinary workmen's can even think of reaching the precincts of High Court for the cost of litigation, which is not within the reach of any common man in this country. It is significant to note that such a situation is not conducive to the maintenance of industrial peace and harmony. There is almost unanimity among researchers, academicians and industrial relations experts that it is high time that this exclusive discretionary power of the Government is done away with.

After an exhaustive analytical study of Section 10 of the Act conducted by wadegaonkar, researcher concluded that, "it is now time to do away with this sole prerogative of the Government to initiate the industrial adjudication. It would be desirable to give a right to move the Labour Courts and Tribunals to the individual parties as regards the items under schedule II of the Act; these are items with which individual workmen are vitally connected. As regards the items under schedule III it would be appropriate to give the right to move the adjudicating authority to the employer and the representative union of the employer as these is items with which the workmen are connected as group".

In the light of another empirical study conducted by professor P.G. Krishnan of Delhi University a suggestion was made to the following effect. It is desirable that, "the reference system as an intermediate stage is done away with and the parties be enabled to take the matters directly before the adjudicatory machinery. In this regard a new Section 10-B is to be enacted it must provide that where the Government fails to make a reference within fifteen days of the submission of the failure report of the conciliation officer the parties are entitled to take the dispute before any of the adjudicating authorities competent to deal with it under the Act. In that case the dispute must be deemed to have been validly referred to that authority".

Finally the recommendations of First, Second NCL and Ramanujan Committee, 1990 for constitution of IRCs and LRCs who shall decide the question of adjudication of interests disputes and for direct reference of rights disputes by the parties to the Labour Court will be taken into consideration.

In view of the above discussion, it may concluded that the exclusive Governmental discretion to refer the industrial disputes for adjudication should be done away and incase of disputes by the workmen be given direct access to Labour Courts and in case of recognized unions also have the option of taking the disputes directly for adjudication, while the Government may continue to have the power to refer disputes for adjudication in public interest for ensuring industrial peace.

Prohibit the Continuance of strikes and lockouts after the order of reference.

The right to strike or cessation of work is not the fundamental right recognized by the constitution and would not come within the ambit article 19 (1) (c) of the Constitution. However, strikes and lockouts are weapons in the armory of labour and the employer in the process of collective bargaining all over the world and regulated by the Act. Compulsory adjudication system is seen as an alternative to strikes and lockout with a view to achieve the purpose of the Act. The rights of the workmen to strike and the right of the employer to lockout have been subjected to restrictions imposed by the Act, namely,

(i) Sections 22 and 23 prohibited the commencement of strike and lockouts in the circumstances stated therein.

(ii) Section 23(b) prohibits any strikes and lockouts in any establishment during the pendency of adjudication proceedings and for a period of two months after the conclusion of such proceedings.

(iii) Once the award of the adjudication comes into operation strikes and lockouts are prohibited by Section 23(1) during the period from which the award is in operation in respect of any of the matters covered by the award; and

(iv) If there is already strike and lockout in existence, the Appropriate Government by referring the concerned disputes for adjudication will acquire power to prohibit the continuance of any such strike or lockout.

Section 10(3) of the Act lays down “where an industrial dispute has been referred to a Board, Labour Court Tribunal or National Tribunal under this Section,

the Appropriate Government may by order prohibit the continuance of any strike or lockout in connection with such dispute which may be in existence on date of reference".

The object of Section 10(3) of the Act is to ensure the investigation and settlement of disputes in peaceful atmosphere. Continuance of a strike or lockout even though commenced before the order of reference, during the pendency of adjudication proceedings is not conducive for effective adjudication of dispute. Therefore the power conferred on the Government to prohibit the continuance of any strike or lockout that may have been in existence on the date of reference and Section 24 of the Act declares that the strikes and lockouts continued in contravention of an order made by the Government under Section 10(3) shall become illegal.

The language used in the Sub-Section (3) of Section 10 gave risk to interpretational difficulties. However, the Supreme Court in *Delhi Administration v. Workmen of Edward Keventers*, reversing the decision of the Delhi High Court, held that the Appropriate Government could prohibit Strikes or lockout only in respect of the demands which were referred for adjudication. The strike in respect of those demands, the Government can prohibit the continuance of the strike under this provision only if it had referred all the demands for adjudication. In other words, if the Government does not refer all those demands for adjudication, it cannot prohibit the strike in respect of the demands which were not referred. The words "such disputes which may be in existence on the date of reference" are read together as relating to the disputes referred. It was held that the words "which may be in existence on the date of reference" do not relate to strike or lockout but to the disputes. The Kerala High Court took the view that the power under Section 10(3) is of a quasi-judicial nature and therefore an order there under cannot be passed by the Government without giving the notice and hearing to those who would be affected by the order.

On the other hand the Delhi and A.P., High Courts were of the opinion that this power of the Government was purely administrative and therefore there was no need for the compliance with the principles of Natural Justice. The Supreme Court in *Nirmala Textile Finishing Mills Ltd. v. Industrial Tribunal Punjab*, upheld the Constitutional validity of this provision on the ground that the power is not arbitrary because it provides for the exercise of discretion for attaining the object of the Act Viz., peaceful settlement of industrial disputes.

Power to include similar establishments in a reference

The Appropriate Government under Section 10(5) of the Act, empowered to include in an order of reference, either at the time of reference or thereafter but before submission of award, any industrial establishment, group or class of establishments of a similar nature which are likely to be interested in or affected by such dispute. Whether or not at the time of such inclusion any dispute exists or is apprehended in such establishments.

Compulsory Adjudication:

Constitute the Dispute Resolution Mechanism

In addition to constituting other industrial relations machinery like Conciliation officer, Board of Conciliation and Court of Inquiry, the Appropriate Government has the power to constitute the adjudication machinery i.e. Labour Court and Industrial Tribunal and the Central Government has the power to constitute National Tribunal.

(i) Labour Courts

According to Section 7(1) of the Act, "The Appropriate Government may by notification in the official gazette constitute one or more Labour Courts for the adjudication of industrial disputes relating to any matter specified in the second schedule and for performing such other functions as may be assigned to them under the Act". Sec 7(2) states that "A Labour Court shall consist of one person to be appointed by the Appropriate Government".

Thus, under this provision both the Central and State Governments as Appropriate Government have power to constitute one or more Labour Courts, mainly, for the adjudication of matters prescribed in Second Schedule which are generally rights disputes. If for any reason there occurs a vacancy in the office of the presiding officer of a Labour Court, the Appropriate Government shall appoint another to fill the vacancy.

(ii) Industrial Tribunal

According to Sec 7-A (1) of the Act "The Appropriate Government may, by notification in the official Gazette constitute one or more Industrial Tribunals for the adjudication of industrial dispute relating to any matter, whether specified in the Second Schedule or the Third Schedule and for the forming such other functions as

may be assigned to them under the Act". The Industrial Tribunal like the Labour Court shall consist of only one person to be appointed as the presiding officer of the Tribunal.

The Appropriate Government also has power, if it so thinks fit to appoint two persons as assessors to advise the Tribunal in the proceedings before it. Under this Section the Appropriate Government has the power to constitute Industrial Tribunals for a limited time or for a particular case or number of cases or for particular area. In other words, the Appropriate Government may constitute Tribunals on an ad-hoc basis as and when the disputes arise and the Government decides to refer them to the Tribunal.

(iii) National Tribunal

According to Sec 7-B (1) of the Act, "The Central Government may by notification in the official gazette, constitute one or more National Tribunals for adjudication of industrial disputes, which in the opinion of the Central Government involve questions of national importance or are of such a nature that industrial establishments situated in more than one state are likely to be interested in or affected by such disputes. A National Tribunal shall consist of one person only to be appointed by the Central Government. Further, only a person who is or has been a judge of a High Court can be appointed as the presiding officer of a National Tribunal. The Central Government may also appoint, if it so thinks fit, two persons as assessors to advise the National Tribunal in the proceedings before it".

This power of the Central Government to constitute National Tribunal is an overriding power and under Section 10 (1-A) of the Act the Central Government has power to refer such disputes to a National Tribunal whether or not the Central Government is the Appropriate Government in relation to such disputes.

The object of this provision is twofold: namely,

(i) To get the disputes of national importance adjudicated upon by a higher Tribunal, as only a person who is or has been a judge of a High Court can be appointed as the presiding officer; and

(ii) As the Central Government need not be the Appropriate Government in respect of industrial disputes relating to all India establishments, the reference to National Tribunal can avoid reference by different State Governments and it also overcomes the limitations of territorial

jurisdiction of Industrial Tribunals constituted by the respective State Governments.

Awards and Settlement:

The Industrial Dispute Act, 1947 which extends to the whole of India came into operation on the first day of April 1947. As per Preamble of the said Act, it is enacted to make a provision for the investigation and settlement of the dispute and certain other purposes such as recovery of money from the employer in terms of Settlement or Award by making an application to the appropriate government. The purpose and aim of the Industrial Disputes Act 1947 is to minimize the conflict between labour and management and to ensure, as far as possible, Economic and Social Justice. The act has made comprehensive provisions both for this settlement of disputes and prevention of disputes in certain Industries.

Method of settlement of Industrial Dispute:

In the interests of the industry in particular and the national economy in general, cordial relations between the employer and employees should be maintained. To ensure cordial labour management relations and to achieve industrial harmony, the following methods of settlement of industrial disputes are provided under the Act.

1. **Collective Bargaining:**

Collective Bargaining or Negotiation is one of the methods for settlement of an industrial dispute. It plays significant role in promoting labour management relations and in ensuring industrial harmony Collective Bargaining is a process/Method by which problems of wages and conditions of employment are settled amicably, peacefully and voluntarily between labour and management. In collective bargaining, the parties to the dispute I.e., the employer and the employees/workmen settle their disputes by mutual discussions and agreements without the intervention of a third party. Such settlements are called "bipartite settlement". Therefore, settlement of labour disputes by direct Negotiation or settlement through collective bargaining is always preferable as it is the best way for the betterment of labour disputes. Collective Bargaining is recognized as a right of social importance and greater emphasis is placed on it by India's five year plans. The

term 'Collective Bargaining' was coined for the first time by Sidney and Webb in their famous book 'Industrial Democracy' published in 1897.

It means Negotiation between an employer and group of workers to reach agreement on working conditions. N. W. Chamberlain (in his 'Source Book on Labour: 1958 p. 327) described collective bargaining as "the process whereby management and Union agree on the terms under which workers shall perform their duties". In simple word, collective bargaining means "Bargaining between an employer or group of employers and a bonafide Labour Union".

2. **Conciliation:**

Conciliation is a process, by which a third party persuades the parties to the industrial dispute to come to an amicable settlement. Such third party is called 'Conciliation Officer' of Board of Conciliation. Sections 4 and 5 of the act provide for the appointment of Conciliation Officer and the constitution of the Board of Conciliation respectively.

3. **Voluntarily Arbitration:**

The expression 'Arbitration' simply means "the settlement or determination of a dispute outside the court". Parties to the dispute, without going to the Court of law, may refer the dispute/Matter to a person in whom they have faith, to suggest an amicable solution. Such person, who acts as a mediator between the disputants to settle the dispute is called "Arbitrator". The decision given by the parties, which is binding on the parties, is called "Award". Therefore Arbitration is a judicial process under which one or more outsiders render a binding decision based on the merits of the dispute. Section 10-A of the industrial dispute act, 1947 confers on parties, power to enter into Arbitration agreement. The agreement must be in prescribed form and must specify the name/names of the arbitrator or arbitrators.

4. **Adjudication:**

When an industrial dispute could not be settle either through bipartite negotiations or through the Conciliation machinery or through the voluntary Arbitration, the final stage resorted to, for settlement of an industrial dispute is Adjudication or compulsory Adjudication, which envisages Governmental reference

to statutory bodies such as Labour Court or Industrial Tribunal or National Tribunal. Section 7, 7-A and 7-B of the Industrial disputes Act, 1947 provide for the constitution of Labour Court, Industrial Tribunal and Labour Tribunal respectively.

Definition of Award

Section 2(b) of the Industrial Dispute Act, 1947 defines Award as follows - According to Section 2(b) of the Industrial Disputes Act, 1947 Award means an interim or a final determination of any Industrial Dispute or of any question relating thereto by any Labour Court, Industrial Tribunal or National Industrial Tribunal and includes arbitration award made under section 10A.

Ingredients of Award –

To constitute Award under Section 2(b) of the Industrial Dispute Act, 1947 the following ingredients are to be satisfied-

a) An Award is an interim or final determination of an industrial dispute.
b) It is an Interim or final determination of any question relating to such dispute.
c) Such interim or final determination is made by any Labour Court, Industrial Tribunal or National Industrial Tribunal.
d) Award of Arbitrators under section 10A is an award.

What is Settlement?

According to Section 2 (p) of the Industrial Dispute Act, 1947 Settlement means a settlement arrived at in the course of conciliation proceeding and includes a written agreement between the employer and workmen arrived at otherwise than in the course of conciliation proceeding where such agreement has been signed by the parties thereto in such manner as may be prescribed and a copy thereof has been sent to an officer authorized in this behalf by the appropriate Government and the conciliation officer.

Procedure for Settlement of Industrial Disputes The Industrial Disputes Act, 1947 provides procedure for settlement of industrial disputes, which must be followed in all public utility service, has been defined in section 2 (n) of the Act so as to include any railway, postal, telegraph or telephone service that supplies power, water and light to the public, any system of public conservancy or sanitation, any section of an industrial establishment on the working of which the safety of the establishment or

the workmen employed therein depend and any industry which keeping in view the public emergency has been declared as such by the appropriate Government. As laid down in the Act a dispute should first go through the process of conciliation before it could be referred to the appropriate authorities for adjudication33. Where any industrial dispute exists or is apprehended, the Conciliation Officer may or where the dispute relates to a public utility service and a notice under Section 22 has been given shall hold conciliation proceedings in prescribed manner.

Conciliation proceedings can be stated in case of dispute that actually exists or when there is reasonable ground to apprehend that an industrial dispute is likely to come into existence unless something is done to prevent or where both parties to dispute approach the Government separately for conciliation. Conciliation proceedings are deemed to have been started from the date on which a notice issued to the parties to appear before the conciliation officer who may meet them jointly or separately. The Conciliation Officer must submit his report to the Government within fourteen days of the starting of conciliation proceedings. During this period he tries to bring about a fair and amicable settlement between the parties to dispute. If a settlement arrived at, the Conciliation Officers will send a report to the Government along with a memorandum of settlement duly signed by both parties. This settlement come into force from the date agreed upon by the parties to dispute or in its absence the date on which it was signed by them and is binding for a period of six months unless agreed upon otherwise, and after the period afore said, until expiry of two months from the date on which a notice in waiting of the intention to terminate the settlement is given by one of the parties to the other party or parities to the settlement. Such a settlement is binding on all parties to the industrial dispute, to the employer, his heirs, successors or assignees and to the workmen employed in the establishment on the date of the dispute and all the persons who subsequently become employed therein. If no settlement is reached by the parties, the conciliation officer will submit his report to the appropriate Government stating the reasons for which he thinks no settlement could be arrived at as well as the facts of the case.

Action by the Government:

On receipt of the report from the Conciliation Officer, the Government will come to a decision on whether the circumstances and the facts of the case as such to

justify a further reference. The Government has to arrive at a prima facie conclusion that the nature of the dispute justifies a further reference. If in the opinion of the Government, there is a scope of arriving at a settlement by further conciliation efforts, it may refer the case to the Board of Conciliation.

Collective Bargaining as a method of Settlement of Industrial Disputes

Collective bargaining as such is one of the most developed in Indian history since independence, and deserves the attention of all who are concerned with the preservation of industrial peace and implement of industrial productivity. In the laissez faire the employers enjoyed unfettered rights to hire and fire. They had much superior bargaining power and were in a position to dominate over the workmen. There are some routine criticism of the adjudicatory Awards and Settlement i.e., delay, and expensive. Therefore the parties to the industrial dispute are coming closure to the idea that direct negotiations provide better approach to resolving key deference over wages and other conditions of employment.

The system of collective bargaining as a method of settlement of industrial dispute has been adopted in industrially advanced countries. The common law emphasis to individual contract of employment is shafted to collective agreement negotiated by and with reprehensive groups. The Industrial Disputes Act, 1947 which provides for the machinery for the settlement of industrial disputes.

On whom Awards and Settlements are binding

According to Section 18 of the Industrial Disputes Act, 1947 Awards and Settlements are binding on the following persons - A settlement arrived at by agreement between the employer and workman otherwise than in the course of conciliation proceeding shall be binding on the parties to the agreement. Subject to the provisions of sub-section (3), an arbitration award which has become enforceable shall be binding on the parties to the agreement who referred the dispute to arbitration.

A settlement arrived at in the course of conciliation proceedings and an award of a Labour Court, Tribunal or National Tribunal shall be binding onAll parties to the industrial dispute; All other parties summoned to appear in the proceedings as parties to the dispute, unless the Board, arbitrator Labour Court, Tribunal or National

Tribunal, as the case may be, records the opinion that they were so summoned without proper cause; Where a party referred to in clause (a) or clause (b) is an employer, his heirs, successors or assigns in respect of the establishment to which the dispute relates; All persons who were employed in the establishment or part of the establishment on the date of the dispute and all persons who subsequently become employed in that establishment or part.

Period of operation of Awards and Settlement

Section 19 of the Industrial Disputes Act 1947 provides for the period of operation of Award and Settlement. A settlement shall come into operation on such date as is agreed upon by the parties to the dispute, and if no date is agreed upon, on the date on which the memorandum of the settlement is signed by the parties to the dispute.

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

An award shall, subject to the provisions of this section, remain in operation for a period of one year from the date on which the award becomes enforceable under section 17A. Provided that the appropriate Government may reduce the said period and fix such period as it thinks fit: Provided further that the appropriate Government may, before the expiry of the said period, extend the period of operation by any period not exceeding one year at a time as it thinks fit so, however, that the total period of operation of an award does not exceed three years from the date on which it came into operation.

Where the appropriate Government, whether of its own motion or on the application of any party bound by the award, considers that since the award was made, there has been a material change in the circumstances on which it was based, the appropriate Government may refer the award or a part of it to a Labour Court, if

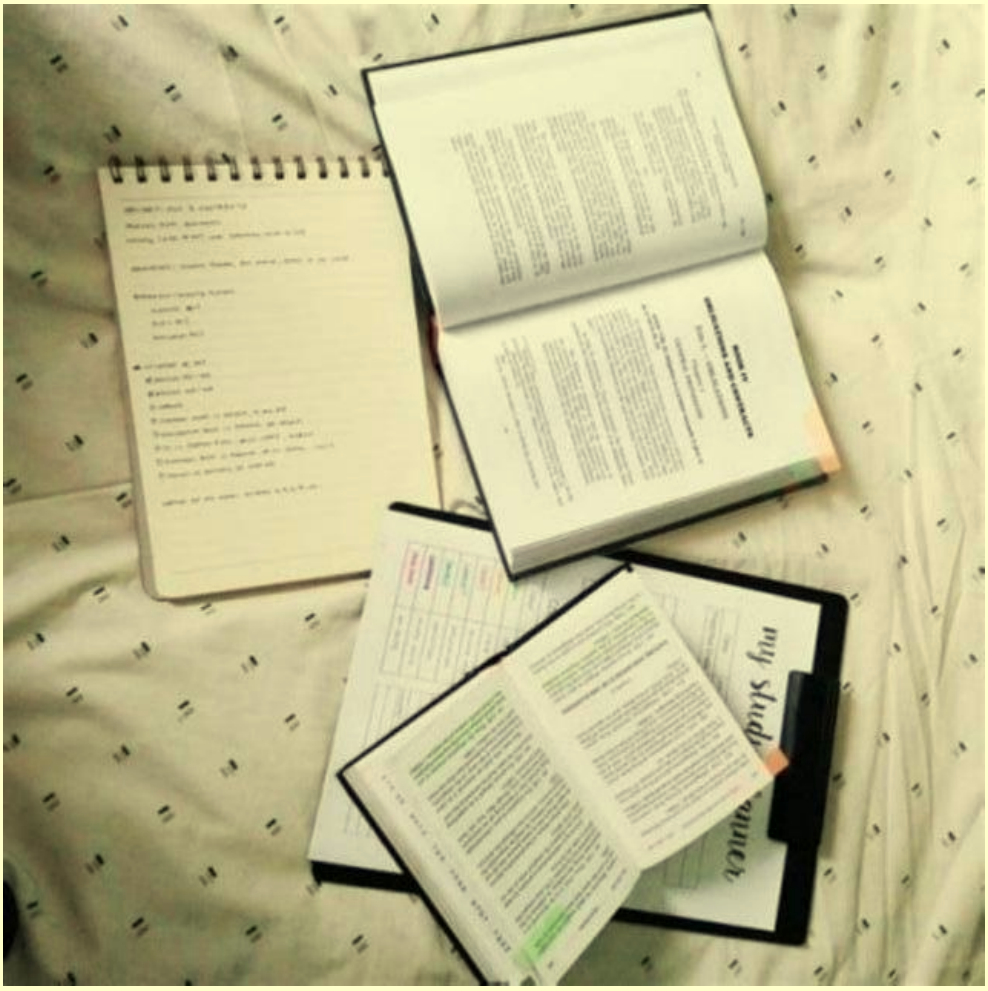
the award was that of a Labour Court or to a Tribunal, if the award was that of a Tribunal or of a National Tribunal, for decision whether the period of operation should not, by reason of such change, be shortened and the decision of Labour Court or the Tribunal, as the case may be on such reference shall be final.

A settlement is an agreement reached among the parties to a workers' compensation claim. This includes you, your employer and the workers' compensation insurer (unless your employer is self-insured). This is a type of contract, and it may bar you from seeking further compensation for your injury.

An award, on the other hand, is granted to you by the workers' compensation court. This may include medical benefits or other types of workers' compensation awards based on the specifics of your injury. For example, a judge can order - or an insurance company can admit for - temporary and permanent disability benefits. This isn't a settlement. You don't have to sign away any rights to get these benefits.

If you need help determining whether you received an award or a settlement, we can help. We can review your situation and help you understand your legal options. We can also advise you before you accept an award or settlement. At every stage of your case, we will work to ensure that you receive the full and fair benefits you need under Colorado's workers' comp laws.

According to Section2 (p) of the Industrial Dispute Act, 1947 Settlement means a settlement arrived at in the course of conciliation proceeding and includes a written agreement between the employer and workmen arrived at otherwise than in the course of conciliation proceeding where such agreement has been signed by the parties thereto in such manner as may be prescribed and a copy thereof has been sent to an officer authorized in this behalf by the appropriate Government and the conciliation officer.



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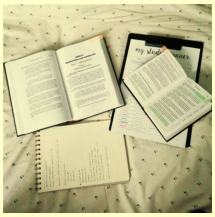

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UNIT III

STRIKE AND LOCK-OUT

Introduction:

Strike and lock-out are two powerful weapons in the hands of the workers and the employers. Strike signifies the suspension or stoppage of work by the worker while in case of lock-out the employer compels persons employed by him to accept his terms or conditions by shutting down or closing the place of business. Strike is recognized as an ordinary right of social importance to the working class to ventilate their grievances and thereby resolve industrial conflict.

Skillful use of these weapons, whether threatened or actual, may help one party to force the other to accept its demand or at least to concede something to them. But reckless use of them results in the risk of unnecessary stoppage of work hurting both parties badly creating worse tensions, frictions and violations of law and order. From the point of view of the public, they retard the nation's economic development. India cannot tolerate frequent stoppage of work for frivolous reasons that often accompany it.

For these reasons, the Industrial Disputes Act seeks to regulate and restrict strikes and lock-outs so that neither the workmen nor employers may hold the nation to ransom.

Definitions of Strike:

Strike as defined in clause (q) of Section 2 of the Act means:

1. Cessation of work by a body of persons employed in any industry acting in combination; or

2. A concerted refusal of any number of persons who are or have been employed in any industry to continue to work or to accept employment; or

3. A refusal under a common understanding of any number of persons who are or have been employed in any industry to continue to work or to accept employment.

Thus the definition given in the act postulates three main things or ingredients:

(a) Plurity of workmen;

(b) Combination or concerted action;

(c) Cessation of work or refusal to do work.

Historical Background:

Strikes came into existence in the wake of the Industrial Revolution. With the invention of machinery to supplant human labour, unemployment, lowering of wages in a competitive market, supply of labour in excess of demand - became the order of the day.

The first known strike was in the 12th century B.C., in Egypt. Workers under Pharaoh Ramses III stopped working on the Necropolis until they were treated better. The use of the English word 'strike' first appeared in 1768 when sailors in support of demonstrations in London, "struck or removed the topgallant sails of merchant ships at port thus, thus crippling the ships.

As the 19th century progressed, strikes became a fixture of industrial relations across the industrialized world, as workers organized themselves to bargaining for better wages and standards with their employees.

The 1974 railway strike in India was the strike by workers of Indian Railways in 1974. The 20 days strike by 17 lakh workers is the largest known strike in India. The strike was held to demand a raise in pay scale, which had remained stagnant over many years, in spite of the fact that pay scales of other government owned entities had risen over the years.

Strikes became common during the Industrial Revolution, when mass labor became important in factories and mines. In most countries, strike actions were quickly made illegal, as factory owners had far more political power than workers. However, most western countries partially legalized striking in the late 19th or early 20th centuries. Strike means the stoppage of work by a body of workmen acting in concert with a view to bring pressure upon the employer to concede to their demands during an industrial dispute.

Indian Iron & Steel Ltd. v. Its Workmen it was held that mere cessation of work does not come within the preview of strike unless it can be shown that such cessation of work was a concerted action for the enforcement of an industrial demand.

Cessation of work or refusal to work is an essential element of strike. This is the most significant characteristic of the concept of strike. There can be no strike if there is no cessation of work. The cessation of work may take any form. It must

however be temporary and not forever and it must be voluntary. No duration can be fixed for this in fact duration for cessation of work is immaterial. Cessation of work even for half an hour amounts to strike.

Buckingham & Carnatak Co. Ltd. v. Workers of Buckingham& Carnatak Co. Ltd. On the 1st November, 1948 night shift operators of carding ad spinning department of the Carnatak Mill stopped wok some at 4 p.m. some at 4:30 p.m. and some at 5 p.m. The stoppage ended at 8 p.m. in both the departments. By 10 p.m. the strike ended completely. The cause for the strike was that the management of the Mills had expressed inability to comply with the request of the workers to declare 1st November, 1948 as a holiday for solar eclipse. Supreme Court held it strike.

Concerted action is another important ingredient of strike. The workers must act under a common understanding. The cessation of work by a body of persons employed in any industry in combination is a strike. Stoppage of work by workers individually does not amount to strike. In Ram Sarup & Another v. Rex held that Mere absence from work is not enough but there must be concerted refusal to work, to constitute a strike.

The object of an industrial strike is achievement of economic objectives or defence of mutual interests. The objects of strikes must be connected with the employment, non employment, terms of employment or terms and conditions of labour because they are prominent issues on which the workers may go on strikes for pressing their demands and such objects include the demands for codification of proper labour laws in order to abolish unfair labour practices prevalent in a particular area of industrial activity. The strike may also be used as a weapon for betterment of working conditions, for achievement of safeguards, benefits and other protection for themselves, their dependents and for their little ones.

In B. R. Singh v Union of India it was held that the strike is a form of demonstration. Though the right to strike or right to demonstrate is not a fundamental right, it is recognized as a mode of redress for resolving the grievances of the workers. Though this right has been recognized by almost all democratic countries but it is not an absolute right.

In T.K. Rangarajan v Tamil Nadu, the Tamil Nadu government terminated the services of all employees who resorted to strike. The Apex Court held that Government staffs have no statutory, moral or fundamental right to strike. In 2005, the Supreme Court reiterated that lawyers have no right to go on strike or give a call for boycott and not even a token strike to espouse their causes.

In Dharma Singh Rajput v. Bank of India, it was held that right to strike as a mode of redress of the legitimate grievance of the workers is recognized by the Industrial Disputes Act. However, this right is to be exercised after complying with the conditions mentioned in the Act and also after exhausting the intermediate and salutary remedy for conciliation.

Causes of Strikes:-

In the early history of labor troubles the causes of strikes were few. They arose chiefly from differences as to rates of wages, which are still the most fruitful sources of strikes, and from quarrels growing out of the dominant and servient relations of employers and employees. While labor remained in a state of actual or virtual servitude, there was no place for strikes. With its growing freedom "conspiracies of workmen" were formed, and strikes followed. The scarcity of labor in the fourteenth century, and the subsequent attempts to force men to work at wages and under conditions fixed by statute, were sources of constant difficulties, while the efforts to continue the old relation of master and servant with its assumed rights and duties, a relation law recognizes to this day, were, and still are, the causes of some of the most bitter strikes that have ever occurred.

Strikes are caused by differences as to:

1. Rates of wages and demands for advances or reductions i.e. Bonus, profit sharing, provident fund and gratuity.
2. Payment of wages, changes in the method, time or frequency of payment;
3. Hours of labor and rest intervals;
4. Administration and methods of work, for or against changes in the methods of work or rules and methods of administration, including the difficulties regarding labor-saving machinery, piece-work, apprentices and discharged employees;

5. Trade unionism.
6. Retrenchment of workmen and closure of establishment. 7. Wrongful discharge or dismissal of workmen.

Kinds of Strike:

There are mainly three kinds of strike, namely general strike, stay-in-strike and go slow.

1. General Strike:

In General Strike, the workmen join together for common cause and stay away from work, depriving the employer of their labour needed to run his factory. Token Strike is also a kind of General Strike. Token Strike is for a day or a few hours or for a short duration because its main object is to draw the attention of the employer by demonstrating the solidarity and co-operation of the workers. General Strike is for a longer period. It is generally resorted to when employees fail to achieve their object by other means including a token strike which generally proceeds a General Strike. The common forms of such strikes are organized by central trade unions in railways, post and telegraph, etc. Hartals and Bundhs also fall in this category.

2. Stay-in-Strike:

It is also known as 'tools-down-strike' or 'pens-down-strike. It is the form of strike where the workmen report to their duties, occupy the premises but do not work. The employer is thus prevented from employing other labour to carry on his business.

In Mysore Machinery Manufacturers v/s State Court held that where dismissed workmen were staying on premises and refused to leave them, did not amount to strike but an offence of criminal trespass. In Punjab National Bank Ltd. v/s their workmen Court held that Refusal under common understanding to continue to work is a strike and if in pursuance of such common understanding the employees entered the premises of the bank and refused to take their pens in their hands would no doubt be a strike under section 2(q).

3. Go-Slow:

In a 'Go-Slow' strike, the workmen do not stay away from work. They do come to their work and work also, but with a slow speed in order to lower down the production and thereby cause loss to the employer.

In Sasa Musa Sugar Works Pvt. Ltd. v/s Shobrati Khan & Ors held that Go-Slow strike is not a "strike" within the meaning of the term in the Act, but is serious misconduct which is insidious in its nature and cannot be countenanced.

In addition to these three forms of strike which are frequently resorted to by the industrial workers, a few more may be cited although some of them are not strike within the meaning of section 2(q).

i. **Hunger Strike:** In Hunger Strike a group of workmen resort to fasting on or near the place of work or the residence of the employer with a view to coerce the employer to accept their demands. Piparaich Sugar Mills Ltd. v/s Their Workmen Certain employees who held key positions in the mill resorted to hunger strike at the residence of the managing Director, with the result that even those workmen who reported to their duties could not be given work. Held: That concerted action of the workmen who went on Hunger Strike amounted to "strike" within the meaning of this sub-section.

ii. **Sympathetic Strike: A Sympathetic Strike is resorted to in sympathy of other striking workmen.** It is one which is called for the purpose of indirectly aiding others. Its aim is to encourage or to extend moral support to or indirectly to aid the striking workmen. The sympathizers resorting to such strike have no demand or grievance of their own.

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

Definition of Lock-Out:

"Lock-Out" has been defined in section 2 (1) to mean the closing of a place of employment, or the suspension of work, or the refusal by an employer to continue to employ any number of persons employed by him. India witnessed lock-out twenty-five years after the "lock-out" was known and used in the arena of labour management relations in industrially advanced countries.

Strike is a weapon in the hands of the labour to force the management to accept their demands. Similarly, Lock-Out is a weapon in the hands of the management to coerce the labour to come down in their demands relating to the conditions of employment. Lock-Out is the keeping of labour away from works by an employer with a view to resist their claim.

There are four ingredients of Lock-Out:-

1. Lock out is a
   i. temporary closing of a place of employment by the employer, or
   ii. suspension of work by the employer, or
   iii. refusal by an employer to continue to employ any number of persons employed by him;
2. The above mentioned acts of the employer should be motivated by coercion.
3. An industry as defined in the Act; and
4. A dispute in such industry

Lock-Out has been described by the Supreme Court as the antithesis of strike. Shri. Ramchandra Spinning Mills v. State of Madrasheld that if the employer shuts down his place of business as a means of reprisals or as an instrument of coercion or as a mode of exerting pressure on the employees or generally speaking when his act is what may be called an act of belligerency there would be a lock-out.

In case of Lock-Out the workmen are asked by the employer to keep away from work, and, therefore they are not under any obligation to present themselves for work. So also Lock-Out is due to and during an industrial dispute.

Causes:

A lockout is generally used to enforce terms of employment upon a group of employees during a dispute. A lockout can act to force unionized workers to accept changed conditions such as lower wages. If the union is asking for higher wages, or better benefits, an employer may use the threat of a lockout or an actual lockout to convince the union to back down. Lock-Outs may be caused by internal disturbances, when the factory management goes in to financial crisis or got succumbed into financial debts, disputes between workers and workers, disputes between workers and management or may be caused by ill-treatment of workers by the management. Sometimes lockouts may be caused by external influences, such as unnecessary

political parties involvement in management of workers, union may be provoked for unjustified demands that may be unaffordable by the management, which may ultimately lead to lockout of the factory.

1. Disputes or clashes between workers and the management.
2. Unrest, disputes or clashes in between workers and workers.
3. Illegal strikes, regular strikes or continuous strikes by workers.
4. Continuous or accumulated financial losses of factory or industry.
5. If any company involves in any fraudulent or illegal activities.
6. Failure in maintaining proper industrial relations, industrial peace and harmony.

Prohibition of Strikes and Lock-outs:

Section 22 of the Industrial Disputes Act, 1947, deals with the prohibition of strikes and lock-outs. This section applies to the strikes or lock-outs in industries carrying on public utility service. Strike or lock-out in this section is not absolutely prohibited but certain requirements are to be fulfilled by the workmen before resorting to strike or by the employers before locking out the place of business.

Conditions laid down in section 22(1) are to be fulfilled in case of strike and conditions as laid down in section 22(2) are to be fulfilled in case of any lock-out by the employer. The intention of the legislature in laying down these conditions was to provide sufficient safeguards against a sudden strike or lock-out in public utility services lest it would result in great inconvenience not only to the other party to the dispute but to the general public and the society.

Section 22(1): No person employed in public utility service shall go on strike in breach of contract:

a) Without giving to the employer notice of strike within six weeks before striking; or

b) Within fourteen days of giving such notice; or

c) Before the expiry of the date of strike specified an any such notice as aforesaid; or

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

These provisions do not prohibit the workmen from going on strike but require them to fulfill the conditions before going on strike. These provisions apply to a public utility service only and not to a non- public utility service.

With regards to Notice of Strike, notice within six weeks before striking is not necessary where there is already a lock-out in existence. Secondly, notice may be given by the Trade Union or representatives of the workmen to do so. Thirdly, a notice of strike shall not be effective after six weeks from the date it is given. The strike can take place only when 14 days have passed but before 6 weeks have expired after giving such notice.

Section 22(2): No employer carrying on any public utility service shall lock-out any of his workmen:

a) Without giving them notice of lock-out as herein after provided within six weeks before locking out; or

b) Within fourteen days of giving such notice; or

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

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

Section 22(3): Notice of strike or lock-out as provided by sub-sections (1) and (2) many in certain cases be dispensed with

(1) No notice of strike shall be necessary where there is already in existence a lock-out in the public utility service concerned.

(2) No notice of lock-out shall be necessary where there is already in existence a strike in the public utility service concerned.

Sub-section (3) is in the nature of an exception of sub-sections (1) and (2) of section 22. In Bhaskaran v Sub-Divisional Officer held that posts and Telegraphs Department, being Public Utility Service, cannot declare lock-out without notice and that the employees of the department cannot go on strike without notice.

Notice of strike shall be given by such number of persons to such person or persons in such manner as may be prescribed by the President or Secretary or office-bearer of a registered Trade Union or federation. Where there is no registered Trade

Union of workmen by at least seven representatives of workmen duly authorized in this behalf at a general meeting specifically held for the purpose.

The object of giving notice of strike is to enable the other party to make amends or to come to terms or redress the grievance or to approach the authorities to intervene and stop, if it is possible the threatened action.

Section 22(5) provides that Notice of lock-out shall be given in such manner as may be prescribed. Section 22(6) deals with intimation of notices given under sub-section (1) or (2) to specified authorities. If on any day an employer receives from any person employed by him any such notice as is referred to in sub-section (1), he shall within five days report to the Appropriate Government or to such authority as that Government may prescribe, the number of notices received on that day. Similarly, if any employer gives any notice as is referred to in subsection (2), to any person employed by him, he shall report this fact within five days to the to the Appropriate Government or to such authority as that Government may prescribe.

General prohibition of Strikes and Lock-outs:

The prohibition against strikes and lock-out contained in Section 23 is general in nature. It applies to both public utility as well as non-public utility establishments. A strike in breach of contract by workmen and lock-out by the employer is prohibited in the following cases:

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

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

(iii) During the pendency of arbitration proceedings before an arbitrator and two months after the conclusion of such proceedings, where a notification has been issued under sub-section (3-A) of section 10-A, or

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

The object of these provisions seems to ensure a peaceful atmosphere to enable a conciliation or adjudication or arbitration proceeding to go on smoothly. This

section because of its general nature of prohibition covers all strikes and lock-outs irrespective of the subject-matters of dispute pending before the authorities. However a conciliation proceeding before a conciliation officer is no bar to a strike or lock-out under this section, it is only a conciliation proceeding before a Board which is mentioned in this Act.

The provisions of section 23 shall apply to all industrial establishments. Section 23 applies to both public utility service as well as non-public utility service, while Section 22 applies to public utility service alone. Section 23 does not prohibit a strike or lock-out during the pendency of conciliation proceeding before a conciliation officer, Section 22 does so.

Illegal Strikes and Lock-outs:

According to Section 24(1) Strike or lock-out shall be illegal if it is:

(1) Commenced or declared in contravention of section 22 in a public utility service;

(2) Commenced in contravention of section 23 in any industrial establishment (including both public utility and non-public utility service);

(3) Continued in contravention of an order made by the appropriate Government under section 10(3) or sub-section (4-A) of section 10-A of the Act.

Strike or lock-out in contravention of the provisions of Section 22 or Section 23 of the Act is declared illegal by Section24 of the Act. A strike or lock-out which commenced as legal under Section 22 & 23 can be continued unless an order under Section 10(3) has been passed prohibiting the continuance of an existing strike or lock-out. Sub-section (2) of Section 24 of the Act lays down that continuance of strike or lock-out is deemed to be illegal only if an order prohibiting it is passed under Section 10(3). Sub-section (3) of Section 24 of the Act provides that a lock-out declared in consequence of an illegal strike or a strike declared in consequence of an illegal lock-out shall not be deemed to be illegal.

Thus Strike and lock-out shall not be deemed to be illegal if:-

(i) At the commencement they are not in contravention of the provisions of this Act;

(ii) Their continuance has not been prohibited by the appropriate Government under section 10(3) of the Act;

(iii) A lock-out is declared in consequence of an illegal strike or vice versa.

In Maharashtra General Kamgar Union v. Balkrishna Pen P. Ltd. Court held that when a strike is commenced before the expiry of 14 days notice, it will be illegal but only for the unexpired notice period and thereafter, the strike would be legal.

Prohibition of financial aid to Illegal Strikes and Lock-outs:

Section 25 of the Act prohibits financial aid to illegal strikes and lock-outs. The provisions of this section are attracted only if the strike or lock-out is illegal and not otherwise. It says that no person shall knowingly spend or apply any money in direct furtherance or support of an illegal strike or lock-out.

This section has the following ingredients:

(i) Spending or applying money;

(ii) Money spent or applied in direct furtherance or support of an illegal strike or lock-out;

(iii) The strike or lock-out must actually be illegal;

(iv) Knowledge on the part of the person expending or applying money that the strike or lock-out is illegal.

Thus for prosecuting a person for the contravention of Section 25, the prosecution must prove:-

(a) That the strike or lock-out was illegal;

(b) That the accused had the knowledge that the strike or lock-out was illegal and that the money spent by him was direct furtherance or support of the same.

(c) That the money was spent by the accused.

It is only spending of money in support of a strike which is prohibited under this section. Therefore, helping the strikers by way of providing clothes or any other sort of help is not punishable under this Act. Section 28 provides penalty for giving financial aid to illegal strikes and lock-outs. Punishment may extend to six months' imprisonment or one thousand rupees fine or both.

Punishment for Illegal Strikes:

If a strike is illegal the party guilty of the illegality is liable to punishment under Section 26 of the Act. Section 26(1) prescribes penalty which can be imposed on any workman who commences, continues or otherwise acts in furtherance of a

strike which is illegal under this act. Thus to penalize a workmen under Section 26(1) two conditions must be fulfilled, namely,

1. A workman must commence, continue or in some other manner act in furtherance of a strike and
2. such strike must be illegal under the act.

Any workman found guilty of participating in an illegal strike shall be punishable with imprisonment of a term which may extend to one month or with a maximum fine of rupees fifty or with both. Section 26(2) provides that an employer shall be punishable with imprisonment extending to one month or with a maximum fine of rupees one thousand or with both if, (1) Such employer commences, continues or otherwise acts in furtherance of a lock-out; and (2) Such lock-out is illegal under the act.

Even though the workers have a right to go a strike but it is not their fundamental right. In case of illegal strike the guilty party has to undergo punishment. A distinction has been tried between illegal but justified strikes and illegal and unjustified strikes. For instance a strike may be illegal but it might have been taken recourse for good reasons and carried on in orderly and peaceful manner.

In Crompton Greaves v The Workers It was held that the workers will be entitled to wages for the strike period when the strike is legal as well as justified. A strike is legal if it does not violate any provisions of the Act. A strike cannot be said to be unjustified unless the reasons for it are entirely perverse or unreasonable. In a case a question was raised “whether the employer can dismiss a workman for joining a strike which is not illegal but unjustified”. It was held that the right to strike is recognized by implication. A strike may be unjustified for many reasons, for example:-

a) demands may be unreasonable,
b) demands may be made with extraneous motives,
c) steps taken by employer to redress the alleged grievances though negotiation or conciliation.

The strike does not put an end to the employer-employee relationship and an employer cannot discharge a workman for a mere participation in a strike which is not illegal.

In Bank of India v/s T. S. Kelewala the supreme Court held that where the contract or standing orders or the service rules/regulations are silent on the issue of workers' entitlement to wages during the strike period, the management has the power to deduct wages for absence of duty when the absence is concerted action on the part of the employees and the absence is not disputed, irrespective of the fact whether the strike was legal or illegal.

If the strike is illegal, the workmen are not entitled to wages or compensation and they are also liable to punishment by way of discharge or dismissal. The Supreme Court in the case of India General Navigation and Railway Co. Ltd., and Anr. v/s Their Workmen held that "It is difficult to understand how a strike in respect of a public utility service, which is clearly illegal, could at the same time be justified. These two conclusions cannot in law exist, the law has not made any distinction between an illegal strike which may be said to be justified and one is not justifiable".

It was further observed by the Supreme Court that in case of an illegal strike the only question of practical importance would be the quantum of punishment. To decide the quantum of punishment a clear distinction has to be made between violent strikers and peaceful strikers.

Violent strikers are those who obstruct the loyal workmen from carrying on the work or take part in violent demonstrations and act in defiance of law and order; Peaceful strikers are those workmen who are silent participants in the strike.

The first category of strikers is to be dealt with more severely and the punishment of dismissal, discharge or termination has to be imposed upon them. It would neither be in the interest of industry nor the workmen to effect wholesale dismissal of all striking workmen.

In Chandramalai Estate Ernakulam v/s Its Workmen held that Strike is the last weapon. There may, however, be the circumstances where the demand is of such urgent nature that it cannot be reasonably expected from the workmen to wait till after

asking the Government to make a reference; in such a case the strike even before such request has been made will be justified.

In Swadeshi Industries Ltd. v/s Their Workmen held that Strike for securing improvement on matters relating to wages, dearness allowance, bonus, provident fund, gratuity, leave and holiday may prima facie be considered to be justified because it is the primary object of a Trade Union to secure better conditions of employment of the workmen. In Syndicate Bank v/s Umesh Nayak etc., When there is a machinery for settlement of disputes but employees or employers resort to strike or lock-out without having recourse to the prescribed means, strike or lock-out is unjustified and when there is a breach of rules, it would be illegal. Therefore, the strike or lock-out as a weapon has to be used sparingly for redressal of urgent and pressing grievance when either no means are available or the available means have failed. The justness or otherwise of the action of the employer or employees has, therefore, to be examined on the anvil of the interest of the society which action tends to affect.

In Iron and Metal Traders Pvt. Ltd., Bombay v/s M.S. Haskiel & Others, many strikers were instated but the respondents were singled out by the management for drastic treatment. The Tribunal found the action of the employer as discriminatory and therefore ordered reinstatement of three workers and awarded compensation to seven in lieu of reinstatement. The management filed appeal to the Supreme Court and the Supreme Court held the approach of the Tribunal to be fair, just and unreasonable.

It must also be noted that whenever an action of forfeiture is taken against an employee on the ground that he participated in an illegal strike and absented himself from duty it is necessary that he should be given an opportunity of being heard. Without observing the principle of natural justice no action of forfeiture should be taken.

Impact of Illegal Strike & Illegal Lock-out:

1. **Wages during illegal strike:**

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

legal the workmen are entitled to wages. A strike is legal or illegal, justified or unjustified is question of fact which is to be judged in the light of the fact which is to be judged in the light of the facts and circumstances of each case. It has been held by the Supreme Court that in order to entitle the workmen to wages for the period of strike, the strike should be legal as well as justified. M/s Crompton Greaves v/s The Workers The Supreme Court has observed that it is well settled that in order to entitle the workmen to wages for the period of the strike, the strike should be legal as well as justified. A strike is legal if it does not violate any provision of the statute. Again a strike cannot be said to be unjustified unless the reasons for it are entirely perverse or unreasonable. It is also well settled that the use of force or violence or acts of sabotage resorted by the workmen during a strike disentitles them to wages for the strike period. Syndicate Bank v/s Umesh Nayak Whether strike is legal and justified this question is to be determined by the adjudication under the Act. Primarily High Court is not the forum for getting findings on the issues regarding justifiability and legality of strike.

2. Trade Union Immunities and illegal strikes: -

The illegality or unjustifiability or unreasonableness of the strike will not deprive the labour union of its immunities granted by the Trade Union Act as was clearly held in Rohtas Industries Ltd., v. Rohtas Industries Staff Union.

3. Whether workers are entitled to wages during illegal lock-out: -

In Krishna Sugar Mills v. State of U.P., this questioned was discussed. The mill was closed for two days consequent to the alleged assault of officers by some workmen who created a panicky situation. The Tribunal held that the closure was lock-out which was illegal and unjustified and so workers are entitled to wages during the lock-out period. The matter was agitated before the High Court which held that the lock-out may be sometimes not at all connected with economic demands; it may be resorted to as a security measure. In this case such a lock-out was declared without giving notice as was required and that it was unjustified also being a retaliatory measure. So the company was liable to pay wages during the lock-out period.

4. Can the employer dispense with the service of workers consequent to a strike: -

The employer-employee relationship is not terminated by participation in strike or by declaration of lock-out. The purpose of strike is to redress the legitimate grievance of the strikers. This right is recognized by the law and the violation of this right cannot put an end to the contract of employment by any unilateral process.

5. Disciplinary action against striking workmen: -

Normally participation in illegal strike amounts to misconduct on the part of the workmen for which even punishment of dismissal can be given. In Model Mills Ltd., v. Dhermodas, the Supreme Court upheld the right of employer to dismiss from services the workmen participating in illegal strike under the provisions of the standing orders of the company.

Though under the Constitution of India, the right to strike is not a fundamental right as such, it is open to a citizen to go on strike or withhold his labour. It is a legitimate weapon in the matter of industrial relations. In both lock-out and strike, a labour controversy exists which is deemed intolerable by one of the parties, but lock-out indicates that the employers rather than the employees have brought the matter in issue.

Strike may be justified or unjustified, legal or illegal. It depends on the circumstances of each case. It is usually associated with collective bargaining by workers and is permissible under Industrial dispute Act, 1947. Lock-out is a weapon of coercion in the hands of the employer with a motive to coerce the workmen which is due to an industrial dispute and continues during the period of dispute. However strikes and lock-outs are prohibited during the pendency of conciliation adjudication and arbitration proceedings.

Strikes are said to be revolutionary as it seeks to obtain better living conditions for the workers who form the majority in the industrial community. Better wages, better homes and healthy living condition better education these are the healthy objectives for the attainment of which labour resorts to strikes. Hence, strikes may justly be described as contributing towards a revolutionary process in man's progress towards social order. '

Lock-outs', on the contrary, are reactionary by any measures; because their object is to frustrate this progressive tend in human affairs. To hold down wages to a minimum, workers denied of equal opportunities for the education of their children, and no savings to fall back upon in evil times, is surely unjustifiable, and may be rightly called reactionary.

A strike signals the transfer of power from the employer to the union. While the employer has a right to employ and retrench workers, in the case of a strike, the right to not come to the place of work is with the union. This transfer of right also means higher bargaining power for the union. A strike is also used by the union to unite its members and send a strong signal to the management. In this case, strike also becomes an effective tool for the union to regain any lost support among the workers.

A lockout declared because of the poor financial condition of the company has an obvious advantage for the employer because it lets him cut his financial losses. During this period, an employer does not have to pay the labour costs and other variable costs.

However A lockout is the last step an employer would take. This is because a lockout means loss of production, which in turn means financial losses for the company. So except it is a case of financial distress, the employer would like to continue working.

A lockout also means deterioration in the relationship between the employer and the union/workmen. If the workmen decide to contest the reasons on which the employer has declared a lockout, there are chances that the employer might have to end up paying wages for the period of lockout along with other benefits which will have a huge financial implication on the company.

LAY-OFF

The freedom of contract theory, emerged out of the laissez-faire principle, authorised the employer to discharge his workmen due to breakdown of machinery or such other reasons beyond the control of the employer. This invariably exposed the workmen to frequent risk of involuntary unemployment. This absolute power of the employer to discharge his workmen gradually began to disappear with the erosion of the laissez-faire philosophy and the introduction of more State interventions in

industrial relations. Consequently, the employer lost his privilege to sever the contract of service and that he can utmost only lay-off temporarily the workers on the occurrence of such eventualities. This means that there will be only a suspension of employer-employee relationship and does not involve any complete severance of such relationship.

Historical Background of Lay-off Compensation:-

All disputes relating to lay-off prior to the incorporation of its definition in the Act were decided in accordance with the judicial pronouncements as there existed no definition of term "lay-off" formerly in the Act.

After independence , due to modernization in textiles mills, often there was retrenchment and lay-off of Workmen without any compensation payment in majority of the managements, although few of them paid compensation, thus there was no uniformity norms for compensation in such circumstances which resulted in the deteriorating economic conditions of the labour class and the stake of National economic development and social security of the society necessitated for the enactment of the social/beneficial legislation like the present Act.

Originally the Industrial Dispute Act did not provide for lay-off and retrenchment. The explosive situations due to enormous accumulation of stocks, particularly in the textile mills, with the consequence of probable closure, large scale lay-off and retrenchment in many mills provoked to introduce some effective measures to prevent large scale industrial unrest in the country. The ordinance promulgated for this purpose in 1953 was replaced by the Industrial Disputes (Amendment) Act, 1953 which commenced retrospectively from 24th October, 1953. Thus, Chapter VA was introduced into the Act to regulate lay-off, retrenchment, transfer and closure of undertakings. The provisions under this Chapter have much impact on some of the rights and privileges of the employers who are subjected to certain new liabilities and restrictions in the event of lay-off, retrenchment, transfer or closure of undertakings. In 1976, a new Chapter VB, was added to the Industrial Disputes Act incorporating more stringent conditions against lay-off, retrenchment and closure of certain establishments.

Section (kkk) prescribes Lay-off as the failure ,refusal or inability to provide employment to the workmen by the employer on account of shortage of coal ,power or raw material, or the accumulation of stock, or the breakdown of machinery, or natural calamity, or any other connected reasons.

Although the employer is willing to provide employment to the workmen, but is unable to do so because of unavoidable circumstances which are beyond the control of the employer. The section provides that a workman who is so deprived of employment must be such whose name is borne on the muster rolls of his industrial establishment and the workman must not have been retrenched.

Application of Chapter VA.-

Section 25-A makes it clear that the provisions of Sections 25-C to 25-E shall not apply to:

(i) Industrial establishments in which less than fifty workmen on an average per working day have been employed in the preceding calendar month; or

(ii) Industrial establishments which are of a seasonal character or in which work is performed only intermittently.

Hence, the provisions relating to lay-off will not be applicable to industrial establishments with less than 50 workers in the preceding calendar month or in case of seasonal character or with intermittent works, industrial establishment for this purpose is defined to mean:

(i) A factory as defined in the Factories Act, 1948; or

(ii) A “mine” as defined in the Mines Act, 1952; or

(iii) A “plantation” as defined in the Plantation Labour Act, 1951.

Lay-off differs from Lock-outs.-

The Supreme Court in Kairbetta Estate v Rajamanickam, 10 discussed the concept of lay-off and lock-out and observed that both are different. The main points of difference between them are:-

i) That lay-off generally occurs in a continuing business whereas lock-out is a closure of the business even though temporarily.

ii) In case of lay-off the employer is unable to give employment due to the reasons specified such as shortage of coal, power, raw materials, or accumulation of stock or break down of machinery, etc. In lock-out the employer deliberately closes the place of business and lock/-outs the whole body of workmen for reasons which have no relevance to the causes applicable to lay-off

iii) In the case of lay-off employer is liable to pay compensation whereas in lock-out no such liability is imposed upon the employer if the lock-out is justified and legal.

iv) Lock-out is resorted to by the employer as a weapon of collective bargaining whereas lay-off is invariably caused by economic and trade reasons.

v) The Act imposes certain prohibition and penalties against lock-out whereas layoff does not have such thing.

Distinction Between Lay-off and Retrenchment.

Term lay-off has been defined in Section 2(kkk) and the term retrenchment' in Section(oo). In case of lay-off there is failure, refusal or inability of the employer to give employment to a workmen for a temporary period while in retrenchment the workman is deprived of his employment permanently. Lay-off is on account of one or more reasons mentioned in Section2(kkk) while in retrenchment the termination is on the ground of service of labour.

The reasons of lay-off are entirely different as compared to reasons of retrenchment. In lay-off the labour force is not surplus but in retrenchment it is surplus which has to be retrenched. In lay-off the relationship of employment is not terminated while in retrenchment it is terminated. In lay-off relationship of employment is only suspended while in retrenchment it is terminated. Consequences of both are different to each other and are governed by different norms. Lay-off is for trade reasons beyond the control of the employer i.e it is not intentional act while retrenchment is permanent with the intention to dispense with surplus labour. In lay-off there is no severance of relationship of employer and employee while in retrenchment, the relationship of employer and employee is severed at the instance of the employer. The right to receive lay-off compensation is subject to certain more

stringent restrictions while the right to receive compensation is absolute in retrenchment. The right to receive lay-off compensation is subject to certain more stringent restrictions while the right to receive retrenchment compensation is subject to less stringent restrictions.

Right of workmen laid off for compensation.-

Section 25-C of the Industrial Dispute Act lays down the conditions and extent of compensation to workers who are laid off. The provision which was introduced in 1953 underwent a recast in 1956 and in 1965. After the 1965 amendment to Section 25-C the conditions for lay-off compensation are the following:

1. The establishment must have employed fifty or more workmen in an average during the calendar month preceding the lay-off;
2. The industrial establishment in question must not be of a seasonal character or in which work is performed intermittently;
3. The claimant should come within the definition of workman;
4. He should not be badli workman; or casual workman;
5. His name must be borne on the muster roll and he should not have been retrenched;
6. He must have completed not less than one year of continuous service;
7. Each one year continuous service must be under the same employer;
8. Lay-off compensation must be half of basic wages and dearness allowance;
9. Maximum period for entitlement of lay-off compensation is forty-five days during any period of twelve months;
10. No right to lay off compensation for more than forty-five days during 12 months if there is an agreement to that effect;
11. In the absence of a contrary agreement, lay-off compensation is payable for subsequent periods beyond 45 days during the same 12 months; if such subsequent period is/are not less than one week or more at a time;
12. Beyond 45 days the employer can escape liability of resorting to retrenchment after payment of retrenchment compensation; xiii) Finally, the lay off in question should not be by way of mala fide or victimization or with other ulterior motives.

Badli workmen.–

'Badli workmen' as stated in the explanation to Section 25C is a substituted workman. He is employed in the place of another whose name is borne in the muster roll. The badli workman's name should not find a place in the muster roll. Such a workman ceases to be a badli workman for the purpose of section 25-C on his completion of one year's continuous service in the establishment. Consequently, a badli workman who has completed one year continuous service is entitled to get work from the employer. If the employer fails to give him work, the badli workman would be entitled to get lay-off compensation, if he has completed one year's continuous service with that employer.

Continuous service-

A workman who has completed a minimum of one year's continuous service with the same employer alone is entitled to lay-off compensation under Section 25C. In 1964 section 25B was amended to its present form. Section 25C(I) defines continuous service and Section 25B(2) defines 'continuous service of one year' while sub-clause (b) of section28B(2) defines 'continuous service of six months'.

Continuous service means uninterrupted service. However, interruption on account of any of the following reasons will still deem such service to be uninterrupted. Such instances are:

a) Sickness;
b) Authorized leave;
c) Accident;
d) Strike which is not illegal;
e) Lock-out; and
f) Cessation of work which is not due to any fault on the part of the workman.

Participation in illegal strike: A workman taking part in illegal strike ipso facto does not affect his continuity in service, unless that workman is actually dismissed from service on this score.

Continuous service of one year.-

Under Section 25B(2)(a) of the Act a person can be said to be in continuous service for a period of one year if that worker:-

i) Has been in employment for twelve calendar months; and

ii) He has actually worked for not less than: a) 190 days in the case of employment below ground in a mine; b) 240 days in any other case.

Both the conditions in (i) and (ii) must be simultaneously complied with. Hence, employment for 12 calendar months but with less than 190 or 240, as the case may be, actual days of work by a workman will not be satisfying this provision. Similarly, a workman who has put in more than 190 or 240 days actual work but that in less than 12 calendar months will not be in conformity with the provision. Before a workman can be considered to have completed one year of continuous service in an industry it must be shown first that he was employed for a periods of not less than 12 calendar months and, next that during those 12 calendar months had worked for not less than 240 days. Where the workman has not at all been employed for a period of 12 calendar months, it becomes unnecessary to examine whether the actual days of work numbered 240 days or more.

Continuous service of six months.

Under Section 25-B(2)(B) a worker must:

i) Have been in employment for a period of six calendar months; and

ii) ii) Have actually worked for not less than 95 days in the case of his employment in underground mine or 120 days in any other case to constitute continuous service for a period of six months.

Right of workmen laid off for compensation where chapter V-A is applicable

A workman with one year's continuous service is entitled to lay-off compensation for all days of lay-off except weekly holidays. The amount of compensation payable to each workman shall be half the total of basic wages and dearness allowance. Lay-off compensation payable under Section 25C is not wages within the meaning of the term 'wages' in the Payment of Wages Act, 1936. This is by way of temporary relief to a workman who is forced to undergo involuntary unemployment, of course for reasons stated in the definition clause of "lay-off". The employer, for reasons beyond his control, is unable to provide work and hence as a social security measure and in the general social interest a duty is imposed upon the employer to give compensation to the workman who is deprived of his opportunity to work and hence forced to lose wages.

Period of lay off compensation

Lay-off compensation is payable for all days of layoff. However, the maximum period for which compensation payable is 45 days during any period of 12 calendar months. In the absence of a contrary agreement, if the layoff exceeds 45 days during a period of 12 months, then the workman is entitled to the same rate of compensation for such period beyond the 45 days, whether in continuation of it or subsequently, on other occasions. However, such period lay-off beyond the 45 days should be for minimum of one week or more to entitle the compensation thereof. But in such situations the employer may either:

i) Go on paying on lay-off compensation for such subsequent periods; or

ii) Retrench the workmen after the expiry of 45 days of lay-off on paying the retrenchment compensation as in Section 25F.

Workmen not entitled to compensation in certain cases

Under Section 25E no compensation shall be paid to a workman who has been laid off-

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

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

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

Prohibition of lay-off in industries where chapter V-B is applicable-

Sec 25M (1) No workman (other than a badli workman or a casual workman) whose name is borne on the muster rolls of an industrial establishment to which this Chapter applies shall be laid-off by his employer except 3[with the prior permission of the appropriate Government or such authority as may be specified by that Government by notification in the Official Gazette (hereafter in this section referred

to as the specified authority), obtained on an application made in this behalf, unless such lay-off is due to shortage of power or to natural calamity, and in the case of a mine, such lay-off is due also to fire, flood, excess of inflammable gas or explosion

An application for permission under sub-section (1) shall be made by the employer in the prescribed manner stating clearly the reasons for the intended lay-off and a copy of such application shall also be served simultaneously on the workmen concerned in the prescribed manner.

Where the workmen (other than badli workmen or casual workmen) of an industrial establishment, being a mine, have been laid-off under sub-section (1) for reasons of fire, flood or excess of inflammable gas or explosion, the employer, in relation to such establishment, shall, within a period of thirty days from the date of commencement, of such lay-off, apply, in the prescribed manner, to the appropriate Government or the specified authority for permission to continue the lay-off.

Where an application for permission under sub-section (1) or subsection (3) has been made, the appropriate Government or the specified authority, after making such enquiry as it thinks fit and after giving a reasonable opportunity of being heard to the employer, the workmen concerned and the persons interested in such lay-off, may, having regard to the genuineness and adequacy of the reasons for such lay-off, the interests of the workmen and all other relevant factors, by order and for reasons to be recorded in writing, grant or refuse to grant such permission and a copy of such order shall be communicated to the employer and the workmen.

Sub sec (5) provides that Where an application for permission under sub-section (1) or subsection (3) has been made and the appropriate Government or the specified authority does not communicate the order granting or refusing to grant permission to the employer within a period of sixty days from the date on which such application is made, the permission applied for shall be deemed to have been granted on the expiration of the said period of sixty days.

Sub sec (6) provides that An order of the appropriate Government or the specified authority granting or refusing to grant permission shall, subject to the provisions of subsection (7), be final and binding on all the parties concerned and shall remain in force for one year from the date of such order.

Sub sec (7) provides that The appropriate Government or the specified authority may, either on its own motion or on the application made by the employer or any workman, review its order granting or refusing to grant permission under sub-

section (4) or refer the matter or, as the case may be, cause it to be referred, to a Tribunal for adjudication: Provided that where a reference has been made to a Tribunal under this sub-section, it shall pass an award within a period of thirty days from the date of such reference.

Sub sec (8) provides that Where no application for permission under sub-section (1) is made, or where no application for permission under sub-section (3) is made within the period specified therein, or where the permission for any lay-off has been refused, such lay-off shall be deemed to be illegal from the date on which the workmen had been laid-off and the workmen shall be entitled to all the benefits under any law for the time being in force as if they had not been laid-off.

Sub sec (9) provides that Notwithstanding anything contained in the foregoing provisions of this section, the appropriate Government may, if it is satisfied that owing to such exceptional circumstances as accident in the establishment or death of the employer or the like, it is necessary so to do, by order, direct that the provisions of sub-section (1), or, as the case may be, sub-section (3) shall not apply in relation to such establishment for such period as may be specified in the order.

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

Explanation.-

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

RETRENCHMENT:

Retrenchment is a permanent measure to remove surplus staff because of some basic change in the nature of the business. It results in a complete severance of employeremployee relationship. It is a case of involuntary unemployment to the

workman. Until 1953 there was no statutory provision in India to give immunity or protection from the risk of such involuntary unemployment. In 1953 some provisions were incorporated in the Industrial Disputes Act and in 1976 some more amendments were introduced.

Definition

Section 2(oo) of the Act defines retrenchment as termination by the employer of the service of a workman for any reason whatsoever, otherwise than as punishment inflicted by way of disciplinary action. But it does not include

(a) voluntary retirement of the workman;

(b) retirement on reaching the age of superannuation;

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

(c) termination of services on ground of continued ill health

"For any reasons whatsoever":

In Sundarmany's case the bank, employed respondent as a temporary employee because the permanent cashier was away. When the permanent cashier joined duty, Sundarmany's services were dispensed with. The High Court held this was nothing but discharge of Sundarmany as surplus employee. The bank appealed before the Supreme Court and Justice Krishna Iyer gave a very wide content to the definition of retrenchment. The words "for any reason whatsoever" was interpreted to mean whatsoever be the reason every termination spells retrenchment. The Court observed that had the bank known the laws, half a month's pay would have concluded the story and the bank was ordered to reinstatement the employee.

In Hindustan Steel case, the workmen were timekeepers for a number of years on the fixed term. Their services have been extended from time to time. Later, consistent with the economic policy, the employer chose not to renew the contract. The Supreme Court held that such termination is retrenchment falling within Sundarmany's case. The Court discussed the impact of a composite order which implied the single order covering an appointment and termination of services. In cases of composite order the absence of an independent order terminating the services will not affect the coverage of retrenchment.

Above decisions were reiterated in Delhi Cloth & General Mills v Sambu Nath, which held that striking off the name of a workman from the rolls amounted to

retrenchment. In Santosh Gupta v State Bank of India 1980, the appointment of an employee of the Bank in 1973 was terminated after a year in 1974 on the ground that she did not pass the test which would have enabled her to be confirmed in the service. The Supreme Court held this as retrenchment under section 25-F. The management contended that the termination was not due to discharge of surplus labour and therefore, section 25-F and section 2(oo) would not attract. Rejecting this argument the court observed that section 2(oo) is so comprehensive to cover termination for any reason whatsoever except those not expressly included in section 25-F or not expressly approved for by other provisions of the Act such as section 25-FFF. The object of the above provisions is to compensate the workman for loss of employment, until he finds alternate employment.

Termination of casual worker's service is not retrenchment-

Termination of casual worker engaged for particular urgent work on completion of such work will not amount to retrenchment. Where the workman was engaged on casual basis without a written service contract or letter of appointment, for doing a particular urgent work, his service automatically came to an end when the work was over and there was no retrenchment. Therefore, the question of complying with the procedure for retrenchment does not arise in such case. Further, in such a case merely because the workman was required repeatedly for doing the urgent work and thus had to work for considerable time, the termination of service would not amount to retrenchment. Unlike in Sundarmany's case or in the Hindustan Steel Ltd case where the contract of employment was for a specific period that came to an end by efflux of time in terms of the agreement between the parties, the context and facts in the instant case are quite different.

Exclusion from the definition of retrenchment

1. **Voluntary retirement-** Being an act of the employee in terminating the services by abandoning or resigning from the service such as voluntary retirement will not be covered by the definition.
2. **Superannuation**-To attract termination of service on superannuation it is necessary that:-
    i. There must be stipulation on the point of retrenchment in the contract of employment between the employer and employee; and
    ii. The stipulation must be with regard to the age of superannuation. Termination of service on satisfaction of these two conditions will not

constitute retrenchment. But if such age of superannuation is not mentioned either in the contract of employment or invalid standing orders, it will not be treated as termination on superannuation under this clause

3. **Termination on non-renewal of service contract or on expiry of fixed term contract-** When the employment was for a stipulated time period under a contract then the non-renewal of the contract of employment on the expiry of the stipulated period would not amount to retrenchment.
4. **Continued ill health-**Termination owing to the continued ill health of the workman is not covered in retrenchment. Ill health contemplated not only physical but mental ill health as well. 'Continued ill health' includes any physical defect or infirmity incapacitating a workman for future work for an indefinite period. The question whether a workman is suffering continued ill health is a question of fact which may be proved or disproved on either side.

Condition for valid retrenchment

i. He is given one month's notice of it with reasons, or one month wages in lieu of such notice. Provided no such notice is necessary if it is under an agreement specifying the date of termination of service;
ii. He is paid compensation equivalent to 15 days average pay for every completed year of company's service or any part of it exceeding six months; and
iii. Notice is served on the appropriate government or on such notified authority.

Retrenchment Compensation –

Under Section 25-F(b), payment of compensation is a mandatory condition precedent for the validity and operative effect of the retrenchment. If the compensation under Section 25-F(b) is not offered within the notice period under Sec 25-F(a), such notice though initially valid would become inoperative and void and no effect could be given to the notice. Notice or wages in lieu of notice under clause (a) of Sec 25-F and payment of retrenchment compensation calculated in the manner set out in clause (b) of Section 25-F are conditions precedent for retrenchment. Hence, these clauses operate as a prohibition against retrenchment until those conditions are fulfilled.

In order to be entitled to the compensation, the workmen should have put in minimum of one year continuous service during a period of twelve calendar months; 190 days work in the underground mine or 240 days work in other cases.

Rate of compensation

Under Section 25-F (b), the workman is entitled to 15 days average pay for every completed year of continuous service, or any part thereof in excess of six months continuous service. Under the second proviso to Section 25-C the employer has right to set off any amount paid to be workman as lay-off compensation during the preceding twelve months as against the compensation payable for retrenchment. In case of death of the workman, his legal heirs are entitled to the retrenchment compensation.

Notice to the appropriate Government

Sec 25-F (c) lays down the third condition namely, to give notice of the retrenchment to the Government. However, previous notice to the government under section 25-F(C) is only directory and not mandatory. In Bombay Union of Journalists v State of Bombay17, the Supreme Court held that sec 27-F(a) and (b) are mandatory whereas under section 25-F(e) previous notice to the government will not render the retrenchment invalid. Notice under Section 25-F(e) was only to give information to the Government so as to keep informed about the conditions of employment of different industries within its region.

Remedy against violation of Section 25-F

As the right or obligation dispute pertaining to Section 25-F cannot be raised straight away in writ proceedings. The Supreme Court laid down that the remedy provided by way of making a reference under Section 10 of the Industrial Disputes Act is the exclusive remedy which should be availed of in respect of rights and obligations which are the creation of the Industrial Disputes Act itself.

The Impact of 1976 and 1984 amendment on Retrenchment

Under Section 25-N inserted by the 1976 amendment the following conditions are required for valid retrenchment, an establishment employing 100 or more workers on an average per working day in the preceding 12 months.

(i) No workman employed in such establishment shall be retrenched who has been in the company's continuous service for not less than one year until:-

(a) The workman has been given three months notice in writing stating reasons for retrenchment and the period of notice has expired or the workman has been paid wages for that notice period;

(b) No such notice is required if the retrenchment is under an agreement which specify the date of termination of service;

(c)The workman has been paid compensation equivalent to 15 days average pay for every completed year of service or any part thereof in excess of six months; and

(d) Notice in the prescribed manner has been served on the appropriate Government.

The appropriate Government on receipt of notice should hold an enquiry after which it may grant or refuse in writing the permission for retrenchment. In case the appropriate Government does not communicate the permission or the refusal within three months from the date of service of notice seeking permission, the workman is deemed to be validly retrenched after expiry of three months.

Section 25-N (7) further empowers the appropriate Government to withdraw by order of a dispute involving questions of retrenchment as well in an establishment covered by Chapter VB pending before a Conciliate officer or the Central or State Government, if the appropriate Government is of opinion that such retrenchment is not in the interest of industrial peace or that such retrenchment is by way of victimization. The Government has to transfer such dispute to an authority specified by that Government by notification in the official Gazette. The order passed by such authority is final and binding on the employer and the workman. Sec 25N(b) being mandatory, if the compensation is found to be insufficient, the retrenchment would be void ab initio in the absence of bona fide action of the employer or waiver of the workman.

Penalty:

Sec 25-Q provides punishment of imprisonment to an extent of one month, or fine up to Rs. 1,000/-, or with both for violation of the requirement of giving notice to Government and the permission thereafter under Section 25N (1)(c) or for the violation of sub-section (4) of Section 25-N of the Act.

RETRENCHMENT PROCEDURE

Section 25-G incorporates the well recognized principle of retrenchment in industrial law, namely, the “last come first go” or “first come last go.” The Section

becomes applicable only if all the conditions laid down herein are fully and cumulatively satisfied they are:-

(i) The person claiming protection should be a workman as defined in section 2(s);

(ii) He should be a citizen of India;

(iii) The "industrial establishment" employing such workman must be an "industy" under sec 2(j)

(iv) He should belong to a particular category of workmen in that establishment; and

(v) There should not be an agreement between the employer and the workman contrary to the procedure of "last come first go."

Given all the above conditions, the employer shall "ordinarily" retrench the workman who was the last person in that category. However, the employer can deviate from this procedure on justifiable reasons which should be recorded.

Last come first go

The principle of "last come first go" is statutorily incorporated in Section 25-G. If a case for retrenchment is made out, it would normally be for the employer to decide which of the employees should be retrenched. However, this rule is not intended to deny the freedom of the employer to depart from it for sufficient and valid reasons. The rule "last come first go" is intended to afford a very healthy safeguard discrimination of workmen in regard to retrenchment. The departure from the ordinary industrial rule of retrenchment without any justification, may itself, in a proper case, lead to the inference that the impugned retrenchment is the result of ulterior consideration and hence it is mala fide and may amount to unfair labour practice and victimization. The rule of 'last come first go' has to be complied with for the validity of the retrenchment.

Departure from the rule "last come first go"

The rule is that the employers shall retrench the workman who came last, first, popularly as 'last come first go'. It is not inflexible rule and extraordinary situations may justify variations. For instance, a junior recruit who has a special qualification needed by the employer may be retained even though another who is one up is retrenched. But there must be valid reason for this deviation. The burden is on the management to substantiate the special ground for departure from the rule. Section 25-G insists on the rule "last come first go" being applied category wise. This is to

say, those who fall in the same category shall suffer retrenchment only in accordance with the principle of 'last come first go'. Where the seniority list of particular workmen is the same, there is a telling circumstance to show that they fall in the same category. Grading for purposes of scales of pay and like considerations will not create new categorization. If grades for scales of pay, based on length of service, etc. are evolved, that process amounts to creation of separate categories.

Effect of departure from 'last come first go' rule

A retrenchment violating the 'last come first go' rule will be declared invalid unless such deviation is supported by valid and justifiable reasons. Normally the workman so improperly and illegally detained is entitled to reinstatement and also for payment of remuneration for the period during which the workman remained unemployed.

Re-employment of retrenched workman-Section 25-H

The rule under section 25-H provides that after effecting retrenchment, if the employer proposes to take into his employment any person. i) He shall give an opportunity to the retrenched workmen who offer themselves for re-employment; and ii) These retrenched workmen have preference over the new applicants. Thus, Section 25-H imposes a statutory obligation on the employer to give preference to retrenched workmen when he subsequently employs any person.

Conditions to apply Section 25-H

The preferential right of employment secured by Section 25-H to a retrenched workman will be available only if the following conditions are satisfied:-

(i) The workman should have been 'retrenched' prior to the re-employment in question. In other words, if that workman's termination of employment was not due to retrenchment, but due to some other eventualities like dismissal, discharge or superannuation, etc., he cannot claim the preferential right of re-employment under this section.

(ii) He should be a citizen of India.

(iii) He should offer himself for re-employment failing which he will forfeit the right. The offer is made in response to the notice given by the employer under Rule 76 of the Industrial Disputes (Central) Rules, 1957 or corresponding State Rules.

(iv) The workman should have been retrenched from the same category of service in the industrial establishment in which the re-employment is proposed.

It is not the designation, but the nature of the work that will decide the category of the post. Thus, a workman who was designated as assistant storekeeper, but who was substantially doing clerical work was retrenched. Subsequently, the management employed three persons as clerks in that establishment. It was held that Section 25-H is violated as the retrenched workman is not given preferential re-employment.

THE LAW RELATING TO CLOSURE OF UNDERTAKING

The law relating to investigation and settlement of industrial disputes namely, the Industrial Disputes Act, 1947, originally does not contain the provisions relating to closure of an industry. The provisions relating to law of closure were inserted in the year 1957 in view of the Supreme Court judgment. Subsequently over a period of years the law relating to closure, has undergone series of amendments from time to time and thus was consolidated to the present position in the year 1982. This particular area in the law relating to investigation and settlement of industrial disputes has undergone a close judicial scrutiny starting from later seventies. It is a unique law in India unlike in any industrialized country in the world.

It is in the fitness of things that the right to security in the event of unemployment has, though late, found legislative recognition in our country. The security of employment is necessary from the point of view of the workmen as well as the industry. If a worker sticks to his job he becomes more efficient by experience and an efficient worker is sure to augment the production in the industry. The protection to workmen in India had been made possible by an amendment of the Industrial Disputes Act, 1947 in the year 1957. T

he impact of the decision of the Supreme Court in Hariprasad Shivshankar Shuka v. A.D. Diwelkar, and Barsi Light Railway Co., Ltd., v. Jogelkar, made the policy makers feel the necessity for this amendment. In Barsi Light case the Supreme Court has held that such industry workers whose services were terminated by an employer, on real and bona fide closure of business or in case of transfer of ownership of undertaking from one employer to another, were not entitled to any relief under the Industrial Disputes Act, 1947, because their case was not covered by retrenchment within the meaning of section 25-F of the Industrial Disputes Act, 1947. Taking

advantage of this judicial dictum a number of employers declared their undertakings as closed on one pretext or the other, throwing thereby a number of workmen out of employment without paying them a single penny as compensation. Therefore section 25-FFF was inserted,9 with a view to provide for involuntary unemployment, to create a sense of security in a worker and to raise the position and status of labour.

Prior to 1953 the only provision of the Act, which in those days, used the word "closure" was section 2(1) of the Industrial Disputes Act, invariably led Tribunal to hold that closure came within the ambit of the definition of "lock-out", particularly because, unlike the 1929 definition, the 1947 - definition had no restrictive qualifying clause. The Labour Appellate Tribunal, the High Courts and the Supreme Court on other hand, (impressed by the Constitutional guarantee of the right to carry on any, trade, profession business or vocation) were at pains to emphasize that lock-out was the" closing of the business itself". Realizing the difficulty of maintaining this distinction in cases of temporary closures, and even independently of such difficulty, there developed a marked tendency to enquire into the reasons for the closure, and decisions-makers entered into detailed investigation of the bona fide of management action.

Definition of Closure

According to Section 2(cc) of the Industrial Disputes Act, Closure of an industry means the permanent closing down of a place of employment or part thereof.

The term closure was used in the Act even prior to the insertion of this definition clause but was not defined as such. This led to divergence in judicial view as to when the closing down of a part of an establishment constituted closure and when it was an act of retrenchment. This controversy is resolved by the express terms of the definition clause itself. It is now made clear that closure arises even if a part of the place of employment is permanently closed down.

No industrialist will like to close down an earning industry, unless there are compelling circumstances to do so. Various kinds of situations, such as labour trouble of unprecedented nature, recurring loss, paucity of adequate number of suitable persons for the purpose of management, non-availability of raw-materials, and insurmountable difficulty in the replacement of damaged or worn-out machinery may arise in any industry, ultimately forcing its closure.