

4. Contents : Includes matter pertaining to employment conditions like pay, hours of works, leave with wages, health, and safety disciplinary actions, lay-off, dismissals retirements etc., laws relating to such activities, regulations governing labour welfare, social security, industrial relations, issues concerning with workers' participation in management, collective bargaining, etc.

Objectives of Industrial Relation

1. To safeguard the interest of labour and management by securing the highest level of mutual understanding and good-will among all those sections in the industry which participate in the process of production.
2. To avoid industrial conflict or strife and develop harmonious relations, which are an essential factor in the productivity of workers and the industrial progress of a country.
3. To raise productivity to a higher level in an era of full employment by lessening the tendency to high turnover and frequency absenteeism.
4. To establish and nurse the growth of an Industrial Democracy based on labour partnership in the sharing of profits and of managerial decisions, so that ban individuals personality may grow its full stature for the benefit of the industry and of the country as well.
5. To eliminate, as far as is possible and practicable, strikes, lockouts and gheraos by providing reasonable wages, improved living and working conditions, said fringe benefits.
6. To establish government control of such plants and units as are running at a loss or in which productions has to be regulated in the public interest.
7. Improvements in the economic conditions of workers in the existing state of industrial managements and political government.
8. Control exercised by the state over industrial undertaking with a view to regulating production and promoting harmonious industrial relations.
9. Socializations or rationalization of industries by making the state itself a major employer
10. Vesting of a proprietary interest of the workers in the industries in which they are employed.

The main aspect of Industrial Relations are:-

1. Labour Relations, i.e. relations between union and management.

2. Employer-employees relations, i.e. relations between management and employees.
3. Group relations, i.e. relations between various groups of workmen.
4. Community or Public relations, i.e. relations between industry and society.
5. Promotions and development of healthy labour-managements relations.
6. Maintenance of industrial peace and avoidance of industrial strife
7. Development of true industrial Democracy.

Effects of poor Industrial Relations

Poor Industrial Relation produces highly disquieting effects on the economic life of the country. We may enumerate the ill-effects of poor Industrial Relations as under:

1. Multiplier effects: Modern industry and for that matter modern economy are interdependent. Hence although the direct loss caused due to industrial conflict in any one plant may not be very great, the total loss caused due to its multipliers effect on the total economy is always very great.
2. Fall in normal tempo: poor Industrial Relations adversely affect the normal tempo of work so that work far below the optimum level. Costs build up. Absenteeism and labour turnover increase. Plants discipline breaks down and both the quantity and quality of production suffer.
3. Resistance of change: Dynamic industrial situation calls for change more or less continuously. Methods have to be improved. Economics have to be introduced. New products have to be designed, produced and put in the market. Each of these tasks involves a whole chain of changes and this is resisted bitterly if these are industrial conflict.
4. Frustration and social cost: every man comes to the work place not only to earn a living. He wants to satisfy his social and egoistic needs also. When he finds difficulty in satisfying these needs he feels frustrated. Poor Industrial Relations take a heavy toll in terms of human frustration. They reduce cordiality and aggravate social tension.

Suggestions to Improve Industrial Relation:-

1. Both management and unions should develop constructive attitudes towards each other
2. All basic policies and procedures relating to Industrial Relation should be clear to everybody in the organization and to the union leader. The personnel manager must make certain that line people will understand and agree with these policies.
3. The personnel manager should remove any distrust by convincing the union of the company's integrity and his own sincerity and honesty. Suspicious, rumours and doubts should all be put to rest.
4. The personnel manager should not vie with the union to gain workers' loyal to both the organization. Several research studies also confirm the idea of dual allegiance. There is strong evidence to discard the belief that one can owe allegiance to one group only.
5. Management should encourage right kind of union leadership. While it is not for the management to interfere with union activities, or choose the union leadership, its action and attitude will go a long way towards developing the right kind of union leadership.

IMPORTANCE OF INDUSTRIAL RELATIONS:

The healthy industrial relations are a key to the progress. Their significance may be discussed as under -

1. **Uninterrupted production** – The most important benefit of industrial relations is that this ensures continuity of production. This means, continuous employment for all from manager to workers. The resources are fully utilized, resulting in the maximum possible production. There is uninterrupted flow of income for all. Smooth running of an industry is of vital importance for several other industries; to other industries if the products are intermediaries or inputs; to exporters if these are export goods; to consumers and workers, if these are goods of mass consumption.
2. **Reduction in Industrial Disputes** – Good industrial relation reduces the industrial disputes. Disputes are reflections of the failure of basic human urges or motivations to secure adequate satisfaction or expression which are fully cured by good industrial relations. Strikes, lockouts, go-slow tactics, gherao and grievances are some of the reflections of industrial unrest which do not spring up in an atmosphere of industrial peace. It helps promoting co-operation and increasing production.

3. **High morale** – Good industrial relations improve the morale of the employees. Employees work with great zeal with the feeling in mind that the interest of employer and employees is one and the same, i.e. to increase production. Every worker feels that he is a co-owner of the gains of industry. The employer in his turn must realize that the gains of industry are not for him alone but they should be shared equally and generously with his workers. In other words, complete unity of thought and action is the main achievement of industrial peace. It increases the place of workers in the society and their ego is satisfied. It naturally affects production because mighty co-operative efforts alone can produce great results.
4. **Mental Revolution** – The main object of industrial relation is a complete mental revolution of workers and employees. The industrial peace lies ultimately in a transformed outlook on the part of both. It is the business of leadership in the ranks of workers, employees and Government to work out a new relationship in consonance with a spirit of true democracy. Both should think themselves as partners of the industry and the role of workers in such a partnership should be recognized. On the other hand, workers must recognize employer's authority. It will naturally have impact on production because they recognize the interest of each other.
5. **New Programmes** – New programmes for workers development are introduced in an atmosphere of peace such as training facilities, labour welfare facilities etc. It increases the efficiency of workers resulting in higher and better production at lower costs.
6. **Reduced Wastage** – Good industrial relations are maintained on the basis of cooperation and recognition of each other. It will help increase production. Wastages of man, material and machines are reduced to the minimum and thus national interest is protected.

Thus, from the above discussion, it is evident that good industrial relation is the basis of higher production with minimum cost and higher profits. It also results in increased efficiency of workers. New and new projects may be introduced for the welfare of the workers and to promote the morale of the people at work.

An economy organized for planned production and distribution, aiming at the realization of social justice and welfare of the masses can function effectively only in an atmosphere of industrial

peace. If the twin objectives of rapid national development and increased social justice are to be achieved, there must be harmonious relationship between management and labour.

Difference between industrial relations and human relations

The term “Industrial Relations” is different from “Human Relations”. Industrial relations refer to the relations between the employees and the employer in an industry. Human relations refer to a personnel-management policy to be adopted in industrial organizations to develop a sense of belongingness in the workers improves their efficiency and treat them as human beings and make a partner in industry.

Industrial relations cover the matters regulated by law or by collective agreement between employees and employers. On the other hand, problems of human relations are personal in character and are related to the behavior of worker where morale and social elements predominated. Human relations approach is personnel philosophy which can be applied by the management of an undertaking. The problem of industrial relations is usually dealt with a three levels – the level of undertaking, the industry and at the national level. To sum up the term “Industrial Relations” is more wide and comprehensive and the term “Human Relations” is a part of it.

Determining factors of industrial relations –

Good industrial relations depend on a great variety of factors. Some of the more obvious ones are listed below:

1. History of industrial relations – No enterprise can escape its good and bad history of industrial relations. A good history is marked by harmonious relationship between management and workers. A bad history by contrast is characterized by militant strikes and lockouts. Both types of history have a tendency to perpetuate themselves. Once militancy is established as a mode of operations there is a tendency for militancy to continue. Or once harmonious relationship is established there is a tendency for harmony to continue.
2. Economic satisfaction of workers – Psychologists recognize that human needs have a certain priority. Need number one is the basic survival need. Much of men conducted are dominated by this need. Man works because he wants to survive. This is all the more for underdeveloped countries where workers are still living under subsistence

conditions. Hence economic satisfaction of workers is another important prerequisite for good industrial relations.

3. Social and Psychological satisfaction – Identifying the social and psychological urges of workers is a very important step in the direction of building good industrial relations. A man does not live by bread alone. He has several other needs besides his physical needs which should also be given due attention by the employer. An organization is a joint venture involving a climate of human and social relationships wherein each participant feels that he is fulfilling his needs and contributing to the needs of others. This supportive climate requires economic rewards as well as social and psychological rewards such as workers' participation in management, job enrichment, suggestion schemes, redressal of grievances etc.
4. Off-the-Job Conditions – An employer employs a whole person rather than certain separate characteristics. A person's traits are all part of one system making up a whole man. His home life is not separable from his work life and his emotional condition is not separate from his physical condition. Hence for good industrial relations it is not enough that the worker's factory life alone should be taken care of his off-the-job conditions should also be improved to make the industrial relations better.
5. Enlightened Trade Unions – The most important condition necessary for good industrial relations is a strong and enlightened labour movement which may help to promote the status of labour without harming the interests of management, Unions should talk of employee contribution and responsibility. Unions should exhort workers to produce more, persuade management to pay more, mobilize public opinion on vital labour issues and help Government to enact progressive labour laws.
6. Negotiating skills and attitudes of management and workers – Both management and workers' representation in the area of industrial relations come from a great variety of backgrounds in terms of training, education, experience and attitudes. These varying backgrounds play a major role in shaping the character of industrial relations. Generally speaking, well-trained and experienced negotiators who are motivated by a desire for industrial peace create a bargaining atmosphere conducive to the writing of a just and equitable collective agreement. On the other hand, ignorant, inexperienced and ill-trained persons fail because they do not recognize that collective bargaining is a difficult human activity which deals as much in the emotions of people as in their economic

interests. It requires careful preparation and top –notch executive competence. It is not usually accomplished by some easy trick or gimmick. Parties must have trust and confidence in each other. They must possess empathy, i.e. they should be able to perceive a problem from the opposite angle with an open mind. They should put themselves in the shoes of the other party and then diagnose the problem. Other factors which help to create mutual trust are respect for the law and breadth of the vision. Both parties should show full respect for legal and voluntary obligations and should avoid the tendency to make a mountain of a mole hill.

7. Public policy and legislation: - when Government, regulates employee relations, it becomes a third major force determining industrial relations the first two being the employer and the union. Human behaviour is then further complicated as all three forces interact in a single employee relation situation. Nonetheless, government in all countries intervenes in management – union relationship by enforcing labour laws and by insisting that the goals of whole society shall take precedence over those of either of the parties. Government intervention helps in three different ways 1) it helps in catching and solving problems before they become serious. Almost everyone agrees that it is better to prevent fires than to try stopping them after they start; 2) It provides a formalized means to the workers and employers to give emotional release to their dissatisfaction; and 3) It acts as a check and balance upon arbitrary and capricious management action.
8. Better education: - with rising skills and education workers' expectations in respect of rewards increase. It is a common knowledge that the industrial worker in India is generally illiterate and is misled by outside trade union leaders who have their own axe to grind. Better workers' education can be a solution to this problem. This alone can provide worker with a proper sense of responsibility, which they owe to the organization in particular, and to the community in general.
9. Nature of industry: - In those industries where the costs constitute a major proportion of the total cost, lowering down the labour costs become important when the product is not a necessity and therefore, there is a little possibility to pass additional costs on to consumer. Such periods, level of employment and wages rise in decline in employment and wages. This makes workers unhappy and destroys good industrial relations.

Today's professional industrial relations director, or by whatever title he is designated, no longer views his job as personalizing management, or that of a social worker in a factory, or a union buster, he looks upon his department as an adjunct to management supervision at all levels; he keeps other executives informed about new discoveries, programme trends and needs. At the same time, he provides efficient service in the operation of several centralized services.

A successful industrial relations programme reflects the personnel viewpoint, which is influenced by three main considerations:

a) Individual thinking

b) Policy awareness and

c) Expected group reaction

Individualized thinking makes it imperative for the administrator to consider the entire situation in which the affected individual is placed. Policy awareness underscores the idea of the consistency of treatment and the precedent value of any decision which a management takes; while expected group reaction balances what we know of human nature in groups against an individual's situation in the light of the policy that has been formulated and implemented. In all these different circumstances, reality demands that all the three aspects of the personnel viewpoint should be considered at once in terms of the past, the present and the future. This viewpoint is held at all the levels of management from the top to the bottom, from the top executives and staff to the line and supervisory personnel.

Scope of industrial relations work

The staff employed in the industrial relations department should know the limitations within which it has to function. The industrial relations director generally has several assistants who help him to perform his functions effectively, and he usually reports directly to the president or chairman of the board of directors of an organization.

The functions of the industrial relations staff are -

1. Administration, including overall organization, supervision and co-ordination of industrial relations policies and programmes.
2. Liaison with outside groups and personnel departments as well as with various cadres of the management staff.

3. Drafting of regulations, rules, laws or orders and their construction and interpretation.
4. Position classification, including overall direction of job analysis, salary and wage administration, wage survey and pay schedules.
5. Recruitment and employment of workers and other staff.
6. Employment testing, including intelligence tests, mechanical aptitude tests and achievement tests.
7. Placement, including induction and assignment.
8. Training of apprentices, production workers, foremen and executives.
9. Employee counselling on all types of personnel problems-educational, vocational, health or behaviour problems.
10. Medical and health services.
11. Safety services, including first aid training.
12. Group activities, including group health insurance, housing, cafeteria programmes and social clubs.
13. Suggestion plans and their uses in labour, management and production committees.
14. Employee relations, especially collective bargaining with representatives and settling grievances.
15. Public relations.
16. Research in occupational trends and employee attitudes and analysis of labour turnover.
17. Employee records for all purposes.
18. Control of operation surveys, fiscal research and analysis.
19. Benefit, retirement and pension programmes.

Functional Requirements of A Successful Industrial Relations Programme

The basic requirements on which a successful industrial relations programme is based are:-

1. **Top Management Support:** - Since industrial relations is a functional staff service, it must necessarily derive its authority from the line organization. This is ensured by providing that the industrial relations director should report to a top line authority to the president, chairman or vice president of an organization.
2. **Sound Personnel Policies:** - These constitute the business philosophy of an organization and guide it in arriving at its human relations decisions. The purpose of such policies is to decide, before any emergency arises, what shall be done about the large number of problems which crop up every day during the working of an organization. Policies can be successful only when they are followed at all the level of an enterprise, from top to bottom.
3. **Adequate Practices should be developed by professionals:** - In the field to assist in the implementation of the policies of an organization. A system of procedures is essential if intention is to be properly translated into action. The procedures and practices of an industrial relations department are the “tool of management” which enables a supervisor to keep ahead of his job that of the time-keeper, rate adjuster, grievance reporter and merit rater.
4. **Detailed Supervisory Training :-** To ensure the organizational policies and practices are properly implemented and carried into effect by the industrial relations staff, job supervisors should be trained thoroughly, so that they may convey to the employees the significance of those policies and practices. They should, moreover, be trained in leadership and in communications.
5. **Follow-up of Results:** - A constant review of an industrial relations programme is essential, so that existing practices may be properly evaluated and a check may be exercised on certain undesirable tendencies, should they manifest themselves. A follow up of turnover, absenteeism, departmental morale, employee grievances and suggestion; wage administration, etc. should be supplemented by continuous research to ensure that the policies that have been pursued are best fitted to company needs and employee satisfaction. Hints of problem areas may be found in exit interviews, in trade union demands and in management meetings, as well as in formal social sciences research.

Perspective theories

When studying the theories of industrial relations, there are three major perspectives that contrast in their approach to the nature of workplace relations. The three views are generally described as the unitary, pluralist and Marxist perspectives. The Marxist perspective is sometimes referred to as the Conflict Model. Each offers a particular perception of workplace relations and will therefore

interpret such events as workplace conflict, the role of trade unions and job regulation varies differently.

1. Unitary perspective

In Unitarianism, the organization is perceived as an integrated and harmonious whole with the ideal of "one happy family", where management and other members of the staff all share a common purpose, emphasizing mutual cooperation. Furthermore, unitarism has a paternalistic approach where it demands loyalty of all employees, being predominantly managerial in its emphasis and application.

Consequently, trade unions are deemed as unnecessary since the loyalty between employees and organizations are considered mutually exclusive, where there can't be two sides of industry. Conflict is perceived as disruptive and the pathological result of agitators, interpersonal friction and communication breakdown.

2. Pluralistic perspective

In pluralism the organization is perceived as being made up of powerful and divergent sub-groups, each with its own legitimate loyalties and with their own set of objectives and leaders. In particular, the two predominant sub-groups in the pluralistic perspective are the management and trade unions.

Consequently, the role of management would lean less towards enforcing and controlling and more toward persuasion and co-ordination. Trade unions are deemed as legitimate representatives of employees; conflict is dealt by collective bargaining and is viewed not necessarily as a bad thing and, if managed, could in fact be channelled towards evolution and positive change.

3. Marxist/Radical Perspective

This view of industrial relations looks at the nature of the capitalist society, where there is a fundamental division of interest between capital and labour, and sees workplace relations against this history. This perspective sees inequalities of power and economic wealth as having their roots in the nature of the capitalist economic system. Conflict is therefore seen as inevitable and trade unions are a natural response of workers to their exploitation by capital. Whilst there may be periods of acquiescence, the Marxist view would be that institutions of joint regulation would enhance rather than limit management's position as they presume the continuation of capitalism rather than challenge it. There are two variants of this view - the pessimist view propounded by Lenin, Trotsky and Michel and the optimist view propounded by Marx and Engels.

Industrial Relations in India

Prior to 1991, the industrial relations system in India sought to control conflicts and disputes through excessive labour legislations. These labour laws were protective in nature and covered a wide range of aspects of workplace industrial relations like laws on health and safety of labours, layoffs and retrenchment policies, industrial disputes and the like. The basic purpose of these laws was to protect labours. However, these protectionist policies created an atmosphere that led to increased inefficiency in firms, over employment and inability to introduce efficacy. With the coming of globalization, the 40 year old policy of protectionism proved inadequate for Indian industry to remain competitive as the lack of flexibility posed a serious threat to manufacturers because they had to compete in the international market.

With the advent of liberalization in 1992, the industrial relations policy began to change. Now, the policy was tilted towards employers. Employers opted for workforce reduction, introduced policies of voluntary retirement schemes and flexibility in workplace also increased. Thus, globalization brought major changes in industrial relations policy in India. The changes can be summarized as follows:

1. Collective bargaining in India has mostly been decentralized, but now in sectors where it was not so, are also facing pressures to follow decentralization.
2. Some industries are cutting employment to a significant extent to cope with the domestic and foreign competition e.g. pharmaceuticals. On the other hand, in other industries where the demand for employment is increasing are experiencing employment growths.
3. In the expansionary economy there is a clear shortage of managers and skilled labour.
4. The number of local and enterprise level unions has increased and there is a significant reduction in the influence of the unions.
5. Under pressure some unions and federations are putting up a united front e.g. banking.
6. Another trend is that the employers have started to push for internal unions i.e. no outside affiliation.
7. HR policies and forms of work are emerging that include, especially in multi-national companies, multi-skills, variable compensation, job rotation etc. These new policies are difficult to implement in place of old practices as the institutional set up still needs to be changed.
8. HRM is seen as a key component of business strategy.
9. Training and skill development is also receiving attention in a number of industries, especially banking and information technology.

10. SPECIAL POINTS TO BE NOTED WHILE DRAFTING EMPLOYMENT AGREEMENT

Employment Agreement

Employment agreement is an agreement that is entered into between two parties, i.e. the employer and employee. It is a document that pacifies the responsibilities and duties expected of an employee. It also described the profile of the job and the title. The document ensures that the employee knows his place in the organisation and what is expected of him. Employment agreements should be created in a way that is just and fair for all the employees. If this is followed, employees will do their tasks and responsibilities well and without any negative emotions toward their employers. Usually employment contracts contain only vague references to the "policies and procedures to which the employee will be bound". The employer should provide the employee with all of the company policies and other documents that relate to the contract or are referred to in the contract.

Following are the usual contents of an employment agreement:

- 1) Name of the parties involved
- 2) Starting date of employment
- 3) Title and description of the job
- 4) Location of work
- 5) Hours of work
- 6) Probationary period
- 7) Salary
- 8) Restrictive terms
- 9) Holidays
- 10) Other information like deductions, permissible expenses, notice period etc.

The employment agreement may be beneficial for both parties because they will know what responsibilities they are getting in to. On the part of the employees, they are assured that they will be able to get compensation as an exchange for the work they rendered. Employees will also be clearly informed about the things that employers are expecting them to do. On the part of the employers, they are assured that their employees are well informed of the things that they should do, as well as their obligations for the company. Through employment agreement, employers will not be left immediately by their employees without providing them enough time to seek for someone who will take the latter's place.

The benefits of an employment agreement are enumerated below:

- ✓ Employment agreement is useful because it has control over the employee's capability to leave. An employer will be given more time to find a replacement for the employee.
- ✓ If the employee is given confidential information about the business, certain confidentiality clauses can also be included in the agreement. The employer may forbid the employee from using or disclosing the information he/she acquired for personal gain.
- ✓ Employers can also use the employment agreement in enticing skilled individuals to work for them. Certain promises like benefits that will be received as well as job security could be included in the contract to convince the person into working for the company.
- ✓ Employee agreements also give employers control over their employees.

Certain important issues that need to be taken care of before finalizing the employment agreement are given hereunder:

- Identify the long term requirement of employees.
- Identifying the workmen and employees not covered under definition of workmen, respectively.
- Local laws of the State should be borne in mind while drawing up the contracts
- Issue appointment letters which clearly define the employment terms and conditions.
- Employment contracts, where necessary, should be put in place with clauses for wages, benefits, non-compete, confidentiality, term, termination etc.
- Depending on the requirement, use fixed term contracts for workmen.
- The terms and conditions of the employment should be clearly explained to employees before execution and should be drafted without any ambiguity.

A detailed checklist for an Employee Agreement is given hereunder:

1. Details of employment
 - a. Full name of employer and employee
 - b. Address of employer
 - c. Place of work of employee, and, where the employee is required or permitted to work at various places
 - d. Title of job or nature of the work or a brief job description
 - e. Date of commencement of employment
2. Pay and Benefits
 - a. Wages/ salary details

- b. Rate of overtime work (if eligible for overtime pay)
 - c. Any other cash benefits that the employee is entitled to
 - d. Any payment in kind that the employee is entitled to and the value of that payment (e.g. accommodation)
 - e. Any deductions to be made from the employee's remuneration (e.g. Pension / Medical Aid)
 - f. Method of payment and method of calculating wages
 - g. Additional benefits, and any conditions under which they apply, e.g. achievement of targets
 - h. Pension scheme - whether one exists, and if so conditions
 - i. Approvals for any deductions from pay, e.g. pension scheme other than those required by law
3. Nature of contract
 - a. Type of contract: permanent, temporary, fixed term
 - b. Duration of a temporary contract or termination date for a fixed term contract
 - c. Period of notice required to terminate employment, or if employment is for a specified period, the date when employment is to terminate
4. Hours of work
 - a. Number of hours in workweek and workday. · Procedure for scheduling.
 - b. Alternative work schedules
 - c. Definition of overtime & pay or compensatory time off
 - d. Advance notice of overtime & right to refuse overtime
 - e. Staffing and workload standards.
 - f. Meal and rest periods.
 - g. Timekeeping and attendance requirements
5. Leaves
 - a. Annual leave entitlement
 - b. Role of seniority in scheduling vacations.
 - c. Conditions relating to taking leave, e.g. present company holidays or notice requirements
 - d. Details of any other paid leave entitlements
6. Disciplinary procedures
 - a. Details of the disciplinary procedure

- b. Conditions under which the employer can terminate the contract e.g. gross misconduct
- 7. Grievance procedure
 - a. Definition of a grievance.
 - b. Employees' right to union representation.
 - c. Explanations of each step in grievance procedure and time limits at each step.
- 8. Health and Safety
 - a. Employer and employee responsibilities
- 9. Protection of Business information
 - a. Details of confidentiality requirements
 - b. Use and misuse of electronic communications and Internet
- 10. Probation period
 - a. Purpose & duration of the probationary period
 - b. Benefits that will come into effect when the probationary period is completed
- 11. Performance evaluation
 - a. Criteria & frequency for evaluations.
- 12. Retirement policy
- 13. Any other conditions
- 14. Acceptance
 - a. Acceptance clause whereby employees sign that they accept the contract of employment and conditions therein.

Non-Disclosure Agreement / Contract of Confidentiality

A non-disclosure agreement is a legal agreement between two parties where the company gives access to certain restricted information to the employee preventing its disclosure by the employee to third parties. The secrecy of the restricted information is protected through the non-disclosure agreement or the confidentiality agreement. If the classified information is transferred to the employee orally he must provide in writing that the information so communicated constitutes confidential information to which he is legally bound.

Confidential information constitutes the essence of every business. Disclosure of such information may be potentially damaging to a company and provide an unfair advantage to its competitors. Protection of confidential information, therefore, assumes tremendous importance. In the business world, confidential information includes information that qualifies as a trade or business secret. A

trade secret is defined as any information that is not known outside the company and which is not readily ascertainable by proper means, thereby giving the company an advantage over its competitors. Whether any information is a trade secret depends on a variety of factors, such as the extent to which the information is known outside of the company's business; the extent to which the information is known by employees and others involved in the company's business; the measures taken by the company to guard the secrecy of the information; the value of the information to the company and to its competitors; the money or effort expended in developing the information; and the ease with which the information can be duplicated by others. Examples of trade secrets include methods of production not protected by patent, testing procedures, processes, designs, formulas and software.

If it is found that the employee is likely to misuse confidential information obtained while in employment, the employer is entitled to an injunction preventing such misuse. However, an injunction cannot be granted to protect the employer for misuse that has already taken place. For such past misuse, the employer is entitled only to damages; as otherwise, this will go against fair competition. The injunction should not give a competitive advantage to the employer, as for example no injunction should be granted if an employee obtains the information independently from the market. Additional remedies include an award of damages for loss of profit because of diminution in the employer's business or damage to the employer's goodwill. However, these are not granted in the absence of detailed evidence to that effect.

The following steps can be taken by employers to protect confidential information:

- i. Companies should ensure that before disclosing confidential information to employees, a non-disclosure agreement is in place.
- ii. Companies should ensure that the confidential nature of the information is expressly communicated to the employees before disclosure.
- iii. Companies should restrict the number of employees having access to confidential information at any point of time.
- iv. Companies should mark files and relevant documents as confidential.
- v. Companies should have in place proper security systems for computers and networks. Passwords should be provided and changed frequently.
- vi. Companies should have in place proper policies for document retention and destruction.
- vii. Companies should very clearly set forth the standards of non-disclosure of confidential information in the employee handbook.

- viii. Companies should take special care when an employee is leaving the company. The employee should be reminded of his obligations and asked to deposit all confidential material in his possession.
- ix. A covenant of non-disclosure should also include a clause whereby the employee is under an obligation to disclose to the employer any confidential information acquired in the course of employment, which is in the nature of a trade secret for the company but unknown to the employer.

11. IMPORTANT CASE LAWS

1. Apprentices Act, 1961

- a) ***UP State Road Transport Corpn v. UP Parivahan Nigam Shishukh Berozgar Sangh*** AIR 1995 SC 1114 = (1995) 2 SCC 1 , it was held that other things being equal, a trained apprentice should be given preference over direct recruits. It was also held that he need not be sponsored by the employment exchange. Age bar may also be relaxed, to the extent of training period. The concerned institute should maintain a list of persons already trained and in between trained apprentices, preference should be given to those who are senior. – same view in *UP Rajya Vidyut Parishad v. State of UP* 2000 LLR 869 (SC).

2. Contract Labour (Regulation and Abolition) Act, 1970

- a) In ***Steel Authority of India v. National Union Water Front*** 2001(5) SCALE 626 = 2001 LLR 961 = AIR 2001 SC 3527 = JT 2001(5) SC 602 = 2001 III CLR 349 = (2001) 7 SCC 1 = 2001 LLN 135 = 2001 AIR SCW 3574 (SC 5 member Constitution bench), it was held that Central / State Government can issue notification u/s 10 abolishing contract labour only after following prescribed procedure regarding consultation etc. It was also held that even if such a notification is issued, the employees with contractor will not be automatically absorbed in the employment of the company, if the contract was genuine. However, company will give preference to them. However, if the contract was not genuine but a mere camouflage, the so called contract labour will have to be treated as employees of principal employer.
- b) ***Food Corporation of India Workers Union Vs Food Corporation of India and others, 1992 LLJ (Guj)*** - It has been held that workmen can be employed as contract labour

only through licensed contractors, who shall obtain licence under section 12. As per section 7, the principal employer is required to obtain Certificate of Registration. Unless both these conditions are complied with the provisions of Contract Labour Act will not be attracted. Even if one of these conditions is not complied with, the provisions of the Contract Labour Act will not apply. In a situation where in either of these two conditions is not satisfied, the position would be that a workman employed by an intermediary is deemed to have been employed by the principal employer.

3. Employees Provident Funds Act, 1952

- a) In ***RPFC v. T S Hariharan*** 1971 Lab IC 951 (SC), it was held that temporary workers should not be counted to decide whether the Act would apply.
- b) ***RPFC v. Shiv Kumar Joshi*** (1996) 4 CTJ 805 = 1996 LLR 641 (NCDRC 5 member bench), it was held that the Regional Provident Fund Commissioner is providing service under the Act and hence he is liable under Consumer Protection Act. Confirmed in ***RPFC v. Shiv Kumar Joshi*** 1999 AIR SCW 4456 = 1999(7) SCALE 453 = 2000 LLR 217 = AIR 2000 SC 331 = 99 Comp Cas 347 = (2000) CLA-BL Supp 26 = 24 SCL 46 (SC).

4. Payment of Gratuity Act, 1972

- a) "Gratuity" as observed by the Supreme Court in its etymological sense, means a gift, especially for services rendered or return for favours received. AIR 1970 SC 919, ***Delhi Cloth & General Mills Co. Ltd. v. Its Workmen.***
- b) AIR 1960 SC 251, ***Indian Hume Pipe Co. Ltd. v. ts Workmen.*** Gratuity has to be considered to be an amount paid unconnected with any consideration and not resting upon it and has to be considered something given freely or without recompense. It does not have foundation on any legal liability, but upon a bounty steaming from appreciation and graciousness. Long service carries with it expectation of an appreciation from the employer and a gracious financial assistance to tide over post retrieval difficulties.
- c) In the case of ***B. Mohan Reddy vs. A.P.S. Co-op. Marketing Federation Ltd.*** 1990 (1) LLN 820 it was held that payment of Gratuity Act does not authorize employer to with-hold Gratuity of employee for any reasons such as negligence and unauthorized leave except where services of employee are terminated for any act of willful

omission or negligence which caused any damage, loss or destruction to employers property or for riotous or disorderly behaviour or for any act which constitutes an offence involving moral turpitude committed in the course of employment.

- d) It has been held by the Bombay High Court in the case of ***Bombay Gas Public Ltd. Co. V/s. Papa Akbar and Anr.*** 1990 II LLJ 220 that the provisions of Sec. 4 (6) (a) of the payment of Gratuity Act do not come into force unless there is a termination of service. Merely stating that the employee went on strike and thereby caused a heavy loss to the company could not be a ground to deny gratuity to the employees.
- e) Re-employment under same employer under fresh contract will not militate against concept of gratuity - When an employee retires and earns gratuity and the same employer offers such employee a job under a fresh agreement and the new agreement provides for the payment of gratuity, that would, in no way, militate against the concept of gratuity if such gratuity is paid on the first retirement - **CIT v. Smt. Savitaben N. Amin** [1986] 157 ITR 135 (Guj.).

12. IMPORTANT ORGANIZATIONS

1. International Labour Organization

The International Labour Organization (ILO) is a specialized agency of the United Nations that deals with labour issues. Its headquarters are in Geneva, Switzerland. Its secretariat — the people who are employed by it throughout the world is known as the International Labour Office.

The ILO was established as an agency of the League of Nations following the Treaty of Versailles, which ended World War I. Post-war reconstruction and the protection of labour unions occupied the attention of many nations during and immediately after World War I.

The first annual conference (referred to as the International Labour Conference, or ILC) began on 29 October 1919 in Washington DC and adopted the first six International Labour Conventions, which dealt with hours of work in industry, unemployment, maternity