The Act applies to an existing and not to a dead industry. It is to ensure fair wages and to prevent disputes so that production might not be adversely affected. It applies to all industries irrespective of religion or caste of parties. It applies to the industries owned by Central and State Governments too (*Hospital Employees Union* v. *Christian Medical College,* (1987) 4 SCC 691).

IMPORTANT DEFINITIONS

(i) Industry

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

The Supreme Court carried out an indepth study of the definition of the term industry in a comprehensive manner in the case of *Bangalore Water Supply and Sewerage Board* v. *A Rajiappa*, AIR 1978 SC 548 (hereinafter referred to as Bangalore Water Supply case), after considering various previous judicial decisions on the subject and in the process, it rejected some of them, while evolving a new concept of the term "industry".

Tests for determination of "industry"

After discussing the definition from various angles, in the above case, the Supreme Court, laid down the following tests to determine whether an activity is covered by the definition of "industry" or not. It is also referred to as the triple test.

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

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

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

   (d) If the organisation is a trade or business, it does not cease to be one because of philanthrophy animating the undertaking.

II. Although Section 2(i) uses words of the widest amplitude in its two limbs, their meaning cannot be magnified to over-stretch itself. Undertaking must suffer a contextual and associational shrinkage, so also, service, calling and the like. This yields the inference that all organised activity possessing the triple elements in (i) although not trade or business, may still be "industry", provided the nature of the activity, viz., the employer - employee basis, bears resemblance to what we find in trade or business. This takes into the fold of "industry", undertaking, callings and services, adventures analogous to the carrying on of trade or business. All features, other than the methodology of carrying on the activity, viz., in organising the co-operation between employer and employee, may be dissimilar. It does not matter, if on the employment terms, there is analogy.

III. Application of these guidelines should not stop short of their logical reach by invocation of creeds, cults or inner sense of incongruity or outer sense of motivation for or resultant of the economic operations. The ideology of the Act being industrial disputes between employer and workmen, the range of this statutory ideology must inform the reach of the statutory definition, nothing less, nothing more.

Hence, the Supreme Court observed that professions, clubs, educational institutions. co-operatives, research institutes, charitable projects and other kindred adventures, if they fulfil the triple tests listed in (1), cannot be exempted from the scope of Section 2(j). A restricted category of professions, clubs, co-operatives and

gurukulas and little research labs, may qualify for exemption if, in simple ventures, substantially and going by the dominant nature criterion, substantively, no employees are entertained but in minimal matters, marginal employees are hired without destroying the non-employee character of the unit.

If in a pious or altruistic mission many employ themselves, free or for small honoranum or like return, mainly drawn by sharing in the purpose or cause, such as lawyers volunteering to run a free legal services clinic or doctors serving in their spare hours in a free medical centre or ashramites working at the bidding of the holiness, divinity or like central personality and the services are supplied free or at nominal cost and those who serve are not engaged for remuneration or on the basis of master and servant relationship, then the institution is not an industry even if stray servants, manual or technical, are hired. Such undertakings alone are exempt - not other generosity compassion, developmental compassion or project.

Criteria for determining dominant nature of undertaking

The Supreme Court, in *Bangalore Water Supply* *case* laid down the following guidelines for deciding the dominant nature of an undertaking:

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

(b) Notwithstanding with previous clause, sovereign functions strictly understood alone qualify for exemption and not the welfare activities or economic adventures undertaken by Government or statutory bodies.

(c) Even in departments discharging sovereign functions, if there are units which are industries and they are substantially severable, then they can be considered to come within Section 2(j).

(d) Constitutional and competently enacted legislative provisions may well remove an undertaking from the scope of the Act.

The above decision of the Supreme Court has a wide sweep. The triple test along with dominant nature criteria will cover almost the entire labour force in the country. The charitable or missionary institutions, hospital, educational and other research institutions, municipal corporations, firms of chartered accountants, solicitors' firms, etc., which were not held to be "industry" earlier will now are covered by the definition of "industry".

Now let us see whether the following activities would fall under industry or not:

1. *Sovereign functions:* Sovereign functions strictly understood alone qualify for exemption, not the welfare activities or economic adventures undertaken by Government or statutory bodies. Even in departments discharging sovereign functions, if there are units which are industries and they are substantially severable then they can be considered to come within Section 2(j). (*Bangalore Water Supply case*). If a department of a municipality discharged many functions, some pertaining to "industry" and other non-industrial activities, the predominant function of the department shall be the criterion for the purposes of the Act (*Corpn. of City of Nagpur* v. *Employees,* AIR 1960 SC 675).

2. *Municipalities:* Following Departments of the municipality were held, to be "industry" (i) Tax (ii) Public Conveyance (iii) Fire Brigade (iv) Lighting (v) Water Works (vi) City Engineers (vii) Enforcement (Encroachment) (viii) Sewerage (ix) Health (x) Market (xi) Public Gardens (xii) Education (xiii) Printing Press (xiv) Building and (xv) General administration. If a department of a municipality discharges many functions some pertaining to industry and others non-industrial, the predominant function of the department shall be the criterion for the purpose of the Act.

3. *Hospitals and Charitable institutions:* Exemptions to charitable institutions under Section 32(5) of Payment of Bonus Act is not relevant to the construction of Section 2(j), *FICCI* v. *Workmen,* (1972) 1 SCC 40, there is an industry in the enterprise, provided the nature of the activity, namely the employer-employee basis bears

resemblance to what is found in trade or business. This takes into the fold of industry undertakings, callings, services and adventures 'analogous to the carrying on of trade or business'. Absence of profit motive or gainful objective is irrelevant for "industry", be the venture in the public, joint, private or other sector. The true focus is functional and the decisive test is the nature of the activity with special emphasis on the employer-employee relations.

If the organisation is a trade or business it does not cease to be one because of philanthropy animating the undertaking. Charitable institutions fall into three categories: (a) those that yield profit but the profits are siphoned off for altruistic purposes; (b) those that make no profit but hire the services of employees as in any other business, but the goods and services which are the output, are made available at a low or at no cost to the indigent poor; and (c) those that are oriented on a humane mission fulfilled by men who work, not because they are paid wages, but because they share the passion for the cause and derive job satisfaction from their contribution. The first two are industries but not the third, on the assumption that they all involve co-operation between employers and employees (*Bangalore Water Supply case*). The following institutions are held to be "industry": (1) State Hospital (*State of Bombay* v. *Hospital Mazdoor Sabha,* AIR 1960 SC 610); (2) Ayurvedic Pharmacy and Hospital (*Lalit Hari Ayurvedic College Pharmacy* v. *Workers Union,* AIR 1960 SC 1261); (3) Activities of Panjrapole (*Bombay Panjrapole* v. *Workmen*, (1971) 3 SCC 349).

4. *Clubs:* A restricted category of professions, clubs, co-operatives and even Gurukulas may qualify for exemption if, in simple ventures, substantially and going by the dominant nature criterion substantively, no employees are entertained, but in minimal matters marginal employees are hired without destroying the non-employee character of the unit. But larger clubs are "industry" (*as per Bangalore Water Supply case*).

5. *Universities, Research Institutions etc.:* As regards institutions, if the triple tests of systematic activity, cooperation between employer and employee and production of goods and services were to be applied, a university, a college, a research institute or teaching institution will be "industry". The following institutions were held to be "industry": Ahmedabad Textile Industries Research Association, Tocklai Experimental Station. Indian Standard Institute, and Universities. However Physical Research Laboratory, Ahmedabad was held not to be an Industry by the Supreme Court (1997 Lab. IC 1912 SC). Since it is carrying on research not for the benefit of others and moreover, it is not engaged in commercial or industrial activity.

6. *Professional Firms:* A solicitors establishment can be an "industry" (as per *Bangalore Water Supply case*). Regarding liberal professions like lawyers, doctors, etc., the test of direct cooperation between capital and labour in the production of goods or in the rendering of service or that cooperation between employer and employee is essential for carrying out the work of the enterprise. The personal character of the relationship between a doctor or a lawyer with his professional assistant may be of such a kind that requires complete confidence and harmony in the productive activity in which they may be cooperating.

7. *Voluntary services*: If in a pious or altruistic mission, many employ themselves free or for small honoraria or like return, mainly drawn by sharing in the purpose or cause such as lawyers volunteering to run a free legal services clinic or doctors serving in their spare hours in a free medical centre or ashramites working at the bidding of the Holiness, divinity or Central personality and the services are supplied free or at a nominal cost and those who serve are not engaged for remuneration or on the basis of master and servant relationship, then the institution is not an industry even if stray servants manual or technical are hired. Such eleemosynary or like undertakings alone are exempted. (*Bangalore Water Supply case*)

Following are held to be "industry": Co-operative Societies, Federation of Indian Chamber of Commerce, Company carrying on agricultural operations, Bihar Khadi Gramodyog Sangh, Indian Navy Sailors Home, Panchayat Samiti, Public Health Department of the State Government, Forest Department of Govt., Zoo; Primary Health Centres, and Indian Institute of Petroleum. Some other instances of 'Industry are: Rajasthan Co-operative Credit Institutions Cadre Authority (1985 Lab IC 1023 (Raj.), A trust for promoting religious, social and educational life but also undertaking commercial activities (1987) 1 LLJ 81, M.P. Khadi and Village Industries

Board, Housing Board, Dock Labour Board, Management of a private educational institution (*R.C.K. Union* v. *Rajkumar College,* (1987) 2 LLN 573).

But the following are held to be not "Industry": Posts and Telegraphs Department (*Union of India* v. *Labour Court,* (1984) 2 LLN 577), Telecom Deptt. (*Bombay Telephones Canteen Employees Association* v. *Union of India*), Central Institute of Fisheries (*P. Bose* v. *Director, C.I.F.,* 1986 Lab IC 1564), and Construction and maintenance of National and State Highways (*State of Punjab* v. *Kuldip Singh and another,* 1983 Lab IC 83), Trade Unions (*RMS* v. *K.B. Wagh,* 1993(2) CLR 1059).

Section 2(j) shall stand amended by Amendment Act of 1982.

Section 2(j) under Amendment Act, 1982 [date of effect is yet to be notified]

2(j) "Industry" means any systematic activity carried on by co-operation between an employer and his workmen (Whether such workmen are employed by such employer directly or by or through any agency, including a contractor) for the production, supply or distribution of goods or services with a view to satisfy human wants or wishes (not being wants or wishes which are merely spiritual or religious in nature), whether or not:

(i) any capital has been invested for the purpose of carrying on such activity; or

(ii) such activity is carried on with a motive to make any gain or profit, and includes:

  (a) any activity of the Dock Labour Board established under Section 5A of the Dock Workers (Regulations of Employment) Act, 1948, (9 of 1948);

  (b) any activity relating to the promotion of sales or business or both carried on by an establishment,

but does not include:

(1) any agricultural operation except where such agricultural operation is carried on in an integrated manner with any other activity (being any such activity as is referred to in the foregoing provisions of this clause) and such other activity is the predominant one.

  Explanation: For the purpose of this sub-clause, "agricultural operation" does not include any activity carried on in a plantation as defined in clause (f) of Section 2 of the Plantations Labour Act, 1951; or

(2) hospitals or dispensaries; or

(3) educational, scientific, research to training institutions; or

(4) institutions owned or managed by organisations wholly or substantially engaged in any charitable, social or philanthropic service; or

(5) khadi or village industries; or

(6) any activity of the Government relatable to the sovereign functions of the Government including all the activities carried on by the departments of the Central Government dealing with defence research atomic energy and space; or

(7) any domestic service; or

(8) any activity, being a profession practised by an individual or body of individuals, if the number of persons employed by the individuals or body of individuals in relation to such profession is less than ten; or

(9) any activity, being an activity carried on by a co-operative society or a club or any other like body of individuals, if the number of persons employed by the co-operative society, club or other like body of individuals in relation to such activity is less than ten.

(ii) Industrial Dispute

"Industrial Dispute" means any dispute or difference between employers and employers, or between employers

and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person. [Section 2(k)]

The above definition can be analysed and discussed under the following heads:

(i) There should exist a dispute or difference;

(ii) The dispute or difference should be between:

  (a) employer and employer;

  (b) employer and workmen; or

  (c) workmen and workmen.

(iii) The dispute or difference should be connected with (a) the employment or non-employment, or (b) terms of employment, or (c) the conditions of labour of any person;

(iv) The dispute should relate to an industry as defined in Section 2(j).

(a) Existence of a dispute or difference

The existence of a dispute or difference between the parties is central to the definition of industrial dispute. Ordinarily a dispute or difference exists when workmen make demand and the same is rejected by the employer. However, the demand should be such which the employer is in a position to fulfil. The dispute or difference should be fairly defined and of real substance and not a mere personal quarrel or a grumbling or an agitation. The term "industrial dispute" connotes a real and substantial difference having some element of persistency, and likely, and if not adjusted, to endanger the industrial peace of the community. An industrial dispute exists only when the same has been raised by the workmen with the employer. A mere demand to the appropriate Government without a dispute being raised by the workmen with their employer regarding such demand, cannot become an industrial dispute (*Sindhu Resettlement Corporation Ltd.* v. *Industrial Tribunal 1968*-I L.L.J. 834 S.C.). However, in *Bombay Union of Journalists* v. *The Hindu,* AIR, 1964 S.C. 1617, the Supreme Court observed that for making reference under Section 10, it is enough if industrial dispute exists or is apprehended on the date of reference. Therefore, even when no formal demands have been made by the employer, industrial dispute exists if the demands were raised during the conciliation proceedings. When an industrial dispute is referred for adjudication the presumption is that, there is an industrial dispute (*Workmen* v. *Hindustan Lever Ltd., (*1984) 4 SCC 392).

Unless there is a demand by the workmen and that demand is not complied with by the management, there cannot be any industrial dispute within the meaning of Section 2(k). Mere participation by the employer in the conciliation proceedings will not be sufficient (*W.S. Insulators of India Ltd.* v. *Industrial Tribunal, Madras* 1977-II Labour Law Journal 225).

(b) Parties to the dispute

Most of the industrial disputes exist between the employer and the workmen and the remaining combination of persons who can raise the dispute, has been added to widen the scope of the term "industrial dispute". So the question is who can raise the dispute? The term "industrial dispute" conveys the meaning that the dispute must be such as would affect large groups of workmen and employers ranged on opposite sides. The disputes can be raised by workmen themselves or their union or federation on their behalf. This is based on the fact that workmen have right of collective bargaining. Thus, there should be community of interest in the dispute.

It is not mandatory that the dispute should be raised by a registered Trade Union. Once it is shown that a body of workmen either acting through their union or otherwise had sponsored a workmen's case, it becomes an industrial dispute (*Newspaper Ltd., Allahabad* v. *Industrial Tribunal,* A.I.R. 1960 S.C. 1328). The dispute can be raised by minority union also. Even a sectional union or a substantial number of members of the union can raise an industrial dispute. However, the members of a union who are not workmen of the employer against whom the dispute is sought to be raised, cannot by their support convert an individual dispute into an industrial

dispute. In other words, persons who seek to support the cause must themselves be directly and substantially interested in the dispute and persons who are not the employees of the same employer cannot be regarded as so interested. But industrial dispute can be raised in respect of non-workmen (*Workmen* v. *Cotton Greaves & Co. Ltd.* 1971 2 SCC 658). Industrial dispute can be initiated and continued by legal heirs even after the death of a workman (LAB 1C 1999 Kar. 286).

Individual dispute whether industrial dispute?

Till the provisions of Section 2-A were inserted in the Act, it has been held by the Supreme Court that an individual dispute per se is not industrial dispute. But it can develop into an industrial dispute when it is taken up by the union or substantial number of workmen (*Central Province Transport Service* v. *Raghunath Gopal Patwardhan,* AIR 1957 S.C. 104). This ruling was confirmed later on in the case of *Newspaper Ltd.* v. *Industrial Tribunal*. In the case of *Workmen of Dimakuchi Tea Estate* v. *Dimakuchi Tea Estate* (1958) I. L.L.J. 500, the Supreme Court held that it is not that dispute relating to "any person" can become an industrial dispute. There should be community of interest. A dispute may initially be an individual dispute, but the workmen may make that dispute as their own, they may espouse it on the ground that they have a community of interest and are directly and substantially interested in the employment, non-employment, or conditions of work of the concerned workmen. All workmen need not to join the dispute. Any dispute which affects workmen as a class is an industrial dispute, even though, it might have been raised by a minority group. It may be that at the date of dismissal of the workman there was no union. But that does not mean that the dispute cannot become an industrial dispute because there was no such union in existence on that date. If it is insisted that the concerned workman must be a member of the union on the date of his dismissal, or there was no union in that particular industry, then the dismissal of such a workman can never be an industrial dispute although the other workmen have a community of interest in the matter of his dismissal and the cause for which on the manner in which his dismissal was brought about directly and substantially affects the other workmen. The only condition for an individual dispute turning into an industrial dispute, as laid down in the case of *Dimakuchi Tea Estate* is the necessity of a community of interest and not whether the concerned workman was or was not a member of the union at the time of his dismissal. Further, the community of interest does not depend on whether the concerned workman was a member or not at the date when the cause occurred, for, without his being a member the dispute may be such that other workmen by having a common interest therein would be justified in taking up the dispute as their own and espousing it. Whether the individual dispute has been espoused by a substantial number of workmen depends upon the facts of each case.

If after supporting the individual dispute by a trade union or substantial number of workmen, the support is withdrawn subsequently, the jurisdiction of the adjudicating authority is not affected. However, at the time of making reference for adjudication, individual dispute must have been espoused, otherwise it will not become an industrial dispute and reference of such dispute will be invalid.

(c) Subject matter of dispute

The dispute should relate to employment or non-employment or terms of employment or conditions of labour of any person.

The meaning of the term "employment or non-employment" was explained by Federal Court in the case of *Western India Automobile Association* v. *Industrial Tribunal*. If an employer refuses to employ a workman dismissed by him, the dispute relates to non-employment of workman. But the union insists that a particular person should not be employed by the employer, the dispute relates to employment of workman. Thus, the "employment or non-employment" is concerned with the employers failure or refusal to employ a workman. The expression "terms of employment" refers to all terms and conditions stated in the contract of employment. The expression terms of employment would also include those terms which are understood and applied by parties in practice or, habitually or by common consent without ever being incorporated in the Contract (*Workmen* v. *Hindustan Lever Ltd.,* 1984 1 SCC 392).

The expression "condition of labour" is much wider in its scope and usually it was reference to the amenities to be provided to the workmen and the conditions under which they will be required to work. The matters like safety, health and welfare of workers are also included within this expression.

It was held that the definition of industrial dispute in Section 2(k) is wide enough to embrace within its sweep any dispute or difference between an employer and his workmen connected with the terms of their employment. A settlement between the employer and his workmen affects the terms of their employment. Therefore *prima facie,* the definition of Industrial dispute in Section 2(k) will embrace within its sweep any fraudulent and involuntary character of settlement. Even a demand can be made through the President of Trade Union (1988 1 LLN 202). Dispute between workmen and employer regarding confirmation of workman officiating in a higher grade is an industrial dispute (1984 4 SCC 392).

Employer's failure to keep his verbal assurance, claim for compensation for loss of business; dispute of workmen who are not employees of the Purchaser who purchased the estate and who were not yet the workmen of the Purchaser's Estate, although directly interested in their employment, etc. were held to be not the industrial disputes. Payment of pension can be a subject matter of an industrial dispute (*ICI India Ltd.* v. *Presiding Officer L.C.,* 1993 LLJ II 568).

(d) Dispute in an "Industry"

Lastly, to be an "industrial dispute", the dispute or difference must relate to an industry. Thus, the existence of an "industry" is a condition precedent to an industrial dispute. No industrial dispute can exist without an industry. The word "industry" has been fully discussed elsewhere. However, in *Pipraich Sugar Mills Ltd.* v. *P.S.M. Mazdoor Union,* A.I.R. 1957 S.C. 95, it was held that an "industrial dispute" can arise only in an "existing industry" and not in one which is closed altogether.

The mere fact that the dispute comes under the definition of Section 2(k) does not automatically mean that the right sought to be enforced is one created or recognised and enforceable only under the Act (*National and Grindlays Bank Employees' Union, Madras* v. *I. Kannan* (Madras), 1978 Lab. I.C. 648). Where the right of the employees is not one which is recognised and enforceable under the Industrial Disputes Act, the jurisdiction of the Civil Court is not ousted.

(iii) Workman

"Workman" means any person (including an apprentice) employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be expressed or implied and for the purposes of any proceeding under this Act in relation to an industrial dispute, includes:

(a) any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of that dispute, or

(b) any person whose dismissal, discharge or retrenchment has led to that dispute,

but does not include any such person:

(i) who is subject to the Army Act, 1950, or the Air Force Act, 1950 or the Navy Act, 1957; or

(ii) who is employed in the police service or as an officer or other employee of a prison; or

(iii) who is employed mainly in a managerial or administrative capacity; or

(iv) who is employed in a supervisory capacity drawing more than Rs. 1,600 per month as wages; or

(v) who is exercising either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature. [Section 2(s)]

Some of the expressions used in the definition of "workman" have been the subject of judicial interpretation and hence they have been discussed below:

(a) Employed in "any industry"

To be a workman, a person must have been employed in an activity which is an "industry" as per Section 2(j). Even those employed in operation incidental to such industry are also covered under the definition of workman.

In the case of *J.K. Cotton Spinning and Weaving Mills Co. Ltd*. v. *L.A.T.*, AIR 1964 S.C. 737, the Supreme Court held that 'malis' looking after the garden attached to bungalows provided by the company to its officers and directors, are engaged in operations incidentally connected with the main industry carried on by the employer. It observed that in this connection it is hardly necessary to emphasise that in the modern world, industrial operations have become complex and complicated and for the efficient and successful functioning of any industry, several incidental operations are called in aid and it is the totality of all these operations that ultimately constitutes the industry as a whole. Wherever it is shown that the industry has employed an employee to assist one or the other operation incidental to the main industrial operation, it would be unreasonable to deny such an employee the status of a workman on the ground that his work is not directly concerned with the main work or operation of the industry.

(b) Person employed

A person cannot be a workman unless he is employed by the employer in any industry. The relationship of employer and workman is usually supported by a contract of employment which may be expressed or implied. This is also a must for regarding an apprentice as a worker (*Achutan* v. *Babar,* 1996-LLR-824 Ker.). But such a question cannot be derived merely on the basis of apprenticeship contract (*R.D. Paswan* v. *L.C.,* 1999 LAB 1C Pat 1026). The employee agrees to work under the supervision and control of his employer. Here one must distinguish between contract for employment or service and contract of employment or service. In the former, the employer can require what is to be done but in the latter, he can not only order what is to be done, but also how it shall be done. In the case of contract for employment, the person will not be held as a 'workman' but only an 'independent contractor'. There should be due control and supervision by the employer for a master and servant relationship (*Dharangadhara Chemical Works Ltd.* v. *State of Saurashtra*, AIR 1957 SC 264). Payment on piece rate by itself does not disprove the relationship of master and servant (1983 4 SCC 464). Even a part time employee is a worker (*P.N. Gulati* v. *Labour Commissioner* 1977 (35) FLR 35). Since he is under an obligation to work for fixed hours every day, jural relationship of master and servant would exist. A casual worker is nonetheless a workman (*G.Yeddi Reddi* v. *Brooke Bond India Ltd.,* 1994 Lab 1C 186).

(c) Employed to do skilled or unskilled etc.

Only those persons who are engaged in the following types of work are covered by the definition of "workman":

(i) Skilled or unskilled manual work;

(ii) Supervisory work;

(iii) Technical work;

(iv) Clerical work.

Where a person is doing more than one work, he must be held to be employed to do the work which is the main work he is required to do (*Burma Shell Oil Storage & Distributing Co. of India* v. *Burma Shell Management Staff Association,* AIR 1971 SC 922). Manual work referred in the definition includes work which involves physical exertion as distinguished from mental or intellectual exertion.

A person engaged in supervisory work will be a workman only if he is drawing more than Rs. 1,600 per month as wages. The designation of a person is not of great importance, it is the nature of his duties which is the essence of the issue. If a person is mainly doing supervisory work, but incidentally or for a fraction of the time, also does some clerical work, it would have to be held that he is employed in supervisory capacity; and conversely, if the

main work done is of clerical nature, the mere fact that some supervisory duties are also carried out incidentally, will not convert his employment as a clerk into one in supervisory capacity (*Anand Bazar Patrika (P) Ltd.* v. *Its Workmen,* (1969) II L.L.J. 670). In other words, the dominant purpose of employment must be taken into account at first and the gloss of additional duties to be rejected, while determining status and character of the job (*AGR Rao* v. *Ciba Geigy* AIR 1985 SC 985). The work of labour officer in jute mill involving exercise of initiative, tact and independence is a supervisory work. But the work of a teller in a bank does not show any element of supervisory character.

Whether teachers are workmen or not

After amendment of Section 2(s) of the Act, the issue whether "teachers are workmen or not" was decided in many cases but all the cases were decided on the basis of definition of workman prior to amendment. The Supreme Court in *Sunderambal* v. *Government of Goa* [AIR (1988) SC 1700. (1989) LAB 1C 1317] held that the teachers employed by the educational institution cannot be considered as workmen within the meaning of Section 2(s) of the Act, as imparting of education which is the main function of the teachers cannot be considered as skilled or unskilled manual work or supervisory work or technical work or clerical work. The Court in this case also said that manual work comprises of work involving physical exertion as distinct from mental and intellectual exertion. The teacher necessarily performs intellectual duties and the work is mental and intellectual as distinct from manual.

A person doing technical work is also held as a workman. A work which depends upon the special training or scientific or technical knowledge of a person is a technical work. Once a person is employed for his technical qualifications, he will be held to be employed in technical work irrespective of the fact that he does not devote his entire time for technical work. Thus, the person doing technical work such as engineers, foreman, technologist, medical officer, draughtsman, etc., will fall within the definition of "workman". A medical representative whose main and substantial work is to do convassing for promotion of sales is not a workman within the meaning of this Section (1990 Lab IC 24 Bom. DB). However, a salesman, whose duties included manual as well as clerical work such as to attend to the customer, prepare cash memos, to assist manager in daily routine is a workman (*Carona Sahu Co. Ltd.* v. *Labour Court* 1993 I LLN 300). A temple priest is not a workman (1990 1 LLJ 192 Ker.).

Person employed mainly in managerial and administrative capacity

Persons employed mainly in the managerial or administrative capacity have been excluded from the definition of "workman". Development officer in LIC is a workman (1983 4 SCC 214). In *Standard Vacuum Oil Co.* v. *Commissioner of Labour,* it was observed that if an individual has officers subordinate to him whose work he is required to oversee, if he has to take decision and also he is responsible for ensuring that the matters entrusted to his charge are efficiently conducted, and an ascertainable area or section of work is assigned to him, an inference of a position of management would be justifiable. Occasional entrustment of supervisory, managerial or administrative work, will not take a person mainly discharging clerical duties, out of purview of Section 2(s).

(iv) Strike

"Strike" means a cessation of work by a body of persons employed in any industry acting in combination, or a concerted refusal, or a refusal under a common understanding of any number of persons who are or have been so employed to continue to work or to accept employment. [Section 2(q)]

Strike is a weapon of collective bargaining in the armour of workers. The following points may be noted regarding the definition of strike:

(i) Strike can take place only when there is a cessation of work or refusal to work by the workmen acting in combination or in a concerted manner. Time factor or duration of the strike is immaterial. The purpose behind the cessation of work is irrelevant in determining whether there is a strike or not. It is enough if the cessation of work is in defiance of the employers authority.

Proof of formal consultations is not required. However, mere presence in the striking crowd would not amount to strike unless it can be shown that there was cessation of work.

(ii) A concerted refusal or a refusal under a common understanding of any number of persons to continue to work or to accept employment will amount to a strike. A general strike is one when there is a concert of combination of workers stopping or refusing to resume work. Going on mass casual leave under a common understanding amounts to a strike. However, the refusal by workmen should be in respect of normal lawful work which the workmen are under an obligation to do. But refusal to do work which the employer has no right to ask for performance, such a refusal does not constitute a strike (*Northbrooke Jute Co. Ltd.* v. *Their Workmen,* AIR 1960 SC 879). If on the sudden death of a fellow-worker, the workmen acting in concert refuse to resume work, it amounts to a strike (*National Textile Workers' Union* v. *Shree Meenakshi Mills,* (1951) II L.L.J. 516).

(iii) The striking workman, must be employed in an "industry" which has not been closed down.

(iv) Even when workmen cease to work, the relationship of employer and employee is deemed to continue albeit in a state of belligerent suspension. In *Express Newspaper (P) Ltd.* v. *Michael Mark,* 1962-II, L.L.J. 220 S.C., the Supreme Court observed that if there is a strike by workmen, it does not indicate, even when strike is illegal, that they have abandoned their employment. However, for illegal strike, the employer can take disciplinary action and dismiss the striking workmen.

TYPES OF STRIKE AND THEIR LEGALITY

(a) Stay-in, sit-down, pen-down or tool-down strike

In all such cases, the workmen after taking their seats, refuse to do work. Even when asked to leave the premises, they refuse to do so. All such acts on the part of the workmen acting in combination, amount to a strike. Since such strikes are directed against the employer, they are also called primary strikes. In the case of *Punjab National Bank Ltd.* v. *All India Punjab National Bank Employees' Federation,* AIR 1960 SC 160, the Supreme Court observed that on a plain and grammatical construction of this definition it would be difficult to exclude a strike where workmen enter the premises of their employment and refuse to take their tools in hand and start their usual work. Refusal under common understanding not to work is a strike. If in pursuance of such common understanding the employees enter the premises of the Bank and refuse to take their pens in their hands that would no doubt be a strike under Section 2(q).

(b) Go-slow

Go-slow does not amount to strike, but it is a serious case of misconduct.

In the case of *Bharat Sugar Mills Ltd.* v. *Jai Singh,* (1961) II LLJ 644 (647) SC, the Supreme Court explained the legality of go-slow in the following words: "Go-slow which is a picturesque description of deliberate delaying of production by workmen pretending to be engaged in the factory, is one of the most prenicious practices that discontented and disgruntled workmen sometimes resort to. Thus, while delaying production and thereby reducing the output, the workmen claim to have remained employed and entitled to full wages. Apart from this, 'go-slow' is likely to be much more harmful than total cessation of work by strike. During a go-slow much of the machinery is kept going on at a reduced speed which is often extremely damaging to the machinery parts. For all these reasons, 'go-slow' has always been considered a serious type of misconduct."

In another case, it was observed that slow-down is an insidious method of undermining the stability of a concern and Tribunals certainly will not countenance it. It was held that 'go slow' is a serious misconduct being a covert and a more damaging breach of the contract of employment (*SU Motors* v. *Workman* 1990-II LLJ 39). It is not a legitimate weapon in the armoury of labour. It has been regarded as a misconduct.

(c) Sympathetic strike

Cessation of work in the support of the demands of workmen belonging to other employer is called a sympathetic

strike. This is an unjustifiable invasion of the right of employer who is not at all involved in the dispute. The management can take disciplinary action for the absence of workmen. However, in *Ramalingam* v. *Indian Metallurgical Corporation, Madras,* 1964-I L.L.J. 81, it was held that such cessation of work will not amount to a strike since there is no intention to use the strike against the management.

(d) Hunger strike

Some workers may resort to fast on or near the place of work or residence of the employer. If it is peaceful and does not result in cessation of work, it will not constitute a strike. But if due to such an act, even those present for work, could not be given work, it will amount to strike (*Pepariach Sugar Mills Ltd*. v. *Their Workmen*).

(e) Work-to-rule

Since there is no cessation of work, it does not constitute a strike.

LEGALITY OF STRIKE

The legality of strike is determined with reference to the legal provisions enumerated in the Act and the purpose for which the strike was declared is not relevant in directing the legality. Section 10(3), 10A(4A), 22 and 23 of the Act deals with strike. Sections 22 and 23 impose restrictions on the commencement of strike while Sections 10(3) and 10A(4A) prohibit its continuance.

The justifiability of strike has no direct relation to the question of its legality and illegality. The justification of strike as held by the Punjab & Haryana High Court in the case of *Matchwell Electricals of India* v. *Chief Commissioner,* (1962) 2 LLJ 289, is entirely unrelated to its legality or illegality. The justification of strikes has to be viewed from the stand point of fairness and reasonableness of demands made by workmen and not merely from stand point of their exhausting all other legitimate means open to them for getting their demands fulfilled.

The Supreme Court in *Gujarat Steel Tubes Ltd*. v. *Gujarat Steel Tubes Majdoor Sabha*, AIR 1980 SC 1896 held that justifiability of a strike is purely a question of fact. Therefore, if the strike was resorted to by the workers in support of their reasonable, fair and bona fide demands in peaceful manner, then the strike will be justified. Where it was resorted to by using violence or acts of sabotage or for any ulterior purpose, then the strike will be unjustified.

As regards the wages to the workers strike period are concerned, the Supreme Court in *Charakulam Tea Estate* v. *Their Workmen,* AIR 1969 SC 998 held that in case of strike which is legal and justified, the workmen will be entitled to full wages for the strike period. Similar view was taken by the Supreme Court in *Crompton Greaves Ltd. case* 1978 Lab 1C 1379 (SC).

The *Supreme Court in Statesman Ltd.* v. *Their Workman,* AIR 1976 SC 758 held that if the strike is illegal or unjustified, strikers will not be entitled to the wages for the strike period unless considerate circumstances constraint a different cause. Similar view was taken by the Supreme Court in *Madura Coats Ltd.* v. *The Inspector of Factories, Madurai,* AIR 1981 SC 340.

The Supreme Court has also considered the situation if the strike is followed by lockout and vice versa, and both are unjustified, in *India Marine Service Pvt. Ltd.* v. *Their Workman,* AIR 1963 SC 528. In this case, the Court evolved the doctrine of "apportionment of blame" to solve the problem. According to this doctrine, when the workmen and the management are equally to be blamed, the Court normally awards half of the wages. This doctrine was followed by the Supreme Court in several cases. Thus, the examination of the above cases reveal that when the blame for situation is apportioned roughly half and half between the management and workmen, the workmen are given half of the wages for the period involved.

A division bench of the Supreme Court in the case of *Bank of India* v. *TS Kelawala,* (1990) 2 Lab 1C 39 held that the workers are not entitled to wages for the strike period. The Court observed that "the legality of strike does not always exempt the employees from the deduction of their salaries for the period of strike". The Court, further

observed, "whether the strike is legal or illegal, the workers are liable to lose wages does not either make the strike illegal as a weapon or deprive the workers of it".

(v) Lock-out

"Lock-out" means the temporary closing of a place of employment, or the suspension of work, or the refusal by an employer to continue to employ any number of persons employed by him. [Section 2(l)]

Lock out is an antithesis to strike. Just as "strike" is a weapon available to the employees for enforcing their industrial demands, a "lock out" is a weapon available to the employer to persuade by a coercive process the employees to see his point of view and to accept his demands (*Express Newspapers (P) Ltd.* v. *Their Workers* (1962) II L.L.J. 227 S.C.).

In lock out, the employer refuses to continue to employ the workman employed by him even though there is no intention to close down the unit. The essence of lock out is the refusal of the employer to continue to employ workman. Even if suspension of work is ordered, it would constitute lock out. But mere suspension of work, unless it is accompanied by an intention on the part of employer as a retaliation, will not amount to lock out.

Locking out workmen does not contemplate severance of the relationship of employer and the workmen. In the *case Lord Krishna Sugar Mills Ltd.* v. *State of U.P.,* (1964) II LLJ 76 (All), a closure of a place of business for a short duration of 30 days in retaliation to certain acts of workmen (i.e. to teach them a lesson) was held to be a lock out. But closure is not a lock out.

(vi) Lay-off

"Lay-off" (with its grammatical variations and cognate expressions) means the failure, refusal or inability of an employer to give employment due to following reasons, to a workman whose name appears on the muster-rolls of his industrial establishment and who has not been retrenched:

(a) shortage of coal, power or raw materials, or

(b) accumulation of stocks, or

(c) break-down of machinery, or

(d) natural calamity, or

(e) for any other connected reason. [Section 2(kkk)]

Explanation: Every workman whose name is borne on the muster rolls of the industrial establishment and who presents himself for work at the establishment at the time appointed for the purpose during normal working hours on any day and is not given employment by the employer within two hours of his so presenting himself shall be deemed to have been laid-off for that day within the meaning of this clause.

Provided that if the workman, instead of being given employment at the commencement of any shift for any day is asked to present himself for the purpose during this second half of the shift for the day and is given employment, then, he shall be deemed to have been laid-off only for one-half of that day.

Provided further that if he is not given any such employment even after so presenting himself, he shall not be deemed to have been laid-off for the second half of the shift for the day and shall be entitled to full basic wages and dearness allowance for that part of the day.

From the above provisions, it is clear that lay-off is a temporary stoppage and within a reasonable period of time, the employer expects that his business would continue and his employees who have been laid-off, the contract of employment is not broken but is suspended for the time being. But in the case of *M.A. Veirya* v. *C.P. Fernandez,* 1956-I, L.L.J. 547 Bomb., it was observed that it is not open to the employer, under the cloak of "lay-off", to keep his employees in a state of suspended animation and not to make up his mind whether the

industry or business would ultimately continue or there would be a permanent stoppage and thereby deprive his employees of full wages. In other words, the lay-off should not be *mala fide* in which case it will not be lay-off. Tribunal can adjudicate upon it and find out whether the employer has deliberately and maliciously brought about a situation where lay-off becomes necessary. But, apart from the question of *mala fide,* the Tribunal cannot sit in judgement over the acts of management and investigate whether a more prudent management could have avoided the situation which led to lay-off (*Tatanagar Foundry* v. *Their Workmen,* A.I.R. 1962 S.C. 1533).

Further, refusal or inability to give employment must be due to (i) shortage of coal, power or raw materials, or (ii) accumulation of stock, or (iii) break-down of machinery, (iv) natural calamity, or (v) for any other connected reason. Financial stringency cannot constitute a ground for lay-off (*Hope Textiles Ltd*. v. *State of MP,* 1993 I LLJ 603).

Lastly, the right to lay-off cannot be claimed as an inherent right of the employer. This right must be specifically provided for either by the contract of employment or by the statute (*Workmen of Dewan Tea Estate* v. *Their Management*). In fact 'lay-off' is an obligation on the part of the employer, i.e., in case of temporary stoppage of work, not to discharge the workmen but to lay-off the workmen till the situation improves. Power to lay-off must be found out from the terms of contract of service or the standing orders governing the establishment (*Workmen* v. *Firestone Tyre and Rubber Co.,* 1976 3 SCC 819).

There cannot be lay-off in an industrial undertaking which has been closed down. Lay-off and closure cannot stand together.

Difference between lay-off and lock-out

(1) In lay-off, the employer refuses to give employment due to certain specified reasons, but in lock-out, there is deliberate closure of the business and employer locks out the workers not due to any such reasons.

(2) In lay-off, the business continues, but in lock-out, the place of business is closed down for the time being.

(3) In a lock-out, there is no question of any wages or compensation being paid unless the lock-out is held to be unjustified.

(4) Lay-off is the result of trade reasons but lock-out is a weapon of collective bargaining.

(5) Lock-out is subject to certain restrictions and penalties but it is not so in case of lay-off.

However, both are of temporary nature and in both cases the contract of employment is not terminated but remains in suspended animation.

(vii) Retrenchment

"Retrenchment" means the termination by the employer of the service of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, but does not include:

(a) voluntary retirement of the workman; or

(b) retirement of the workman or reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf; or

(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 its expiry or of such contract being terminated under a stipulation in that behalf contained therein.

(c) termination of the service of workman on the ground of continued ill-health.

Thus, the definition contemplates following requirements for retrenchment:

(i) There should be termination of the service of the workman.

(ii) The termination should be by the employer.

(iii) The termination is not the result of punishment inflicted by way of disciplinary action.

(iv) The definition excludes termination of service on the specified grounds or instances mentioned in it. [Section 2(oo)]

The scope and ambit of Section 2(oo) is explained in the case of *Santosh Gupta* v. *State Bank of Patiala,* (1980) Lab.I.C.687 SC), wherein it was held that if the definition of retrenchment is looked at unaided and unhampered by precedent, one is at once struck by the remarkably wide language employed and particularly the use of the word 'termination for any reason whatsoever'. If due weight is given to these words, i.e. they are to be understood as to mean what they plainly say, it is difficult to escape the conclusion that retrenchment must include every termination of service of a workman by an act of the employer. In the case of *Punjab Land Development Corporation Ltd.* v. *Labour Court, Chandigarh,* (1990) II LLJ 70 SC, the Supreme Court held that expression "retrenchment" means termination by employer of services of workman for any reason whatsoever except those expressly excluded in the Section itself.

The expression "for any reason whatsoever" in Section 2(oo) could not be safely interpretted to include the case of discharge of all workmen on account of *bona fide* closure of business, because for the application of definition, industry should be a working or a continuing or an existing industry, not one which is altogether a closed one. So the underlying assumption would be of course, that the undertaking is running as an undertaking and the employer continues to be an employer (*Hariprasad Shivshankar Shukla* v. *A.D.Divakar,* (1957) SCR 121), hereinafter referred to as *Hariprasad case.*

The *Hariprasad case* and some other decisions, lead to the unintended meaning of the term "retrenchment" that it operates only when there is surplus of workman in the industry which should be an existing one. Thus, in effect either on account of transfer of undertaking or an account of the closure of the undertaking, there can be no question of retrenchment within the meaning of the definition contained in Section 2(oo). To overcome this view, the Government introduced new Sections 25FF and 25FFF, providing that compensation shall be payable to workmen in case of transfer of an undertaking or closure of an undertaking to protect the interests of the workmen. Thus, the termination of service of a workman on transfer or closure of an undertaking was treated as 'deemed retrenchment', in result enlarging the general scope and ambit of the expression (retrenchment) under the Act.

The Supreme Court, clearing the misunderstanding created by earlier decisions stated in *Punjab Land Development Corporation Ltd*. case (1990 II LLJ SC 70), that the sole reason for the decision of the Constitution Bench in Hariprasad case was that the Act postulated the existence and continuance of an Industry and wherein the industry, the undertaking itself was closed down or transferred, the very substratum disappeared and the Act could not regulate industrial employment in the absence of an industry. The true position in that case was that Section 2(oo) and Section 25F could not be invoked since the undertaking itself ceased to exist. In fact, the Constitution Bench in that case was neither called upon to decide, nor did it decide, whether in a continuing business, retrenchment was confined only to discharge of surplus staff and the reference to discharge the surplusage was for the purpose of contrasting the situation in that case (i.e.) workmen were being retrenched because of cessation of business and those observations did not constitute reasons for the decision. What was decided was that if there was no continuing industry, the provision could not apply. In fact, the question whether retrenchment did or did not include other terminations was never required to be decided in Hariprasad case and could not therefore have been or be taken to have been decided in that case.

The Supreme Court in the *Punjab Land Development Corporation Ltd.* case clarified that the expression "retrenchment" does not mean only termination by the employer of service of surplus labour for any reason whatsoever. The expression "retrenchment" is not to be understood in the narrow, natural and contextual

meaning but is to be understood in its wider literal meaning to mean termination of service of workman for any reason whatsoever.

The expression "for any reason whatsoever" in Section 2(oo), must necessarily draw within its ambit, the termination of the workers services due to reasons such as economy, rationalisation in industry, installation or improvement of plant or technique and the like. It is in conjunction with such reasons that the words "any reason whatsoever" must be read and construed (*Kamleshkumari Rajanikant Mehta* v. *Presiding Officer, Central Government, Industrial Tribunal No.1,* (1980) Lab I.C.1116).

A casual labourer is a workman and as such his termination would amount to retrenchment within Section 2(oo); 1981-II Labour Law Journal 82 (DB) (Cal.). Where persons are employed for working on daily wages their disengagement from service or refusal to employ for a particular work cannot be construed to be a retrenchment and that concept of retrenchment cannot be stretched to such an extent as to cover such employees *(U.P.* v. *Labour Court, Haldwani,* 1999 (81) FLR 319 All.).The Supreme Court observed that if the termination of an employee's services is a punishment inflicted by way of disciplinary action, such termination would amount to retrenchment (*SBI* v. *Employees of SBI,* AIR 1990 SC 2034). But where the workmen were engaged on casual basis for doing only a particular urgent work, the termination of their service after the particular work is over, is not a retrenchment (*Tapan Kumar Jana* v. *The General Manager, Calcutta Telephones*, (1980) Lab.I.C.508).

In *Parry & Co. Ltd.* v. *P.C. Pal*, (1970) II L.L.J. 429, the Supreme Court observed that the management has a right to determine the volume of its labour force consistent with its business or anticipated business and its organisation. If for instance a scheme of reorganisation of the business of the employer results in surplusage of employees, no employer is expected to carry the burden of such economic dead weight and retrenchment has to be accepted as inevitable, however, unfortunate it be.

The fact that the implementation of a reorganisation scheme adopted by an employer for reasons of economy and convenience would lead to the discharge of some of the employees, will have no material bearing on the question as to whether the reorganisation has been adopted by the employer *bona fide* or not. The retrenchment should be *bona fide* and there should be no victimisation or unfair labour practice on the part of the employer. The Supreme Court in the case of *Workmen of Subong Tea Estate* v. *Subong Tea Estate,* (1964) 1 L.L.J. 333, laid down following principles with regard to retrenchment:

1. The management can retrench its employees only for proper reasons, which means that it must not be actuated by any motive of victimisation or any unfair labour practice.
2. It is for the management to decide the strength of its labour force, and the number of workmen required to carry out efficiently the work in his industrial undertaking must always be left to be determined by the management in its discretion.
3. If the number of employees exceeds the reasonable and legitimate needs of the undertaking, it is open to the management to retrench them.
4. Workmen may become surplus on the ground of rationalisation or on the group of economy reasonably and bona fide adopted by the management or of other industrial or trade reasons.
5. The right of the employer to effect retrenchment cannot normally be challenged but when there is a dispute in regard to the validity of the retrenchment, it would be necessary for the tribunal to consider whether the impugned retrenchment was justified for proper reasons and it would not be open to the employer either capriciously or without any reason at all to say that it proposes to reduce its labour for no rhyme or reason.

The Section does not make any difference between regular and temporary appointment or an appointment on daily wage basis or appointment of a person not possessing requisite qualification (L.L.J.-II-1996 Mad. 216) or whether the appointment was held to be in accordance with law or not. In *Prabhudayal Jat* v. *Alwar Sehkari*

Bhumi Vikas Bank Ltd., (1997) Lab IC Raj. 944, where the services of an employee irregularly appointed was terminated, the Court held, it was a fit case of retrenchment.

In *Anand Behari* v. *RSRTC,* AIR 1991 SC 1003, the services of bus conductors, were terminated on the ground of weak eye sight which was below the standard requirement. Supreme Court held that the termination is due to continued ill- health which has to be construed relatively in its context, and that must have a bearing on the normal discharge of their duties. Ill-health means disease, physical defect, infirmity or unsoundness of mind. Termination on account of lack of confidence is stigmatic and does not amount to retrenchment (*Chandulal* v. *Pan American Airways,* (1985) 2 SCC 727). Striking of the name of a worker from the rolls on the ground of absence for a specific period, provided under Standing Orders amounts to retrenchment (1993 II LLJ 696). Disengagement of workers of seasonal factories after season is not a retrenchment (LLJ I 98 SC 343).

(viii) Award

"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 an arbitration award made under Section 10-A. [Section 2(b)]

This definition was analysed in the case of *Cox & Kings (Agents) Ltd.* v. *Their Workmen,* AIR 1977 S.C. 1666 as follows: The definition of "award" is in two parts. The first part covers a determination, final or interim, of any industrial dispute. The second part takes in a determination of any question relating to an industrial dispute. However, basic thing to both the parts is the existence of an industrial dispute, actual or apprehended. The 'determination contemplated is of the industrial dispute or a question relating thereto on merits.

The word 'determination' implies that the Labour Court or the Tribunal should adjudicate the dispute upon relevant materials and exercise its own judgement. The definition of 'award' also includes the 'interim award', but it should be distinguished from 'interim relief' granted by Tribunal under Section 10(4). (*Hotel Imperial* v. *Hotel Workers Union*). However, in *Management of Bihar State Electricity Board* v. *Their Workmen,* it was held that since there is no provision for interim relief in the Act, it will take the form of interim award. It may be noted that if the 'interim relief' does not take the form of 'interim award', the violation of it, will not attract any penalty under the Act.

Further, if an industrial dispute has been permitted to be withdrawn by an order of the adjudication authority, it will not amount to an award because there is no determination of the dispute on merit. However, position would be different if the dispute has been settled by a private agreement and the Tribunal has been asked to make award in terms of the agreement. The Delhi High Court in *Hindustan Housing Factory Employees Union* v. *Hindustan Housing Factory,* has held that such an award is binding on the parties provided it is not tainted with fraud, coercion, etc. However, it is necessary that the Tribunal brings its own judicial mind with regard to such a compromise so that there is determination of the dispute.

Lastly, if any party to the dispute does not appear before the adjudication authority, the Tribunal can proceed ex-parte but cannot make award unless it has exercised its mind. Thus, the order of dismissal of the reference, for default, does not amount to award.

(ix) Appropriate Government

"Appropriate Government" means:

(i) in relation to any industrial disputes concerning any industry carried on by or under the authority of the Central Government or by a railway company or concerning any such controlled industry as may be specified in this behalf by the Central Government or in relation to an industrial dispute concerning a Dock Labour Board established under Section 5-A of the Dock Workers (Regulation of Employment) Act, 1948 or the Industrial Finance Corporation of India Limited formed and registered under the Companies Act, 1956, or the Employees' State Insurance Corporation established under Section 3 of

the Employees' State Insurance Act, 1948 or the Board of Trustees constituted under Section 3-A of the Coal Mines Provident Fund and Miscellaneous Provisions Act, 1948 or the Central Board of Trustees and the State Boards of Trustees constituted under Section 5-A and Section 5-B, respectively, of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 or the Life Insurance Corporation of India established under Section 3 of the Life Insurance Corporation Act, 1956 or the Oil and Natural Gas Corporation Limited registered under the Companies Act, 1956, or the Deposit Insurance and Credit Guarantee Corporation established under Section 3 of the Deposit Insurance and Credit Guarantee Corporation Act, 1961, or the Central Warehousing Corporation established under Section 3 of the Warehousing Corporation Act, 1962, or the Unit Trust of India established under Section 3 of the Unit Trust of India Act, 1963, or the Food Corporation of India established under Section 3, or a Board of Management established for two or more contiguous States under Section 16 of the Food Corporations Act, 1964, or the Airports Authority of India constituted under Section 3 of the Airports Authority of India Act, 1994, or a Regional Rural Bank established under Section 3 of the Regional Rural Banks Act, 1976 or the Export Credit and Guarantee Corporation Limited or the Industrial Reconstruction Corporation of India Limited, the National Housing Bank establishment under Section 3 of the National Housing Bank Act, 1987 or the Banking Service Commission established under Section 3 of the Banking Service Commission Act, 1975, or an air transport service, or a banking or an insurance company, a mine, an oil-field, a Cantonment Board or a major port, the Central Government, and

(ii) in relation to any other Industrial Dispute, the State Government. [Section 2(a)]

(x) Arbitrator

An "Arbitrator" includes an umpire. [Section 2(aa)]

(xi) Average Pay

"Average pay" means the average of the wages payable to a workman:

(i) in the case of monthly paid workman, in the three complete calendar months;

(ii) in the case of weekly paid workman, in the four complete weeks;

(iii) in the case of daily paid workman, in the twelve full working days preceding the date on which the average pay becomes payable if the workman had worked for three complete calendar months or four complete weeks or twelve full working days as the case may be, and where such calculation cannot be made, the average pay shall be calculated as the average of the wages payable to a workman during the period he actually worked. [Section 2(aaa)]

(xii) Closure

"Closure" means the permanent closing down of a place of employment or a part thereof. [Section 2(cc)]

(xiii) Controlled Industry

"Controlled Industry" means any industry the control of which by the Union has been declared by any Central Act to be expedient in the public interest. [Section 2(ee)]

(xiv) Employer

"Employer" means:

(i) in relation to an industry carried on by or under the authority of any department of the Central Government or a State Government, the authority prescribed in this behalf, or where no authority is prescribed, the head of the department;

(ii) in relation to an industry carried on by or on behalf of a local authority, the chief executive officer of that authority. [Section 2(g)]

"Employer includes among others an agent of an employer, general manager, director, occupier of factory etc.

(xv) Executive

"Executive" in relation to a Trade Union, means the body, by whatever name called, to which the management of the affairs of the trade union is entrusted. [Section 2(gg)]

(xvi) Independent

A person shall be deemed to be "independent" for the purpose of his appointment as the chairman or other member of a Board, Court or Tribunal if he is unconnected with the industrial dispute referred to such Board, Court or Tribunal, or with any industry directly affected by such dispute.

Provided that no person shall cease to be independent by reason only of the fact that he is a shareholder of an incorporated company which is connected with, or likely to be affected by, such industrial dispute; but in such a case, he shall disclose to the appropriate Government, the nature and extent of the shares held by him in such company. [Section 2(i)]

(xvii) Office Bearer

"Office Bearer", in relation to a trade union, includes any member of the executive thereof, but does not include an auditor. [Section 2(III)]

(xviii) Public Utility Service

"Public Utility Service" means:

(i) any railway service or any transport service for the carriage of passengers or goods by air;

(ia) any service in, or in connection with the working of, any major port or dock;

(ii) any section of an industrial establishment, on the working of which the safety of the establishment or the workman employed therein depends;

(iii) any postal, telegraph or telephone service;

(iv) any industry which supplies power, light or water to the public;

(v) any system of public conservancy or sanitation;

(vi) any industry specified in the First Schedule which the appropriate Government may, if satisfied that public emergency or public interest so requires, by notification in the Official Gazette, declare to be a public utility service for the purposes of this Act, for such period as may be specified in the notification:

Provided that the period so specified shall not, in the first instance, exceed six months but may, by a like notification, be extended from time to time, by any period not exceeding six months at any one time, if in the opinion of the appropriate Government public emergency or public interest requires such extension. [Section 2(n)]

Public utility services may be carried out by private companies or business corporations (*D.N. Banerji* v. *P.R. Mukharjee (Budge Budge Municipality),* AIR 1953 SC 58).

(xix) Settlement

"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 authorised in this behalf by the appropriate Government and the conciliation officer. [Section 2(p)]

An analysis of Section 2(p) would show that it envisages two categories of settlements (i) a settlement arrived at in the course of conciliation proceedings, and (ii) a written agreement between employer arrived at otherwise in the course of conciliation proceedings. For the validity of the second category of settlement, it is essential that parties thereto should have subscribed to it in the prescribed manner and a copy thereof sent to authorised officer and the conciliation officer (*Tata Chemicals Ltd.* v. *Workmen,* 1978 Lab. I.C. 637). Moreover, settlement contemplates only written settlement, and no oral agreement can be pleaded to vary or modify or supercede a written settlement (AIR 1997 SC 954).

A settlement cannot be weighed in any golden scale and the question whether it is just and fair has to be answered on the basis of principles different from those which came into play where an industrial dispute is under adjudication. If the settlement has been arrived at by a vast majority of workmen with their eyes open and was also accepted by them in its totality, it must be presumed to be fair and just and not liable to be ignored merely because a small number of workers were not parties to it or refused to accept it (*Tata Engineering and Locomotive Co. Ltd.* v. *Workmen,* 1981-II Labour Law Journal 429 SC). **A memorandum of settlement signed by office bearers of union without being authorised either by constitution of union or by executive committee of the union or by the workmen to enter into agreement with the management does not amount to settlement (*Brooke Bond India Pvt. Ltd.* v. *Workman,* (1981) 3 SCC 493).**

(xx) Trade Union

"Trade Union" means a trade union registered under the Trade Unions Act, 1926. [Section 2(qq)]

(xxi) Unfair Labour Practice

It means any of the practices specified in the Fifth Schedule. [Section 2(ra)]

(xxi) Wages

"Wages" means all remuneration capable of being expressed in terms of money, which would, if the terms of employment, expressed or implied, were fulfilled, be payable to workman in respect of his employment or of work done in such employment, and includes:

(i) such allowance (including dearness allowance) as the workman is for the time being entitled to;

(ii) the value of any house accommodation, or of supply of light, water, medical attendance or other amenity or of any service or of any concessional supply of foodgrains or other articles;

(iii) any travelling concession,

but does not include:

(a) any bonus;

(b) any contribution paid or payable by the employer to any pension fund or provident fund or for the benefit of the workman under any law for the time being in force;

(c) any gratuity payable on the termination of his service.

(d) any commission payable on the promotion of sales or business or both. [Section 2(rr)]

DISMISSAL ETC. OF AN INDIVIDUAL WORKMAN TO BE DEEMED TO BE AN INDUSTRIAL DISPUTE

According to Section 2A, where any employer discharges, dismisses, retrenches or otherwise terminates the services of an individual workman, any dispute or difference between the workman and his employer connected with or arising out of, such discharge, dismissal, retrenchment or termination shall be deemed to be an industrial dispute notwithstanding that no other workman nor any union of workmen is a party to the dispute.

The ambit of Section 2A is not limited to bare discharge, dismissal, retrenchment or termination of service of an individual workman, but any dispute or difference between the workman and the employer connected with or arising out of discharge, dismissal, retrenchment or termination is to be deemed industrial dispute. It has to be considered whether the claim for gratuity is connected with or arises out of discharge, dismissal, retrenchment or termination of service. The meaning of the phrase "arising out" of is explained in *Mackinnon Mackenzie & Co. Ltd.* v. *I.M. Isaak,* (1970) I LLJ 16. A thing is said to arise out of another when there is a close nexus between the two and one thing flows out of another as a consequence. The workman had claimed gratuity and that right flowed out of the termination of the services. Whether he is entitled to gratuity is a matter for the Tribunal to decide. It cannot be accepted that the claim of gratuity does not arise out of termination (*Joseph Niranjan Kumar Pradhan* v. *Presiding Officer, Industrial Tribunal, Orissa,* 1976 Lab. I.C. 1396).

AUTHORITIES UNDER THE ACT AND THEIR DUTIES

The Act provides for following Authorities for Investigation and settlement of industrial disputes:

(i) Works Committee.

(ii) Conciliation Officers.

(iii) Boards of Conciliation.

(iv) Court of Inquiry.

(v) Labour Tribunals.

(vi) Industrial Tribunals.

(vii) National Tribunal.

(i) Works Committee

Section 3 of the Act provides that the appropriate Government may by general or special order require the employer to constitute in the prescribed manner a Works Committee in industrial establishments, where 100 or more workmen are employed or have been employed on any working day in the preceding 12 months. The Works Committee will be comprised of the representatives of employers and workmen engaged in the establishment.

It shall be the duty of the Works Committee to promote measures for securing and preserving amity and good relations between the employer and workmen and, to that end, to comment upon matters of their common interest or concern and endeavour to compose any material difference of opinion in respect of such matters [Section 3(2)].

(ii) Conciliation Officers

With the duty of mediating in and promoting the settlement of industrial disputes, the appropriate Government may, by notification in the Official Gazette, appoint such number of Conciliation Officers as it thinks fit. The Conciliation Officer may be appointed for a specified area or for specified industries in a specified area or for one or more specified industries and either permanently or for a limited period. The main objective of

appointing the Conciliation Officers, by the appropriate Government, is to create congenial atmosphere within the establishment where workers and employers can reconcile on their disputes through the mediation of the Conciliation Officers. Thus, they help in promoting the settlement of the disputes. (Section 4)

(iii) Boards of Conciliation

For promoting the settlement of an industrial dispute, the appropriate Government may, as occasion arises, constitute by a notification in the Official Gazette, a Board of Conciliation. A Board shall consist of a Chairman and two or four other members as the appropriate Government thinks fit.

It shall be the duty of Board to endeavour to bring about a settlement of the dispute and for such purpose it shall, without delay, investigate into the dispute and all matters affecting the merits and the right settlement. The Board may also do all such things which may be considered fit by it, for including the parties to come for a fair and amicable settlement of the dispute. In case of settlement of the dispute, the Board shall send a report thereof to the appropriate Government together with a memorandum of settlement signed by all the parties to the dispute. In case no settlement is arrived at, the Board shall forward a report to appropriate Government enlisting therein the steps taken by the Board for ascertaining the facts and circumstances related to the dispute and for bringing about a settlement thereof. The Board will also enlist the reasons on account of which in its opinion a settlement could not be arrived at and its recommendations for determining the disputes. (Section 5)

(iv) Courts of Inquiry

According to Section 6 of the Act, the appropriate Government may as occasion arises, by notification in the Official Gazette constitute a Court of Inquiry into any matter appearing to be connected with or relevant to an industrial dispute. A Court may consist of one independent person or of such number of independent persons as the appropriate Goverment may think fit and where a Court consists of two or more members, one of them shall be appointed as the Chairman. It is the duty of such a Court to inquire into matters referred to it and submit its report to the appropriate Government ordinarily within a period of six months from the commencement of the inquiry. The period within which the report is to be submitted is not mandatory and the report may be submitted even beyond the period of six months without affecting the legality of the inquiry.

(v) Labour Courts

Under Section 7, the appropriate Goverment is empowered to constitute one or more Labour Courts for 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.

A Labour Court shall consist of one person only to be appointed by the appropriate Government.

A person shall not be qualified for appointment as the presiding officer of a Labour Court unless –

(a) he is, or has been, a judge of a High Court: or

(b) he has, for a period not less than three years, been a district Judge or an Additional District Judge; or

(c) he has held any judicial office in India for not less than seven years; or

(d) he has been the presiding officer of a Labour Court constituted under any provincial Act or State Act for not less than five years.

When an industrial dispute has been referred to a Labour Court for adjudication, it is the duty of the Labour Court to (i) hold its proceedings expeditiously, and (ii) submit its award to the appropriate Government soon after the conclusion of the proceedings. No time period has been laid down for the completion of proceedings but it is expected that such Courts will hold their proceedings without going into the technicalities of a Civil

Court. Labour Court has no power to permit *suo motu* the management to avail the opportunity of adducing fresh evidence in support of charges (1998 Lab 1C 540 AP).

Provisions of Article 137 of the Limitation Act do not apply to reference of dispute to the Labour Court. In case of delays, Court can mould relief by refusing back wages or directing payment of past wages (1999 LAB 1C SC 1435).

(vi) Tribunals

(1) The appropriate Goverment may by notification in the Official Gazette, constitute one or more Industrial Tribunals for the adjudication of industrial disputes relating to any matter whether specified in the Second Schedule or the Third Schedule and for performing such other functions as may be assigned to them under this Act.

(2) A Tribunal shall consist of one person only to be appointed by the appropriate Government.

(3) A person shall not be qualified for appointment as the presiding officer of a Tribunal unless:

(a) he is, or has been, a Judge of High Court; or

(b) he has, for a period of not less than three years, been a District Judges or an Additional District Judge.

(4) The appropriate Government may, if it so thinks fit, appoint two persons as assessors to advise the Tribunal in the proceedings before it.

Further, the person appointed as a Presiding Officer should be an independent person and must not have attained the age of 65 years. (Section 7-A)

The Industrial Tribunal gets its jurisdiction on a reference by the appropriate Government under Section 10. The Government can nominate a person to constitute a Tribunal for adjudication of industrial disputes as and when they arise and refer them to it. The Tribunal may be constituted for any limited or for a particular case or area. If appointed for a limited period, it ceases to function after the expiry of the term even when some matters are still pending (*J.B. Mangharam & Co.* v. *Kher,* A.I.R. 1956 M.B.113).

Further, when a Tribunal concludes its work and submits its award to the appropriate Government, it does not extinguish the authority of the Tribunal nor does it render the Tribunal *functus officio*. The Government can refer to it for clarification on any matter related to a prior award (*G. Claridge & Co. Ltd*. v. *Industrial Tribunal,* A.I.R. 1950 Bom.100).

The duties of Industrial Tribunal are identical with the duties of Labour Court, i.e., on a reference of any industrial dispute, the Tribunal shall hold its proceedings expeditiously and submit its award to the appropriate Government.

(vii) National Tribunals

(1) Under Section 7-B, the Central Government alone has been empowered to constitute one or more National Tribunals for the adjudication of industrial disputes which (a) involve questions of national importance or (b) 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.

(2) A National Tribunal shall consist of one person only to be appointed by the Central Government.

(3) A person shall not be qualified for appointment as the Presiding Officer of a National Tribunal unless: he is, or has been, a Judge of a High Court; or

(4) The Central Government may, if it so thinks fit, appoint two persons as assessors to advise the National Tribunal in the proceeding before it.

Section 7-C further provides that such a presiding officer should be an independent person and must not have attained the age of 65 years.

Duties

When a matter has been referred to a National Tribunal, it must adjudicate the dispute expeditiously and submit its award to the Central Government. (Section 15)

REFERENCE OF DISPUTES

The adjudication of industrial disputes by Conciliation Board, Labour Court, Court of Inquiry, Industrial Tribunal or National Tribunal can take place when a reference to this effect has been made by the appropriate Government under Section 10. The various provisions contained in this lengthy Section are summed up below:

(A) Reference of disputes to various Authorities

Where the appropriate Government is of the opinion that any industrial dispute exists or is apprehended, it may at any time, by order in writing make a reference to various authorities in the following ways:

(a) It may refer the dispute to a Conciliation Board for promoting the settlement of the dispute. As noted earlier, duty of the Board is to promote settlement and not to adjudicate the dispute. A failure report of the Board will help the Government to make up its mind as to whether the dispute can be referred for compulsory adjudication. Further, any matter appearing to be connected with or relevant to the dispute cannot be referred to a Conciliation Board (*Nirma Textile Finishing Mills Ltd.* v. *Second Tribunal,* Punjab 1957 I L.L.J. 460 S.C.).

(b) It may refer any matter appearing to be connected with or relevant to the dispute to a Court of Inquiry. The purpose of making such a reference is not conciliatory or adjudicatory but only investigatory.

(c) It may refer the dispute, or any matter appearing to be connected with, or relevant to, the dispute if it relates to any matter specified in the Second Schedule, to a Labour Court for adjudication. However, disputes relating to any matter falling in the Third Schedule can also be referred to a Labour Court, if the appropriate Government so thinks fit provided the dispute is not likely to affect more than 100 workmen.

(d) It may refer the dispute or any matter appearing to be connected with, or relevant to the dispute specified in the Second or Third Schedule, to an Industrial Tribunal for adjudication. [Section 10(1)]

Under the second proviso to Section 10(1), where the dispute relates to a public utility service and a notice of strike or lock-out under Section 22 has been given, it is mandatory for the appropriate Government or the Central Government as the case may be, to make a reference even when some proceedings under the Act are pending in respect of the dispute. But the Government may refuse to make the reference if it considers that (i) notice of strike/lock-out has been frivolously or vexatiously given, or (ii) it would be inexpedient to make the reference. If the Government comes to a conclusion and forms an opinion which is vitiated by *mala fide* or biased or irrelevant or extraneous considerations, then the decision of the Government will be open to judicial review.

Where the parties to an industrial dispute apply in the prescribed manner, whether jointly or separately, for a reference of the dispute to a Board, Court (Labour Court, Tribunal or National Tribunal), the appropriate Government, if satisfied that the person applying represent the majority of each party, shall make the reference accordingly.

The Industrial Disputes Act provides for no appeal or revision as against the awards so made nor any such remedy is specifically provided for by any other statute or statutory provision though no doubt the Supreme Court in its discretion may under Article 136 of the Constitution of India, grant special leave to a party aggrieved by such an award to appeal to the Supreme Court against an award so made (1978-II Labour Law Journal, Cal.).

Section 10(1) providing for the powers of appropriate Government to make a reference, has been the favoured subject of judicial interpretation. The various observations made in the course of judicial interpretation of Section 10(1) are summarised below:

(i) The order making a reference is an administrative act and it is not a judicial or quasi-judicial act (*State of Madras* v. *C.P. Sarathy,* (1953) I L.L.J. 174 SC). It is because the Government cannot go into the merits of the dispute. Its duty is only to refer the dispute for the adjudication of the authority so that the dispute is settled at an early date.

(ii) The powers of the appropriate Government to make a reference is discretionary but within narrow limits it is open to judicial review.

(iii) Ordinarily the Government cannot be compelled to make a reference. But in such a situation the Government must give reasons under Section 12(5) of the Act. If the Court is satisfied that the reasons given by the Government for refusing to the issue, the Government can be compelled to reconsider its decision by a writ of Mandamus (*State of Bombay* v. *K.P. Krishnan,* A.I.R. 1960 S.C. 1223). The appropriate government is not bound to refer belated claims (1994 I LLN 538 P&H DB).

(iv) In the case of *Western India Match Co. Ltd.* v. *Workmen,* it was held that it is not mandatory for the appropriate Government to wait for the outcome of the conciliation proceedings before making an order of reference. The expression "the appropriate Government at any time may refer" takes effect in such cases where the Government decides to make a reference without waiting for concilliation proceedings to begin or to be completed.

(v) Refusal of the Government to refer the dispute for adjudication does not debar it from making subsequent reference. It at one stage the appropriate Government had come to the conclusion that no reference was called for in the interest of industrial peace, there is nothing in the Act, which bars it from re-examining the matter, whether in the light of fresh material or otherwise, and from making a reference if it comes to the conclusion that a reference is justified and it is expedient in the interest of industrial peace to make such reference (*Western India Match Co. Ltd*. v. *Workers Union*).

(vi) The appropriate Government has no power either expressly or impliedly to cancel, withdraw or supersede any matter referred for adjudication. However, it is empowered to add to or amplify a matter already referred for adjudication (*State of Bihar* v. *D.N. Ganguli,* 1958-II L.L.J. 634 S.C.). The Government is competent to correct clerical error (*Dabur Ltd.* v. *Workmen,* A.I.R. 1968 S.C. 17). Even the Government can refer a dispute already pending before a Tribunal, afresh to another Tribunal, if the former Tribunal has ceased to exist. Now under Section 33-B the Government is empowered to transfer any dispute from one Tribunal to another Tribunal.

(vii) If reference to dispute is made in general terms and disputes are not particularised, the reference will not become bad provided the dispute in question can be gathered by Tribunal from reference and surrounding facts (*State of Madras* v. *C.P. Sarthy*. Also see *Hotel Imperial, New Delhi.* v. *The Chief Commissioner, Delhi*).

(viii) The appropriate Government can decide, before making a reference, the *prima facie* case, but it cannot decide the issue on merits (*Bombay Union of Journalists* v. *State of Bombay,* (1964) 1 L.L.J., 351 SC).

(B) Reference of dispute to National Tribunal involving question of importance, etc.

According to Section 10(1-A), where the Central Government is of opinion that any industrial dispute exists or is apprehended and the dispute involves any question of national importance or is of such a nature that industrial establishments situated in more than one State are likely to be interested in, or affected by such dispute and that the dispute should be adjudicated by a National Tribunal, then, the Central Government may, whether or not it is the appropriate Government in relation to that dispute, at any time, by order in writing, refer the dispute or any matter appearing to be connected with, or relevant to the dispute, whether it relates to any matter specified in the Second Schedule or the Third Schedule, to a National Tribunal, and accordingly.

(a) If the matter under adjudication before the National Tribunal is pending in a proceeding before a Labour Court or Tribunal, the proceeding before the Labour Court or the Tribunal, as the case may be in so far

as it relates to such matter, shall be deemed to have been quashed on such reference to the National Tribunal; and

(b) It shall not be lawful for the appropriate Government to refer the matter under adjudication before the National Tribunal to any Labour Court or Tribunal for adjudication during the pendency of the proceeding in relation to such matter before the National Tribunal. [Section 10(1-A) and 10(5)]

In this sub-section, "Labour Court" or "Tribunal" includes any Court or other authority constituted under any law relating to investigation and settlement of industrial disputes in force in any State.

(C) Reference on application of parties

According to Section 10(2), where the parties to an industrial disputes apply in the prescribed manner, whether jointly or separately, for a reference of the dispute to a Board, Court, Labour Court, Tribunal or National Tribunal, the appropriate Government, if satisfied that the persons applying represent the majority of each party, shall make the reference accordingly and shall specify the time limit (not exceeding three months) to submit the award, such time limit may be extended if required.

Thus, it is mandatory for the Government to make a reference if (i) application to this effect has been made by the parties to the dispute, and (ii) the applicants represent the majority of each party to the satisfaction of the appropriate Government. (*Poona Labour Union* v. *State of Maharashtra,* (1969) II L.L.J.291 Bombay). The Government cannot, before making reference, go into the question of whether any industrial dispute exists or is apprehended.

(D) Time limit for submission of awards

According to Section 10(2A) an order referring an industrial dispute to a Labour Court, Tribunal or National Tribunal shall specify the period within which its award shall be submitted to the appropriate Government. The idea is to expedite the proceedings. Sub-section (2A) reads as follows:

"An order referring an industrial dispute to a Labour Court, Tribunal or National Tribunal under this Section shall specify the period within which such Labour Court, Tribunal or National Tribunal shall submit its award on such dispute to the appropriate Government.

Provided that where such dispute is connected with an individual workman, no such period shall exceed three months:

Provided further that where the parties to an industrial dispute apply in the prescribed manner, whether jointly or separately, to the Labour Court, Tribunal or National Tribunal for extension of such period or for any other reason, and the presiding officer of such Labour Court, Tribunal or National Tribunal considers it necessary or expedient to extend such period, he may for reasons to be recorded in writing, extend such period by such further period as he may think fit:

Provided also that in computing any period specified in this sub-section, the period, if any, for which the proceedings before the Labour Court, Tribunal or National Tribunal had been stayed by any injunction or order of a Civil Court shall be excluded:

Provided also that no proceedings before a Labour Court, Tribunal or National Tribunal shall lapse merely on the ground that any period specified under this sub-section had expired without such proceedings being completed".

(E) Prohibition of strike or lock-out

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 lock-out in connection with such dispute which may be in existence on the date of the reference. [Section 10(3)]

It is necessary that the Government makes an order prohibiting strike or lock out. If no order is made, continuance of strike or lock-out is not illegal. Further, once the order prohibiting strike or lock-out is made, the mere fact that strike was on a matter not covered by the reference, is immaterial (*Keventers Karamchari Sangh* v. *Lt. Governor, Delhi,* (1971) II L.L.J. 525 Delhi).

The only requirement for taking action under Section 10(1) is that there must be some material before the Government which will enable the appropriate Government to form an opinion that an industrial dispute exists or is apprehended. This is an administrative function of the Government as the expression is understood in contradiction to judicial or quasi-judicial function. Merely because the Government rejects a request for a reference or declines to make a reference, it cannot be said that the industrial dispute has ceased to exist, nor could it be said to be a review of any judicial or quasi-judicial order or determination. The industrial dispute may nevertheless continue to remain in existence and if at a subsequent stage the appropriate Government is satisfied that in the interest of industrial peace and for promoting industrial harmony it is desirable to make a reference, the appropriate Government does not lack power to do so under Section 10(1) nor is it precluded from making a reference on the only ground that on an earlier occasion, it had declined to make the reference.

(F) Subject-matter of adjudication

Where in an order referring an industrial dispute to a Labour Court, Tribunal or National Tribunal under this Section or in a subsequent order, the appropriate Goverment has specified the points of dispute for adjudication, the Labour Court or the Tribunal or the National Tribunal, as the case may be, shall confine its adjudication to those points and matters incidental thereto. [Section 10(4)]

(G) Powers of the Government to add parties

Where a dispute concerning any establishment of establishments has been, or is to be, referred to a Labour Court, Tribunal or National Tribunal under this Section and the appropriate Government is of opinion, whether on an application made to it in this behalf or otherwise, that the dispute is of such a nature that any other establishment, group or class of establishments of a similar nature is likely to be interested in, or affected by, such dispute, the appropriate Government may, at the time of making the reference or at any time thereafter but before the submission of the award, include in that reference such establishment, group or class of establishments, whether or not at the time of such inclusion any dispute exists or is apprehended in that establishment, group or class of establishments. [Section 10(5)]

VOLUNTARY REFERENCE OF DISPUTES TO ARBITRATION

Section 10-A provides for the settlement of industrial disputes by voluntary reference of such dispute to arbitrators. To achieve this purpose, Section 10-A makes the following provisions:

(i) Where any industrial dispute exists or is apprehended and the same has not yet been referred for adjudication to a Labour Court, Tribunal or National Tribunal, the employer and the workmen may refer the dispute, by a written agreement, to arbitration specifying the arbitrator or arbitrators. The presiding officer of a Labour Court or Tribunal or National Tribunal can also be named by the parties as arbitrator.

Where an arbitration agreement provides for a reference of the dispute to an even number of arbitrators, the agreement shall provide for the appointment of another person as umpire who shall enter upon the reference, if the arbitrators are equally divided in their opinion, and the award of the umpire shall prevail and shall be deemed to be the arbitration award for the purposes of this Act.

(ii) An arbitration agreement referred to in sub-section (1) shall be in such form and shall be signed by the parties thereto in such manner as may be prescribed.

(iii) A copy of the arbitration agreement shall be forwarded to appropriate Government and the Conciliation Officer and the appropriate Government shall within one month from the date of the receipt of such copy, publish the same in the Official Gazette.

According to Section 10-A(3A), where an industrial dispute has been referred to arbitration and the appropriate Government is satisfied that the persons making the reference represent the majority of each party, the appropriate Government may, within the time referred above, issue a notification in such manner as may be prescribed; and when any such notification is issued, the employer and workmen who are not parties to the arbitration agreement but are concerned in the dispute, shall be given an opportunity of presenting their case before the arbitrator or arbitrators.

(iv) The arbitrator or arbitrators shall investigate the dispute and submit to the appropriate Government the arbitration award signed by the arbitrator or all arbitrators, as the case may be.

(v) Where an industrial dispute has been referred to arbitration and a notification has been issued, the appropriate Government may, by order, prohibit the continuance of any strike or lock-out in connection with such dispute which may be in existence on the date of the reference.

(vi) Nothing in the Arbitration Act, 1940 shall apply to arbitrations under this Section.

PROCEDURE AND POWERS OF AUTHORITIES

Section 11 provides that

(1) Subject to any rules that may be made in this behalf, an arbitrator, a Board, Court, Labour Court, Tribunal or National Tribunal shall follow such procedure as the arbitrator or other authority concerned may think fit.

(2) A Conciliation Officer or a member of a Board or Court or the Presiding Officer of a Labour Court, Tribunal or National Tribunal may for the purpose of inquiry into any existing or apprehended industrial dispute, after giving reasonable notice, enter the premises occupied by any establishment to which the dispute relates.

(3) Every Board, Court, Labour Court, Tribunal and National Tribunal shall have the same powers as are vested in Civil Court under the Code of Civil Procedure, 1908 when trying a suit, in respect of the following maters, namely:

(a) enforcing the attendance of any person and examining him on oath;

(b) compelling the production of documents and material objects;

(c) issuing commissions for the examination of witnesses;

(d) in respect of such other matters as may be prescribed.

Further, every inquiry or investigation by such an authority shall be deemed to be a judicial proceeding within the meaning of Sections 193 and 228 of the Indian Penal Code.

(4) A Conciliation Officer may enforce the attendance of any person for the purpose of examination of such person or call for and inspect any document which he has ground for considering to be relevant to the industrial dispute or to be necessary for the purpose of verifying the implementation of any award or carrying out any other duty imposed on him under this Act, and for the aforesaid purposes, the Conciliation Officer shall have the same powers as are vested in a Civil Court under the Code of Civil Procedure, 1908, in respect of enforcing the attendance or compelling the production of documents.

(5) A Court, Labour Court, Tribunal or National Tribunal may, if it so thinks fit, appoint one or more persons having special knowledge of the matter under consideration, as assessor or assessors to advise it in the proceeding before it.

(6) All Conciliation Officers, members of a Board or Court and the Presiding Officers of a Labour Court, Tribunal or National Tribunal shall be deemed to be public servants within the meaning of Section 21 of the Indian Penal Code.

(7) Subject to any rules made under this Act, the costs of, and incidental to, any proceeding before a Labour

Court, Tribunal or National Tribunal shall be in the discretion of that Labour Court, Tribunal or National Tribunal and the Labour Court Tribunal or National Tribunal, as the case may be, shall have full power to determine by and to whom and to what extent and subject to what conditions, if any, such costs are to be paid, and to give all necessary directions for the purposes aforesaid and such costs may, on application made to the appropriate Government by the person entitled, be recovered by that Government in the same manner as an arrear of land revenue.

(8) Every Labour Court, Tribunal or National Tribunal shall be deemed to be Civil Court for the purposes of Section 345, 316 and 348 of the Code of Criminal Procedure, 1973.

Thus, we see that Section 11(1) gives wide powers to various authorities. However, power to lay-down its own procedure is subject to rules made by the appropriate Government. The Industrial Disputes (Central) Rules, 1957 has prescribed a detailed procedure which these authorities are required to follow. (See Rules 9 to 30). The authorities are not bound to follow the rules laid down in Civil Procedure Code, 1908 or the Indian Evidence Act. However, being quasi-judicial bodies, they should use their discretion in a judicial manner without caprice and act according to the general principles of law and rules of natural justice.

Powers to give appropriate relief in case of discharge or dismissal

According to Section 11-A, where an industrial dispute relating to the discharge or dismissal of a workman has been referred to a Labour Court, Tribunal or National Tribunal for adjudication and, in the course of the adjudication proceedings, the Labour Court, Tribunal or National Tribunal, as the case may be, is satisfied that the order of discharge or dismissal was not justified, it may, by its award, set aside the order of discharge or dismissal and direct reinstatement of the workman on such terms and conditions, if any, as it thinks fit, or give such other relief to the workman including the award of any lesser punishment in lieu of discharge or dismissal as the circumstances of the case may require.

According to the proviso to Section 11-A, in any proceeding under this Section the Labour Court, Tribunal or National Tribunal, as the case may be, shall rely only on the materials on record and shall not take fresh evidence in relation to the matter.

Before the enactment of Section 11-A, there was no provision circumscribing the perimeter of the jurisdiction of the Tribunal to interfere with the disciplinary action of discharge or dismissal for misconduct taken by an employer against an industrial workman.

In *Indian Iron and Steel Co. Ltd.* v. *Their Workmen*, (1958) I LLJ. 260, the Supreme Court, while considering the Tribunal's power to interfere with the managements decision to dismiss, discharge or terminate the service of a workman, has observed that in cases of dismissal for misconduct the Tribunal does not act as a Court of appeal and substitute its own judgement for that of the management and that the Tribunal will interfere only when there is want of good faith, victimisation, unfair labour practice, etc., on the part of the management.

The above Section has no relevance to punishments other than dismissal or discharge (*Rajasthan SRTC* v. *Labour Court,* (1994)1LLJ 542).

STRIKES AND LOCK-OUTS

Strikes and lock-outs are the two weapons in the hands of workers and employers respectively, which they can use to press their viewpoints in the process of collective bargaining. The Industrial Disputes Act, 1947 does not grant an unrestricted right of strike or lock-out. Under Section 10(3) and Section 10A(4A), the Government is empowered to issue order for prohibiting continuance of strike or lock-out. Sections 22 and 23 make further provisions restricting the commencement of strikes and lock-outs.

(i) General prohibition of strikes and lock-outs

No workman who is employed in any industrial establishment shall go on strike in breach of contract and no employer of any such workman shall declare a lock-out:

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

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

(bb) 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 (3A) of Section 10A; or

(c) during any period in which a settlement or award is in operation, in respect of any of the matters covered by the settlement or award. (Section 23)

The purpose of above provisions is to ensure peaceful atmosphere during the pendency of any proceeding before a Conciliation Officer, Labour Court, Tribunal or National Tribunal or Arbitrator under Section 10A.

(ii) Prohibition of strikes and lock-outs in public utility service

The abovementioned restrictions on strikes and lock-outs are applicable to both utility services and non-utility services. Section 22 provides for following additional safeguards for the smooth and uninterrupted running of public utility services and to obviate the possibility of inconvenience to the general public and society (*State of Bihar* v. *Deodar Jha,* AIR 1958 Pat. 51).

(1) No person employed in a public utility service shall go on strike in breach of contract.

(a) without giving to the employer notice of strike, as hereinafter provided, within six weeks before striking, i.e., from the date of the notice to the date of strike a period of six weeks should not have elapsed; or

(b) within 14 days of giving of such notice, i.e., a period of 14 days must have elapsed from the date of notice to the date of strike; or

(c) before the expiry of the date of strike specified in any such notice as aforesaid, i.e., the date specified in the notice must have expired on the day of striking; or

(d) during the pendency of any conciliation proceedings before a conciliation officer and seven days after the conciliation of such proceedings.

(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 hereinafter provided within six weeks before locking-out; or

(b) within 14 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 proceedings before a Conciliation Officer and 7 days after the conciliation of such proceedings.

Right to Strike is to be exercised after complying with certain conditions regarding service of notice and also after exhausting intermediate and salutary remedy of conciliation proceedings (*Dharam Singh Rajput* v. *Bank of India, Bombay,* 1979 Lab. I.C. 1079).

The Act nowhere contemplates that a dispute would come into existence in any particular or specified manner. For coming into existence of an industrial dispute, a written demand is not a *sine qua non*

unless of course in the case of public utility service because Section 22 forbids going on strike without giving a strike notice (1978-I Labour Law Journal 484 SC).

(3) The notice of lock-out or strike under this Section shall not be necessary where there is already in existence a strike or, as the case may be, lock-out in the public utility service, but the employer shall send intimation of such lock-out or strike on the day on which it is declared, to such authority as may be specified by the appropriate Government either generally or for a particular area or for a particular class of public utility services.

(4) The notice of strike referred to in Section 22(1) shall be given by such number of persons to such person or persons and in such manner as may be prescribed.

(5) The notice of lock-out referred to in Section 22(2) shall be given in such manner as may be prescribed.

(6) If on any day an employer receives from any persons employed by him any such notices as are referred to in sub-section (1) or gives to any persons employed by him any such notices as are referred to in sub-section (2), he shall within five days thereof report to the appropriate Government or to such authority as that Government may prescribe the number of such notices received or given on that day. (Section 22)

(iii) Illegal strikes and lock-outs

(1) A strike or lock-out shall be illegal if:

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

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

(2) Where a strike or lock-out in pursuance of an industrial dispute has already commenced and is in existence at the time of reference of the dispute to a Board, an arbitrator, a Labour Court, Tribunal or National Tribunal, the continuance of such strike or lock-out shall not be deemed to be illegal, provided that such strike or lock-out was not at its commencement in contravention of the provisions of this Act or the continuance thereof was not prohibited under Section 10(3) or Section 10A(4A).

(3) A lock-out declared in consequence of an illegal strike or strike declared in consequence of an illegal lock-out shall not be deemed to be illegal. (Section 24)

No person shall knowingly expend or apply any money in direct furtherance or support of any illegal strike or lock-out (Section 25).

JUSTIFIED AND UNJUSTIFIED STRIKES

If a strike is in contravention of the above provisions, it is an illegal strike. Since strike is the essence of collective bargaining, if workers resort to strike to press for their legitimate rights, then it is justified. Whether strike is justified or unjustified will depend upon the fairness and reasonableness of the demands of workers.

In the case of *Chandramalai Estate* v. *Its Workmen*, (1960) II L.L.J. 243 (S.C.), the Supreme Court observed: "While on the one hand it be remembered that strike is a legitimate and sometimes unavoidable weapon in the hands of labour, it is equally important to remember that indiscriminate and hasty use of this weapon should not be encouraged. It will not be right for labour to think that for any kind of demand a strike can be commenced with impunity without exhausting reasonable avenues for peaceful achievement of their objects. There may be cases where the demand is of such an urgent and serious nature that it would not be reasonable to expect labour to wait till after asking the Government to make a reference. In such cases, strike even before such a request has been made, will be justified".

Thus, if workmen go on strike without contravening statutory requirements, in support of their demands, the strike will be justified. In the beginning strike was justified but later on workmen indulged in violence, it will become unjustified.

In the case of *Indian General Navigation and Rly. Co. Ltd.* v. *Their Workmen,* (1960) I L.L.J. 13, the Supreme Court held that the law has made a distinction between a strike which is illegal and one which is not, but it has not made distinction between an illegal strike which may be said to be justifiable and one which is not justifiable. This distinction is not warranted by the Act and is wholly misconceived, specially in the case of employees in a public utility service. Therefore, an illegal strike is always unjustified.

It is well settled that in order to entitle the workmen to wages for the period of strike, 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. Whether a particular strike is justified or not is a question of fact which has to be judged in the light of the facts and circumstances of each case, it is also well settled that the use of force or violence or acts of sabotage resorted to by the workmen during a strike disentitled them to wages for the strike period (*Crompton Greaves Limited* v. *Workmen,* 1978 Lab. I.C. 1379).

Where pending an industrial dispute the workers went on strike the strike thus being illegal, the lock-out that followed becomes legal, a defensive measure (1976-I Labour Law Journal, 484 SC).

WAGES FOR STRIKE PERIOD

The payment of wages for the strike period will depend upon whether the strike is justified or unjustified. This also depends upon several factors such as service conditions of workman, the cause which led to strike, the urgency of cause or demand of workman, the reason for not resorting to dispute settlement machinery under the Act or service rules/regulations etc. (1994-SCC-1197). No wages are payable if the strike is illegal or it is unjustified. Further, if the workers indulge in violence, no wages will be paid even when their strike was legal and justified (*Dum Dum Aluminium Workers Union* v. *Aluminium Mfg. Co.).* The workmen must not take any hasty steps in resorting to strike. They must, first take steps to settle the dispute through conciliation or adjudication except when the matter is urgent and of serious nature. Thus, in *Chandramalai Estate* v. *Workmen,* it was observed that when workmen might well have waited for some time, after conciliation efforts had failed, before starting a strike, and in the mean time could have asked the Government to make a reference, the strike would be unjustified and the workmen would not be entitled to wages for the strike period.

In the case of *Crompton Greaves Ltd*. v. *The Workmen,* AIR 1978 S.C. 1489, it was observed that for entitlement of wages for the strike period, the strike should be legal and justified. Reiterating this position, the Court held in Syndicate Bank v. Umesh Nayak (1994 SCC 1197) that where the strike is legal but at the same time unjustified, the workers are not entitled for wages for the strike period. It cannot be unjustified unless reasons for it are entirely preverse or unreasonable. The use of force, violence or acts of sabotage by workmen during the strike period will not entitle them for wages for the strike period.

Supreme Court in *Bank of India* v. *T.S. Kelawala* (1990 II LLJ S.C. 39) decided, that where employees are going on a strike for a portion of the day or for whole day and there was no provision in the contract of employment or service rules or regulations for deducting wages for the period for which the employees refused to work although work was offered to them, and such deduction is not covered by any other provision, employer is entitled to deduct wages proportionately for the period of absence or for the whole day depending upon the circumstances.

DISMISSAL OF WORKMEN AND ILLEGAL STRIKE

If workers participate in an illegal strike, the employer is within his right to dismiss the striking workmen on ground

of misconduct. For this it is necessary that a proper and regular domestic enquiry is held. In the case of *Indian General Navigation and Rly. Co*. v. *Their Workmen*, the Supreme Court laid down the general rule that mere taking part in an illegal strike without anything further would not necessarily justify the dismissal of all workmen taking part in the strike and that it was necessary to hold a regular inquiry after furnishing charge-sheet to each of the workman sought to be dealt with for his participation in the strike. It was further observed, that because workmen go on strike, it does not justify the management in terminating their services. In any case if allegations of misconduct have been made against them, those allegations have to be enquired into by charging them with specific acts of misconduct and giving them an opportunity to defend themselves at the enquiry. In the case of *Express Newspaper (P) Ltd.* v. *Michael Mark,* (1962) II L.L.J. 220 (S.C.), the Supreme Court held that where the workmen who had participated in an illegal strike, did not join their duties which resulted in their dismissal under the Standing Orders, participation in strike means that they have abandoned their employment. However, the employer can take disciplinary action against the employees under the Standing Orders and dismiss them.

Further, the quantum of punishment should depend upon the extent of involvement in the strike. Those who are guilty of violence, encourage other workers to join an illegal strike and physically obstruct the loyal workers from joining their duties, they can be dismissed from their service. But dismissal of peaceful strikers who merely acted as dumb-driven cattle cannot be justified. The question of punishment has to be considered by the industrial adjudication keeping in view the overriding consideration of the full and efficient working of the industry as a whole.

However, the Supreme Court in an unprecedented judgement in *T.K. Rangarajan* v. *Government of Tamil Nadu and Others*, (2003) 6 SCC 581: 2003-III-LLJ-275 held that the government employees have no fundamental right, statutory or equitable or moral to resort to strike and they can not take the society at ransom by going on strike, even if there is injustice to some extent.

The Apex Court went to observe that strike as a weapon is mostly used which results in chaos and total mal administration. The judgement has evoked a lively debate for and against the proposition.

The Supreme Court has agreed to hear a petition seeking review of its judgement banning strike by all government employees and it is expected that the inconsistencies in the judgement are likely to be resolved.

JUSTIFICATION OF LOCK-OUT AND WAGES FOR LOCK-OUT PERIOD

A lock-out in violation of the statutory requirements is illegal and unjustified and workers are entitled to wages for the lock- out period. For legal lock-out, no wages are payable to workmen. But where the lock-out, though legal is declared with the ulterior motive of victimisation of workmen or has been continued for unreasonable period of time, it is unjustified and the workmen are entitled to wages. In *Lord Krishna Sugar Mills Ltd.* v. *State of U.P.* (1964) II L.L.J. 76 (All), it was observed that locking-out the workmen without any prior notice to them and as a retaliatory measure to terrorise them, is illegal or unjustified. Where illegal or unjustified strike is followed by an unjustified lock out, the wages for lock-out period will depend upon the extent of blame for each others act (*India Marine Services (P) Ltd.* v. *Their Workmen*, (1963) I L.L.J. 122 S.C.).

CHANGE IN CONDITIONS OF SERVICE

(1) Change in service conditions when no proceedings are pending before Labour Court/Tribunal etc.

Notice of change: Section 9A of the Industrial Disputes Act, 1947 lays down that any employer who proposes to effect any change in the conditions of service applicable to any workman in respect of any matter specified in Schedule IV (given in the end of this study) is required to follow the procedure laid down in Section 9A of the Act.

According to Section 9A, the workmen likely to be affected by the proposed changes are to be given a notice in the prescribed manner. No change can be made within 21 days of giving such notice. However, no notice is required for effecting any such change when it is in pursuance of any settlement or award. These provisions

are wholly inapplicable to any alleged right to work relief for office bearers of trade unions. No such right is recognised under provisions of the Act (LLJ II 1998 Mad. 26).

According to Section 9B, where the appropriate Government is of opinion that the application of the provisions of Section 9A to any class of industrial establishments or to any class of workmen employed in any industrial establishment affect the employers in relation thereto so prejudicially that such application may cause serious repercussion on the industry concerned and that public interest so requires, the appropriate Government may, by notification in the Official Gazette, direct that the provisions of the said Section shall not apply or shall apply, subject to such conditions as may be specified in the notification, to that class of industrial establishments or to that class of the workmen employed in any industrial establishment.

(2) Change in conditions of service during pendency of proceedings

Section 33 prohibits the employer from bringing any change, to the prejudice of any workman, in the conditions of service in respect of any matter connected with the dispute which is pending before a Conciliation Officer, or Conciliation Board or an Arbitrator or Labour Court or Tribunal or National Tribunal. The purpose of such a prohibition is to protect the workmen concerned, during the pendency of proceedings against employers harassment and victimisation on account of their having raised the industrial dispute of their continuing the pending proceedings. This Section also seeks to maintain status quo by prescribing management conduct which may give rise to fresh dispute which further exacerbate the already strained relations between the employer and the workmen (*Automobile Products of India Ltd*. v. *Rukmaji Bala* AIR 1955 SC 258). Thus ordinary right of the employer to alter the terms of his employees service to their prejudice or to terminate their services under the general law governing the contract of employment, has been banned subject to certain conditions. However, under Section 3, employer is free of deal with employees when the action against the concerned workman is not punitive or *mala fide* or does not amount to victimisation or unfair labour practice (*Air India Corporation* v. *A. Rebello,* 1972-I L.L.J. 501 S.C.). A detailed study of Section 33 will further clarify that aspect.

According to Section 33(1), during the pendency of any proceedings before Conciliation Officer or a Board, or an Arbitrator, or a Labour Court or Tribunal or National Tribunal, in respect of an industrial dispute, the employer is prohibited from taking following actions against the workmen, except with the express permission in writing of the authority before which the proceedings are pending.

(a) to alter in regard to any matter connected with the dispute to the prejudice of the workmen concerned in such dispute, the conditions of service applicable to them immediately before the commencement of such proceedings.

(b) to discharge or punish, whether by dismissal or otherwise, any workmen concerned in such dispute for any misconduct connected with the dispute".

From the above provisions, it is clear that prohibition on the employer is not absolute. He can make changes in the conditions of service provided he has obtained, before effecting any change, permission in writing of the authority before which the proceedings are pending. Further, alterations in the conditions of services should be to the prejudice of a workman. Transfer of a workman from one department is an ordinary incidence of service and therefore, does not amount to alteration or the prejudice of a workman, even when transfer amounts to reduction in earning due to reduced over-time wages.

In the case of *Bhavanagar Municipality* v. *Alibhai Karimbhai*, AIR 1977 S.C. 1229, the Supreme Court laid down the following essential features of Section 33(1)(a):

(i) the proceedings in respect of industrial dispute should be pending before the Tribunal;

(ii) conditions of service immediately before the commencement of Tribunal proceedings should have been altered;

(iii) alteration is in regard to a matter connected with the pending industrial dispute;

(iv) workmen whose conditions of service have been altered are concerned in the industrial dispute;

(v) alteration is to the prejudice of the workmen.

Change in condition of service – When permissible

Section 33(1) prohibits the employer from changing, during the pendency of proceedings, the conditions of service relating to matter connected with the dispute. Employers were prevented from taking action even in obvious cases of misconduct and indiscipline unconnected with the dispute. To overcome this difficulty, Section 33(2) makes the following provisions:

(i) During the pendency of any such proceedings in respect of an industrial dispute, the employer is permitted to take following actions, in accordance with the standing orders applicable to workmen concerned in such disputes or where there are no such standing orders, in accordance with the terms of the contract, whether express or implied, between him and the workman:

(a) to alter, in regard to 'any matter not connected with the dispute, the conditions of service applicable to that workman immediately before the commencement of such proceedings.

(b) to discharge or punish, whether by dismissal or otherwise, that workman for any misconduct not connected with the dispute.

(ii) According to proviso to Section 33(2), no such workman shall be discharged or dismissed, unless he has been paid wages for one month and an application has been made by the employer to the authority before which the proceedings are pending for approval of the action taken by the employer.

According to Section 33(5), where an employer makes an application to a Conciliation Officer, Board, an Arbitrator, a Labour Court, Tribunal or National Tribunal under the above proviso for approval of the action taken by him, the authority concerned shall, without delay, hear such application and pass within a period of three months from the date of receipt of such application, such order in relation thereto as it deems fit (unless extended on reasonable grounds).

Thus, the stringency of the previous provision is ought to be softened by permitting the employer to take action against the workmen in accordance with the standing orders applicable to them during the pendency of proceedings in regard to any matter unconnected with the dispute by the present Section 33(2).

In cases falling under sub-section (2), the employer is required to satisfy the specified conditions, but he need not necessarily obtain the previous consent in writing before he takes any action. The ban imposed by Section 33(2) is not as rigid or rigorous as that imposed by Section 3(1). The jurisdiction to give or withhold permission is *prima facie* wider than the jurisdiction to give or withhold approval. In dealing with cases falling under Section 32(2) the industrial authority will be entitled to enquire whether the proposed action is in accordance with the standing orders, whether the employer concerned has been paid wages for one month, and whether an application has been made for approval as prescribed by the said sub-section. It is obvious that in case of alteration of conditions of service falling under Section 33(2)(b), no such approval is required and the right of the employer remains unaffected by any ban. Therefore, putting in negatively, the jurisdiction of the appropriate industrial authority in holding enquiry under Section 33(2)(b) cannot be wider and is, if at all, more limited, than that permitted under Section 33(1), and in exercising its powers under Section 33(2) the appropriate authority must bear in mind the departure deliberately made by the legislature in separating the two classes falling under the two sub-sections, and in providing for express permission in one case and only approval in the other". The crucial date for seeking permission of authorities to dismiss an employee is the date of dismissal and not the date of initial action (LAB IC 1998 Mad. 3422).

(3) Protected workmen and change in conditions of service, etc.

A protected workman in relation to an establishment, means a workman who, being a member of the executive

or other officer bearer of a registered Trade Union connected with the establishment, is recognised as such in accordance with rules made in this behalf.

According to Section 33(3), notwithstanding anything contained in Section 33(2), no employer shall, during the pendency of any such proceeding in respect of an industrial dispute, take any action against any protected workman concerned in such dispute:

(a) by altering, to the prejudice of such protected workman, the condition of service applicable to him immediately before the commencement of such proceedings; or

(b) by discharging or punishing, whether by dismissal or otherwise, such protected workman,

save with the express permission in writing of the authority before which the proceeding is pending.

In every establishment the number of workmen to be recognised as protected workmen for the purposes of above-stated provisions, shall be one per cent of the total number of workmen employed therein subject to a minimum number of five protected workmen and a maximum number of one hundred protected workmen and for the aforesaid purpose, the appropriate Government may make rules providing for the distribution of such protected workmen among various Trade Unions, if any, connected with the establishment and the manner in which the workmen may be chosen and recognised as protected workmen [Section 33(4)]. Bombay High Court in *Blue Star Ltd.* v. *Workmen,* held that a Trade Union-worker cannot enjoy the luxury of getting salary, for not doing the assigned task in the company and spending away his time in Trade Union activities exclusively. The Trade Union office bearers cannot claim any special privilege over and above ordinary workers. [Section 33(3) and (4)]

Principles governing domestic enquiry

Some important principles governing a domestic enquiry are summarised below:

(1) The enquiry should be conducted by an unbiased person, i.e., who is neither against nor in favour of a particular party. The person should not be an interested party. He should not import his own knowledge (*Associated Cement Co. Ltd.* v. *Their Workmen*). If he has himself witnessed anything, the enquiry should be held by somebody else. Thus, it should be ensured that justice is not only rendered but appear to be rendered. However, a person holding enquiry will not be held as baised merely on the ground that he receives remuneration from the employer.

(2) The enquiry officer should conduct the enquiry honestly. It should be seen that enquiry is not mere empty formalities (*Kharah & Co.* v. *Its Workmen,* AIR 1964 SC 719).

(3) The employee should be given a fair opportunity to defend himself. He should be clearly informed of the charges levelled against him. Evidence must be examined in the presence of the workman, and he should be given opportunity to cross-examine the witnesses (*Meenaglass Tea Estate* v. *Its Workmen,* AIR 1963 SC 1719). However, the enquiry officer can proceed with the enquiry if the worker refuses to participate without reasons.

(4) If any criminal proceedings, e.g., the theft, etc., are pending against any workman, the enquiry officer need not wait for the completion of those proceedings. However, he may wait for the out-come of such proceedings if the case is of grave or serious nature (*D.C.M.* v. *Kushal Bhum,* AIR 1960 SC 806).

(5) Holding out of preliminary enquiry is not mandatory or necessary. But it is desirable to find out *prima facie* reasons for the domestic enquiry.

(6) A proper procedure should be followed in conducting enquiry. If procedure is prescribed by Standing Orders, it must be followed. Normally, a worker should be informed by a notice so that he can prepare his defence. The proceedings may be adjourned at the discretion of the enquiry officer. The pleadings and other rules should not be rigid and technical. Strict rules of the Evidence Act need not be followed.

(7) The enquiry officer should clearly and precisely record his conclusions giving briefly reasons for reaching the said conclusion.

(4) Recovery of money due from an employer

Following provisions have been made in this respect:

(1) Where any money is due to a workman from an employer under a settlement or an award or under the provisions of Chapter V-A or Chapter V-B, the workman himself or any other person authorised by him in writing in this behalf, or, in the case of death of the workman his assignee or heirs may, without prejudice to any other mode of recovery make an application to the appropriate Government for the recovery of money due to him and if the appropriate Government is satisfied that any money is so due, it shall issue a certificate for that amount to the Collector who shall proceed to recover the same in the same manner as an arrear of land revenue.

(2) Every such application shall be made within one year from the date on which the money become due to the workman from the employer. However, any such application may be entertained after the expiry of the said period of one year, if the appropriate Government is satisfied that the applicant had sufficient cause for not making the application within the said period. However stale claim cannot be entertained unless delay is satisfactorily explained.

(3) Where any workman is entitled to receive from the employer any money or any benefit which is capable of being computed in terms of money and if any question arises as to the amount of money due or as to the amount at which such benefit should be computed, then the question may, subject to any rules that may be made under this Act, be decided by such Labour Court as may be specified in this behalf by the appropriate Government within three months unless extended by the Presiding Officer of a Labour Court.

(4) For the purposes of computing the money value of a benefit, the Labour Court may, if it so thinks fit, appoint a Commissioner who shall, after taking such evidence as may be necessary, submit a report to the Labour Court and the Labour Court shall determine the amount after considering the report of the Commissioner and other circumstances of the case.

(5) The decision of the Labour Court shall be forwarded by it to the appropriate Government and any amount found due by the Labour Court may be recovered in the manner provided for in point (1) above.

(6) Where workmen employed under the same employer are entitled to receive from him any money or any benefit capable of being computed in terms of money then, subject to such rules as may be made in this behalf, a single application for the recovery of the amount due may be made on behalf of or in respect of any number of such workmen. (Section 33-C)

UNFAIR LABOUR PRACTICES

A new Chapter VC relating to unfair labour practices has been inserted. Section 25T under this Chapter lays down that no employer or workman or a Trade Union, whether registered under the Trade Unions Act, 1926 or not, shall commit any unfair labour practice. Section 25U provides that any person who commits any unfair labour practice shall be punishable with imprisonment for a term which may extend to six months or with fine which may extend to one thousand rupees or with both.

The unfair labour practices have been listed in Schedule V which is reproduced at the end of the topic of this study lesson.

PENALTIES

1. Penalty for illegal strikes

Any workman who commences, continues or otherwise acts in furtherance of a strike which is illegal under this

Act, shall be punishable with imprisonment for a term which may extend to one month, or with fine which may extend to fifty rupees or with both. [Section 26(1)]

In the case of *Vijay Kumar Oil Mills* v. *Their Workmen,* it was held that the act of a workman to participate in an illegal strike gives the employer certain rights against the workman, which are not the creation of the Statute but are based on policy, and the employer has every right to waive such rights. In a dispute before the Tribunal, waiver can be a valid defence by the workman. However, waiver by the employer cannot be a defence against prosecution under Section 26 and something which is illegal by Statute cannot be made legal by waiver (*Punjab National Bank* v. *Their Workmen).*

2. Penalty for illegal lock-outs

Any employer who commences, continues, or otherwise, acts in furtherance of a lock-out which is illegal under this Act, shall be punishable with imprisonment for a term which may extend to one month, or with fine which may extend to one thousand rupees, or with both. [Section 26(2)]

3. Penalty for instigation etc.

Any person who instigates or incites others to take part in, or otherwise acts in furtherance of, a strike or lock-out which is illegal under this Act, shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both. (Section 27)

4. Penalty for giving financial aid to illegal strikes and lock-outs

Any person who knowingly expends or applies any money in direct furtherance or support of any illegal strike or lock-out shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both. (Section 28)

5. Penalty for breach of settlement or award

Any person who commits a breach of any term of any settlement or award which is binding on him under this Act, should be punishable with imprisonment for a term which may extend to six months, or with fine or with both, and where the breach is a continuing one with a further fine which may extend to two hundred rupees for everyday during which the breach continues after the conviction for the first, and the Court trying the offence, if it fines the offender, may direct that the whole or any part of the fine realised from him shall be paid, by way of compensation to any person who, in its opinion has been injured by such breach. (Section 29)

6. Penalty for disclosing confidential information

Any person who wilfully discloses any such information as is referred to in Section 21 in contravention of the provisions of that section shall, on complaints made by or on behalf of the trade union or individual business affected, be punishable with imprisonment for a term which may extend to six months or with fine which may extend to one thousand rupees, or with both. (Section 30)

7. Penalty for closure without notice

Any employer who closes down any undertaking without complying with the provisions of Section 25-FFA shall be punishable with imprisonment for a term which may extend to six months or with fine which may extend to five thousand rupees, or with both. (Section 30-A)

8. Penalty for other offences

Any employer who contravenes the provisions of Section 33 shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Further, whoever contravenes any of the provisions of this Act or any rules made thereunder shall, if no other penalty is elsewhere provided by or under this Act for such contravention, be punishable with fine which may extend to one hundred rupees. (Section 31)

9. Offence by companies, etc.

Where a person committing an offence under this Act is a company, or other body corporate, or an association of persons (whether incorporated or not) every director, manager, secretary, agent or other officer or person concerned with management thereof shall, unless he proves that the offence was committed without his knowledge or consent, be deemed to be guilty of such offence. (Section 32)

SCHEDULES

THE FIRST SCHEDULE

[*See* Section 2(n)(vi)]

Industries which may be Declared to be Public Utility Services under sub-clause (vi) of Clause (n) of Section 2

1. Transport (other than railways) for the carriage of passengers of goods [by land or water];
2. Banking;
3. Cement;
4. Coal;
5. Cotton textiles;
6. Foodstuffs;
7. Iron and steel;
8. Defence establishments;
9. Service in hospitals and dispensaries;
10. Fire brigade service;
11. India Government Mints;
12. India Security Press;
13. Copper Mining;
14. Lead Mining;
15. Zinc Mining;
16. Iron Ore Mining;
17. Service in any oil field;
18. *(deleted)*
19. Service in uranium industry;
20. Pyrites mining industry;
21. Security Paper Mill, Hoshangabad;
22. Services in Bank Note Press, Dewas;
23. Phosphorite Mining;
24. Magnesite Mining;
25. Currency Note Press;
26. Manufacture or production of mineral (crude oil), motor and aviation spirit, diesel oil, kerosine oil, fuel

oil, hydrocarbon oils and their blend-including synthetic fuels, lubricating oils and the like.

27. Service in the International Airports Authority of India.

28. Industrial establishments manufacturing or producing nuclear fuel and components, heavy water and allied chemicals and atomic energy.

THE SECOND SCHEDULE

(*See* Section 7)

Matters within the Jurisdiction of Labour Court

1. The propriety or legality of an order passed by an employer under standing orders;
2. The application and interpretation of standing orders;
3. Discharge of dismissal of workmen including reinstatement of or grant of relief to, workmen wrongfully dismissed;
4. Withdrawal of any customary concession or privilege;
5. Illegality or otherwise of a strike or lock-out; and
6. All matters other than those specified in the Third Schedule.

THE THIRD SCHEDULE

[*See* Section 7-A)

Matters within the Jurisdiction of Industrial Tribunals

1. Wages, including the period and mode of payment;
2. Compensatory and other allowances;
3. Hours of work and rest intervals;
4. Leave with wages and holidays;
5. Bonus, profit sharing, provident fund and gratuity;
6. Shift working otherwise than in accordance with standing orders;
7. Classification by grades;
8. Rules of discipline;
9. Rationalisation;
10. Retrenchment of workmen and closure of establishment; and
11. Any other matter that may be prescribed.

THE FOURTH SCHEDULE

[*See* Section 9-A]

Conditions of Service for Change of which Notice is to be Given

1. Wages, including the period and mode of payment.
2. Contribution paid, or payable, by the employer to any provident fund or pension fund or for the benefit of the workmen under any law for the time being in force.

3. Compensatory and other allowances;
4. Hours of work and rest intervals;
5. Leave with wages and holidays;
6. Starting, alternating or discontinuance of shift working otherwise than in accordance with standing orders;
7. Classification by grades;
8. Withdrawal of any customary concession or privilege or change in usage;
9. Introduction of new rules of discipline, or alteration of existing rules except insofar as they are provided in standing orders;
10. Rationalisation, standardisation or improvement of plant or technique which is likely to lead to retrenchment of workmen;
11. Any increase or reduction (other than casual) in the number of persons employed or to be employed in any occupation or process or department of shift (not occasioned by circumstances over which the employer has no control).

THE FIFTH SCHEDULE

[*See* Section 2(ra)]

Unfair Labour Practices

I. On the part of employers and trade unions of employers

1. To interfere with, restrain from, or coerce, workmen in the exercise of their right to organise, form, join or assist a trade union or to engage in concerted activities for the purposes of collective bargaining or other mutual aid or protection that is to say:
   (a) threatening workmen with discharge or dismissal, if they join a trade union.
   (b) threatening a lock-out or closure, if a trade union is organised;
   (c) granting wage increase to workmen at crucial periods of trade union organisation, with a view to undermining the efforts of the trade union at organisation.
2. To dominate, interfere with or contribute support, financial or otherwise to any trade union, that is to say:
   (a) an employer taking an active interest in organising a trade union of workmen; and
   (b) an employer showing partiality or granting favour to one of several trade unions attempting to organise his workmen or to its members, where such a trade union is not a recognised trade union.
3. To establish employer sponsored trade unions of workmen.
4. To encourage or discourage membership in any trade union by discriminating against any workmen, that is to say:
   (a) discharging or punishing a workman, because he urged other workmen to join or organise a trade union;
   (b) discharging or dismissing a workman for taking part in any strike (not being a strike which is deemed to be an illegal strike under this Act);
   (c) changing seniority rating of workmen because of trade union activities;
   (d) refusing to promote workmen to higher posts on account of their trade union activities;

(e) giving unmerited promotions to certain workmen with a view to creating discord amongst other workmen, or to undermine the strength of their trade union;

(f) discharging office-bearers or active members of the trade union on account of their trade union activities.

5. To discharge or dismiss workmen:

(a) by way of victimisation;

(b) not in good faith, but in the colourable exercise of the employers rights;

(c) by falsely implicating a workman in a criminal case on false evidence or on concocted evidence;

(d) for patently false reasons;

(e) on untrue or trumped up allegations of absence without leave;

(f) in utter disregard of the principles of natural justice in the conduct of domestic enquiry or with undue haste;

(g) for misconduct of a minor or technical character, without having any regard to the nature of the particular misconduct or the past record of service of the workman, thereby leading to a disproportionate punishment.

6. To abolish the work of a regular nature being done by workmen, and to give such work to contractors as a measure of breaking a strike.

7. To transfer a workman *mala fide* from one place to another under the guise of following management policy.

8. To insist upon individual workmen, who are on a legal strike to sign a good conduct bond, as a pre-condition to allowing them to resume work.

9. To show favouritism or partiality to one set of workers regardless of merit.

10. To employ workmen as "badlis", casuals or temporaries and to continue them as such for years, with the object of depriving them to the status and privileges of permanent workmen.

11. To discharge or discriminate against any workman for filling charges or testifying against an employer in any enquiry or proceeding relating to any industrial dispute.

12. To recruit workmen during a strike which is not an illegal strike.

13. Failure to implement award, settlement or agreement.

14. To indulge in acts of force or violence.

15. To refuse to bargain collectively, in good faith with the recognised trade unions.

16. Proposing or continuing a lock-out deemed to be illegal under this Act.

II. On the part of workmen and trade unions of workmen

1. To advise or actively support or instigate any strike deemed to be illegal under this Act.

2. To coerce workmen in the exercise of their right to self-organisation or to join a trade union or refrain from joining any trade union, that is to say:

(a) for a trade union or its members to picketing in such a manner that non-striking workmen are physically debarred from entering the work places;

(b) to indulge in acts of force or violence or to hold out threats of intimidation in connection with a strike against non-striking workmen or against managerial staff.

3. For a recognised union to refuse to bargain collectively in good faith with the employer.
4. To indulge in coercive activities against certification of bargaining representative.
5. To stage, encourage or instigate such forms of coercive actions as wilful go slow, squatting on the work premises after working hours or gherao of any of the members of the managerial or other staff.
6. To stage demonstrations at the residences of the employers or the managerial staff members.
7. To incite or indulge in wilful damage to employers property connected with the industry.
8. To indulge in acts of force of violence to hold out threats of intimidation against any workman with a view to prevent him from attending work.

LESSON ROUND UP

- The Industrial Disputes Act, 1947 is an Act to make provision for the investigation and settlement of industrial disputes and for certain other purposes.
- The Industrial Disputes Act applies to all industries. "Industry" for the purpose of Industrial Disputes Act is defined under the Act.
- The industrial dispute connotes a real and substantial difference between employers and employers or between employers and workmen or between workmen and workmen, having some elements of persistency and continuity till resolved and likely to endanger industrial peace of the undertaking or the community.
- An individual dispute espoused by the union becomes an industrial dispute. The disputes regarding modification of standing orders, contract labour, lock out in disguise of closure have been held to be industrial disputes.
- The Act provides for a special machinery of Conciliation Officers, Work Committees, Courts of Inquiry, Labour Courts, Industrial Tribunals and National Tribunals, defining their powers, functions and duties and also the procedure to be followed by them.
- It also enumerates the contingencies when a strike or lock-out can be lawfully resorted to, when they can be declared illegal or unlawful, conditions for laying off, retrenching, discharging or dismissing a workman, circumstances under which an industrial establishment can be closed down and several other matters related to industrial employees and employers.

SELF TEST QUESTIONS

1. What is the object and scope of the Industrial Disputes Act, 1947?
2. Define: (a) Industrial Dispute; (b) Workman; (c) Lay off; (d) Retrenchment; (e) Strike; (f) Lock-out;
3. Describe the various steps in settlement of an industrial dispute. Is it incumbent on the appropriate Government to refer every industrial dispute to adjudication?
4. Describe briefly the authorities provided in the Act for adjudication of industrial disputes.
5. Briefly discuss the provisions relating to illegal strikes and lock-outs.

Section II
The Plantations Labour Act, 1951

LESSON OUTLINE

LEARNING OBJECTIVES

The Act provides for social welfare by regulating the conditions of work in plantations. The Act covers the entire country except the State of Jammu & Kashmir. It applies to all Tea, Coffee, Rubber, Cinchona, Cocoa, Oil Palm and Cardamom plantations, which admeasures five hectares or more and in which fifteen or more persons are employed or were employed on any day of the preceding twelve months. The Act also covers workers employed in offices, hospitals, dispensaries, schools / balwadis and crèches, etc., in the plantations but it does not apply to those factory premises to which the provisions of the Factories Act, 1948 apply. The State Governments are, however, empowered to extend all or any of the provisions of the Act to any plantation notwithstanding that it admeasures less than five hectares or the number of persons employed therein is less than fifteen provided that no such declaration shall be made in respect of such land which admeasured less than five hectares or in which less than 15 persons were employed, immediately before the commencement of this Act. The Act makes it mandatory for employer to provide certain facilities like health, welfare medical, housing, creches, leave etc to its workers. The Act authorize State Government to make rules and appoint various authorities e.g. registering officers , Chief Inspectors, certifying surgeons, Commissioners for implementing provisions of the Act. The Act also prohibits employment of child in any plantation.

The students must be familiar with the basic concepts of the Act.

An Act to provide for the welfare of labour, and to regulate the conditions of work, in plantations

HISTORY OF THE LEGISLATION

In the early stages of plantation, the living conditions of the workers very unhygienic. Medical facilities were very poor. The result is that many workers died after reaching the tea gardens. The pre-independence legislative measures did not deal with the provisions of labour welfare, and they were more protective of the employers than the workers. The Tea District Emigrant Labour Act of 1932 deals mainly with the regulations of recruitment of workers. The Act does not contain any provision regulating welfare arrangements for plantation workers. It is totally an emigration legislation. The Royal Commission on Labour, in its report published in 1931 revealed that much needed to be done in the sphere of health and welfare for plantation workers. An indirect outcome of the Royal commission's report was the setting up of ·the Labour Investigation Committee by the Central Government, in 1946. The Committee too pointed out that the wages, housing accommodation and medical services for plantation workers require substantial improvement and expansion. The Committee suggested the enactment of a separate legislation and Plantation Labour Act was passed in 1951 which was promulgated largely on the basis of the findings of the Labour Investigation Committee. The Act includes several statutory provisions for labour, such as housing, sanitation, schooling facilities for the children of the plantation workers, medical facilities, drinking water, crevches etc. The Act makes it mandatory for the employers to provide facilities. The Act came into effect in 1955.

STATEMENT OF OBJECTS AND REASONS

The Bill of the Act laid down in its statement of objects and reasons the following:

> "In spite of the fact that the plantation industry provides employment for more a million workers, there is at present no comprehensive legislation regulating the conditions of labour in the industry. The Tea Districts Emigrant Labour Act, 1932, which applies only to Assam, regulates merely the conditions of recruitment of labour for employment in the tea gardens of Assam. The Workmen's Compensation Act, 1923, which applies to estate growing cinchona, coffee, rubber or tea also does not confer any substantial benefit on plantation labour as accidents in plantation are few. The other Labour Acts like the Payment of Wages Act, 1936, the Industrial Employment (Standing Orders) Act, 1946 and the Industrial Disputes Act, 1947 benefit plantation labour only to a very limited extent. In its report the Labour Investigation Committee observed that "as the conditions of life and employment on plantations were different from those in other industries, it would be very difficult to fit plantation labour in the general framework of the Industrial Labour Legislation without creating serious anomalies" and recommended a Plantation Labour Code covering all plantation areas.
>
> The Bill seeks to regulate the conditions of plantation labour generally. It applies in the first instance to cinchona, coffee, rubber or tea plantations but the State Government may apply it to any other plantation. Provision is made in the Bill for assuring to the workers reasonable amenities, as for example, the supply of wholesome drinking water or suitable medical or educational facilities or provision for canteen and crèches in suitable cases or provision for sufficient number of latrines and urinals separately for males and females. Housing accommodation is also to be provided for every worker and standards and specifications of such housing accommodation will be prescribed after due consultation. The Bill also regulates the working hours of workers employed in the plantations.
>
> Children under 12 are prohibited from employment in any plantation and State Governments are empowered to make rules regarding the payment of sickness or maternity benefits."

Applicability of the Act

According to section 1, the Act became applicable to whole of India except the State of Jammu and Kashmir.

Sub-section (4) states that it applies to the following plantations –

(*a*) to any land used or intended to be used for growing tea, coffee, rubber, cinchona or cardamom which

admeasures 5 hectares or more and in which fifteen or more persons are employed or were employed on any day of the preceding twelve months;

(*b*) to any land used or intended to be used for growing any other plant, which admeasures 5 hectares or more and in which fifteen or more persons are employed or were employed on any day of the preceding twelve months, if, after obtaining the approval of the Central Government, the State Government, by notification in the Official Gazette, so directs.

Explanation. – Where any piece of land used for growing any plant referred to in clause (*a*) or clause (*b*) of this sub-section admeasures less than 5 hectares and is contiguous to any other piece of land not being so used, but capable of being so used, and both such pieces of land are under the management of the same employer, then, for the purposes of this sub-section, the piece of land first mentioned shall be deemed to be a plantation, if the total area of both such pieces of land admeasures 5 hectares or more.

According to section 1(5), the State Government may, by notification in the Official Gazette, declare that all or any of the provisions of this Act shall apply also to any land used or intended to be used for growing any plant referred to in clause (*a*) or clause (*b*) of sub-section (*4*), notwithstanding that –

(*a*) it admeasures less than 5 hectares, or

(*b*) the number of persons employed therein is less than fifteen:

It is provided that no such declaration shall be made in respect of such land which admeasured less than five hectares or in which less than 15 persons were employed, immediately before the commencement of this Act

IMPORTANT DEFINITIONS

Section 2 provides for the following definitions as -In this Act, unless the context otherwise requires:

1. "Adolescent" means a person who has completed his fourteenth year but has not completed his eighteenth year; {Section 2(*a*)}

2. "Adult" means a person who has completed his eighteenth year; {Section 2 (*b*)}

3. "Child" means a person who has not completed his fourteenth year; {Section 2 (*c*)}

4."Day" means a period of twenty-four hours beginning at midnight; {Section 2 (*d*)}

5. "Employer" when used in relation to a plantation, means the person who has the ultimate control over the affairs of the plantation, and where the affairs of any plantation are entrusted to any other person (whether called a managing agent, manager, superintendent or by any other name) such other person shall be deemed to be the employer in relation to that plantation;

Explanation. –For the purposes of this clause, "the person who has the ultimate control over the the affairs of the plantation" means in the case of a plantation owned or controlled by –

(*i*) a company, firm or other association of individuals, whether incorporated or not, every director, partner or individual;

(*ii*) the Central Government or State Government or any local authority, the person or persons appointed to manage the affairs of the plantation; and

(*iii*) a lessee, the lessee;

{Section 2(*e*)}

In ***S.K. Mehra Vs. State of Assam (1991) 2 GLR 356 and 1991 (2) GLJ 209*** the Hon'ble Gauhati High Court held that simply because a person happens to be president of the company it cannot be said that he has control over the affairs of the plantation in cases where the companies have large numbers of plantations spread all over India. For ready reference the relevant paragraph of the aforesaid judgment is reproduced below:-

> "4. I have heard Mr. P.K. Goswami, learned counsel for the petitioner. Mr. Goswami submits that for violation of the provisions of the Act the employer can be prosecuted. An employer has been defined in section 2(e) of the Act. According to Mr. Goswami, from the terms of section 2(e), it is clear that only such person who has ultimate control over the affairs of the plantation are entrusted to any other person where such other person may be deemed to be the employer in relation to the plantation. According to the Labour Inspector as well as the sanctioning authority there was a Manager of the Tea Estate. Admittedly, he was looking after the affairs of the plantation. He may be termed as a person to whom the affairs of the plantation were entrusted, and as such, he deemed to be an employer; but to term the President of the Company as an employer or to bring him under the definition of "employer, the prosecution must have materials on record to show that the President "had the ultimate control over the affairs of the plantation".

Simply because a person happens to be President of the Company, it cannot be said that he is also in the control of the affairs of the plantations, more so in case of companies owning a large number of plantation, (tea gardens) spread all over the country.

While deciding of liability of Director of the Company under the Plantation Labour Act in *R. L. Rikhye vs. State of Assam & Anr.* reported in 2001 (1) GLT 425 and (2001) 2 GLJ 156 after considering various authorities including *S.K. Mehra* (*Supra*), the Hon'ble Gauhati High Court held as follows:

> "The facts in this case are quite similar. Here also the company owns a large number of plantations spread all over the country and there is nothing in the complaint or in the sanction to show that the present petitioner, who is the Director of the Company, was having any control over the affairs of the plantations and it is clear that in the instant case, the Manager is looking after the affairs of the plantation. That being so, the present petitioner who is only a Director of the Company cannot be prosecuted under the Plantation Labour Act for alleged violation of section 26 and 27 of the Act and the Rule 76 of the Assam Plantation Labour Rules, 1956."

6. "Family", when used in relation to a worker, means –

(*i*) his or her spouse, and

(*ii*) the legitimate and adopted children of the worker dependent upon him or her, who have not completed their eighteenth year,

and includes parents and widow sister, dependent upon him or her; {Section 2(*ee*)}

7. "Inspector" means an inspector of plantations appointed under sub-section (*1*) of section 4 and includes an additional inspector of plantations appointed under sub-section (*1A*) of that section; {Section 2(*eee*)}

8. "**Plantation"** means any plantation to which this Act, whether wholly or in part, applies and includes offices, hospitals, dispensaries, schools, and any other premises used for any purpose connected with such plantation, but does not include any factory on the premises to which the provisions of the Factories Act, 1948 apply; {Section 2 (*f*)}

9. "Qualified Medical Practitioner" means a person holding a qualification granted by an authority specified or notified under section 3 of the Indian Medical Degrees Act, 1916, or specified in the Schedules to the Indian Medical Council Act, 1956, and includes any person having a certificate granted under any Provincial or State Medical Council Act; {Section 2 (*h*)}

10. "Wages" has the meaning assigned to it in clause (*h*) of section 2 of the Minimum Wages Act, 1948 (11 of 1948); {Section 2 (*i*)}

11. "Week" means a period of seven days beginning at mid-night on Saturday night or such other night as may be fixed by the State Government in relation to plantations in any area after such consultation as may be prescribed with reference to the plantations concerned in that area; {Section 2 (*j*)}

12. "Worker" means a person employed in a plantation for hire or reward, whether directly or through any agency, to do any work, skilled, unskilled, manual or clerical and includes a person employed on contract for more than sixty days in a year, but does not include –

(*i*) a medical officer employed in the plantation;

(*ii*) any person employed in the plantation (including any member of the medical staff) whose monthly wages exceed rupees ten thousand;

(*iii*) any person employed in the plantation primarily in a managerial or administrative capacity, notwithstanding that his monthly wages do not exceed rupees ten thousand; or

(*iv*) any person temporarily employed in the plantation in any work relating to the construction, development or maintenance of buildings, roads, bridges, drains or canals; {Section 2 (*k*)}

13. "Young Person" means a person who is either a child or an adolescent. {Section 2 (*l*)}

Reference to time of day

According to section 3, in this Act, references to time of day are references to Indian Standard Time being five and a half hours ahead of Greenwich Mean Time. It is provided that for any area in which the Indian Standard Time is not ordinarily observed, the State Government may make rules –(*a*) specifying the area; (*b*) defining the local mean time ordinarily observed therein; and (*c*) permitting such time to be observed in all or any of the plantations situated in that area.

Registration of Plantations

(1) Appointment of registering officers. – According to section 3A, the State Government may, by notification in the Official Gazette, –

(*a*) appoint such persons, being Gazetted Officers of Government, as it thinks fit, to be registering officers for the purposes of this Chapter, and

(*b*) define the limits within which a registering officer shall exercise the powers and discharge the functions conferred or imposed on him by or under this Chapter.

(2) Registration of plantations-

Section 3B specifies the following steps for registration of a plantation:

(i) *Application for registration*: Every employer of a plantation, existing at the commencement of the Plantation Labour (Amendment) Act, 1981 shall, within a period of sixty days of such commencement, and every employer of any other plantation coming into existence after such commencement shall, within a period of sixty days of the coming into existence of such plantation, make an application to the registering officer for the registration of such plantation. It is provided that the registering officer may entertain any such application after the expiry of the period aforesaid if he is satisfied that the applicant was prevented by sufficient cause from making the application within such period. Every such application shall be in such form and shall contain such particulars and shall be accompanied by such fees as may be prescribed.

(ii) *Registration of plantation:* After the receipt of an application under sub-section (*1*), the registering officer shall register the plantation.

(iii) *Certificate of registration:* Where a plantation is registered under this section, the registering officer shall issue a certificate of registration to the employer thereof in such form as may be prescribed.

(iv) *Notice of change in ownership or management:* Where, after the registration of a plantation under this section, any change occurs in the ownership or management or in the extent of the area or other

prescribed particulars in respect of such plantation, the particulars regarding such change shall be intimated by the employer to the registering officer within thirty days of such change in such form as may be prescribed.

(v) *Cancellation of registration:* Where as a result of any intimation received under sub-section (*5*), the registering officer is satisfied that the plantation is no longer required to be registered under this section, he shall, by order in writing, cancel the registration thereof and shall, as soon as practicable, cause such order to be published in any one newspaper in the language of, and having circulation in, the area where the plantation is situated.

(3) Appeals against orders of registering officer. –

Section 3C provides an opportunity to appeal. It provides that any person aggrieved by the order of a registering officer under section 3B may, within thirty days of the publication of such order in the newspaper under that sub-section, prefer an appeal to such authority as may be prescribed. It is provided that the appellate authority may entertain an appeal under this sub-section after the expiry of the aforesaid period if it is satisfied that the appellant was prevented by sufficient cause from preferring the appeal within such period.

After the receipt of an appeal, the appellate authority may, after giving the appellant, the employer referred to section 3B and the registering officer an opportunity of being heard in the matter, dispose of the appeal as expeditiously as possible.

(4) Power to make rules –

Section 3D empowers the State Government that it may, by notification in the Official Gazette, make rules to carry out the purposes of this Chapter. In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely: –

(*a*) the form of application for the registration of a plantation, the particulars to be contained in such application and the fees to be accompanied along with such application;

(*b*) the form of the certificate of registration;

(*c*) the particulars regarding any change in respect of which intimation shall be given by the employer to the registering officer under sub-section (*5*) of section 3B and the form in which such change shall be intimated;

(*d*) the authority to which an appeal may be preferred under section 3C and the fees payable in respect of such appeal;

(*e*) the registers to be kept and maintained by a registering officer.

Inspecting Staff

(1) Chief inspector and inspectors. –

Section 4 of the Act provides for appointment of Chief Inspector by State Government.

(i) *Power of State Government:* The State Government may, by notification in the Official Gazette, appoint for the State a duly qualified person to be the chief inspector of plantations and so many duly qualified persons to be inspectors of plantations subordinate to the chief inspector as it thinks fit.

(ii) *Appointment of additional inspectors:* The State Government may also, by notification in the Official Gazette, appoint such officers of the State Government or of any local authority under its control, as it thinks fit, to be additional inspectors of plantations for all or any of the purposes of this Act.

(iii) Power of Chief Inspector:

(a) Subject to such rules as may be made in this behalf by the State Government, the chief inspector may declare the local area or areas within which, or the plantations with respect to which, inspectors shall exercise their powers under this Act, and may himself exercise the powers of an inspector within such limits as may be assigned to him by the State Government.

(b) The chief inspector and all inspectors shall be deemed to be public servants within the meaning of the Indian Penal Code 1860.

(2) Powers and functions of inspectors. –

Section 5 of the Act provides that subject to any rules made by the State Government in this behalf, an inspector may within the local limits for which he is appointed –

(*a*) make such examination and inquiry as he thinks fit in order to ascertain whether the provisions of this Act and of the rules made thereunder are being observed in the case of any plantation;

(*b*) with such assistants, if any, as he thinks fit, enter, inspect and examine any plantation or part thereof at any reasonable time for the purpose of carrying out the objects of this Act;

(*c*) examine the crops grown in any plantation or any worker employed therein or require the production of any register or other document maintained in pursuance of this Act, and take on the spot or otherwise statements of any person which he may consider necessary for carrying out the purposes of this Act;

(*d*) exercise such other powers as may be prescribed:

It is provided that no person shall be compelled under this section to answer any question or make any statement tending to incriminate himself.

(3) Facilities to be afforded to inspectors. –

According to section 6, every employer shall afford the inspector all reasonable facilities for making any entry, inspection, examination or inquiry under this Act.

(4) Certifying surgeons. –

Section 7 provides for appointment of certifying surgeons by the State Government.

The State Government may appoint qualified medical practitioners to be certifying surgeons for the purposes of this Act within such local limits or for such plantation or class of plantations as it may assign to them respectively.

Duties of certifying surgeon: The certifying surgeon shall carry out such duties as may be prescribed in connection with –

(*a*) the examination and certification of workers;

(*b*) the exercise of such medical supervision as may be prescribed where adolescents are employed in any work in any plantation which is likely to cause injury to their health.

Provisions as to Health

(1) Drinking water –

Section 8 makes it obligatory for every employer to make effective arrangements in every plantation for providing and maintaining at convenient places in the plantation a sufficient supply of wholesome drinking water for all workers.

(2) Conservancy. –

Section 9 of the Act prescribes the duty of employer to provide for sanitation in his plantation as follows: