CHAPTER V

THE FUTURE OF TRADE UNION MOVEMENT IN INDIA
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5.1 INTRODUCTION:-

Under the Trade Unions Act, 1926, 'Trade Union' means any combination whether temporary or permanent, formed primarily for the purpose of regulating the relations between workmen and employers or between workmen and workmen or between employers and employers or for imposing restrictive conditions on the conduct of any trade or business and includes any federation of two or more Trade Unions. Thus the expression 'trade union' includes both employers and workers organizations. This chapter is concerned with the trade unions of workers.

The main elements in the development of trade unions of workers in every country have been more or less the same. The establishment of large-scale industrial units created conditions of widespread use of machinery, undertaking production with new techniques, changes in working and living conditions, environments of workers and concentration of industries in large towns. All these circumstances laid to the introduction of a new class of workers who were dependent on wages for their livelihood. Such workers were at a disadvantage in an age when the doctrine of laissez faire held the field. In the absence of collective action, they had to be content with the wages which each one of them could separately negotiable with his employer from a position of disadvantage. Under the circumstances even though individual workers protested, it could not be prove effectively, because of a plentiful supply of labour. Workers had to join together to maintain their bargaining power against the employer. Where joint action was inadequate, the sanction which workers evolved was joint withdrawal from work. Recognition by the community of this right to organize for
collective action and withhold labour for their rights, was a long and painful process everywhere; but perhaps less so in India.

5.2 EMERGENCE AND GROWTH OF TRADE UNIONS:

The Unions came into existence to uphold the worker's right to organize and their right to press their demands collectively and if their claims are not accepted to go on strike. Few incidents of organized action by workers are reported in the first fourteen years of this century in our country. As per the report of the national commission¹ by the end of the 19th century modern industry had secured for itself a place in the economic life of the community, the other part of the industry, viz. workers who were sweating from sunrise to sunset in dingy insanitary factories to keep the machines moving, had received no attention. Some social and welfare activists tried to organize labour, but there was no unionization in the real sense.

There is a record of several cases of concerted action in many industrial centres such as Bombay, Calcutta and Kanpur. The trade union movement started within the period of five years i.e. 1919 to 1923 in all parts of the country.

The establishment of the International Labour Organization (ILO) in 1919 also had its influence on the growth of unions in the country. Some unions were functioning independently. They confined their activities to an industrial centre or unit. Other unions felt the need for co-ordination of their activities at the national level. A section of the working class even thought in terms of wider international unity of the working class through the opportunity offered by the ILO.

As a result of all these urges, an All India Federation, viz. the All India Trade Union Congress was formed in 1920. The Trade Union Act was passed in 1926 which gave formal recognition to the

workers right to organize. The passing of Trade Union Act also encouraged the further growth of the trade union movement.

The pattern, structure and basis of unions cannot be ordinarily generalized. In different countries unions have developed on different lines, depending on social and economic requirements of industrialization, political and historical factors and the institutional structure of the respective country. In U.K. where unions grew out of the guild system, the occupational trade became the basis of workers getting together for collective action. Australian experience is similar. In U.S.A., workers are members of local unions, most of which are affiliated to national unions covering an occupation or an industry. In U.S.S.R. trade unions are organized on an industry basis, all persons employed in a factory or establishment belong to one union and at the higher levels, each industry union comprises unions of one branch of the national economy. French, Italian and Belgian unions are divided not only on industry / plant basis, but also have strong religious dominations. 'Enterprise' is the basis of union structure in Japan. About 85 percent of the unions covering 80 percent of the total membership in Japan are confined to a single unit / establishment or enterprise. The basis of union structure in India is specified in the later portion of this chapter.

Over the years, no country is able to keep union structure static. In order to adjust to national situations, the trade union movement has undergone changes. In each country government interventions has played a significant role on restructuring and giving a direction to unions. But this also varies from country to country.

5.3 NECESSITY OF TRADE UNION MOVEMENT:-

With it the industrialisation brought technological changes and consequential changes in the nature of the labour problems. In
view of S.D. Punekar and others when a man hires another man for wages, the labour problem is said to have begun. Between these two persons, the relationship is that of master and servant, employer and employee. This relationship is governed by a tacit understanding between them about the terms and conditions of work, such as wages and allowances, workload, hours of work, benefits and amenities. This is simplest form of labour-management relationship.

Thus with the growth of industrialisation process, the labour problem and relationship becomes more and more complex. The entrepreneurs set up an industrial establishment with a profit motive. They treat the workers as a commodity. And utilizes his labour very cheaply by paying low wages to workers and gets more and more production. The exploitation of the workers at the hands of the industrialist by entrusting to them heavy manual work, high workload, long hours of work, no holidays, low wages, lack of facilities and worst conditions of work were continued. Even women and children’s were also exploited at the work places. The conditions of work were undesirable and inhuman.

On this background trade unions came into existence to protect the common interests of the workers. The workers joined their hands to express their dissatisfaction. Individually they cannot bargain for their demands and rights. So they organized themselves into trade unions to gain strength against exploitation. The trade union can act as a bargaining agent on behalf of the workers with the employer and with the Government when necessary for their demands for higher wages, conditions of work and the like. The trade unions through collective bargaining can secure certain benefits to their members from the employer. In the capacity of representative organization of workers, they bargain with the employers for wages and other allowances, bonus, hours of work, working conditions and welfare facilities and the like. If a worker

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individually bargains with the employer for this, it will be ineffective. On the other hand the trade union is strong enough, as a bargaining agent to negotiate with the employer on behalf of the workers. The employers also found it necessary and convenient to deal with the representatives of the workmen instead of the individual workman. Collective bargaining was found suitable for taking disciplinary action against one or more workmen and also with respect to all other disputes, it is also legally accepted. It bestows equality, prohibits conflicting interests and strengthens collective interests. Collective bargaining is absolutely necessary for maintaining industrial peace.

Before the recognition of the concept of collective bargaining, labour was at a great disadvantage while obtaining reasonable terms for its contract of service from its employer. With the growth and development of trade unions in the country the collective bargaining assumes greater significance and became the rule. In later years it has been included in the statute and recognised by apex court.

The importance of collective bargaining was accepted by the Supreme Court in D.N. Banerji V. P.R. Mukherjee. It laid down that having regard to the modern conditions of the society, where capital and labour have organised themselves into groups for the purpose of fighting their disputes and setting them on the basis of the theory that ‘union is strength’, collective bargaining has come to stay.

Trade unions are recognized by Governments on the basis of membership verification which can be carried out once in ten years or so, to determine which unions are to be invited for participation in national and international level consultation on various matters involving social and labour interests. In India as registration of union is not compulsory. Similarly trade union recognition is also not compulsory. The main distinction between registration and recognition is that registration is with the Registrar; on the other

\[1\] (1953) ILLJ 195.
hand recognition is by the management as a sole-bargaining agent. This recognition is for the purpose of representing members by the management under one or more of the methods. These methods include code of discipline, which is common in public sector undertakings, secret ballot, check-off system and membership verification. The system of collective bargaining is a bipartite process between the employers on the one hand and the trade union at the other.

Ludwig Teller has defined collective bargaining as "an agreement between a single employer or an association of employers on the one hand and a labour union upon the other, which regulates the terms and conditions of employment". He further stated that the term 'collective' as applied to 'collective bargaining agreement', will be seen to reflect the plurality not of the employers, who may be parties thereto, but of the employee involved therein. Again, the term 'collective bargaining' is reserved to mean bargaining between an employer or a group of employers and a bonafide labour union. The collective bargaining agreement bears in many provisions, the imprints of decades of activity contending for labour equality through regulation of the nations underlying collective negotiation. Indeed the collective bargaining agreement is to be found in a culminating purpose of labour activity.

In Associated Cement Companies Ltd V. Their Workman it was decided that an element of collective bargaining, which is the essential feature of the modern trade union movement, is necessarily involved in industrial adjudication.

In workmen of Dimakuchi Tea Estate V. Dimakuchi Tea Estate it was laid down that it is the community of interest or the class as a whole - class of employers or class of workmen - which

\[\text{(1960) 1 LLJ SC 491.}
\[\text{(1958) 1 LLJ SC 500.}
furnishes the real nexus between the dispute and the parties to the dispute'.

In another landmark case Central Provinces Transport Services Ltd V. Raghunath Gopal Patwardhan\(^7\) the apex court held that the language of S.2(k) is wide enough to cover a dispute between an employer and a single employee, the scheme of the Act appears to contemplate that the machinery provided therein should be set in motion to settle only such disputes as involve the right of workmen as a class and that a dispute touching the individual rights of a workmen, was not intended to be the subject of adjudication under the Act.

The word industrial dispute refers firstly to the dispute relating to industrial matters and secondly in this dispute on the one side there is a body of men acting collectively and not individually. Thus the word industrial is used for the nature and quality of the disputes, which distinguishes it from ordinary disputes between the private parties. That is the underlying element in collective bargaining. The industrial dispute is defined in Section 2 (k) of IDA as, "industrial dispute" means any 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 condition of labour, of any person.

Section 2 A of IDA 1947 – is an extension of the definition of industrial dispute in section 2 k. It has been added to IDA 1947 by amending Act of 1965 in order to remove the hardship experienced by individual workmen to get the dispute referred of his discharge, dismal retrenchment or termination of service under section 2(k). This Section is intended to cover the collective disputes. However the dispute of a single workman affecting his rights referred under section 2(k) of IDA for adjudication when sponsored by a trade union or group of workers. Section 2A confirms a statutory right on

\(^{7}\) (1957) 1 LLJ SC 27.
the individual workmen to get his dispute referred mainly to the labour court for his termination of service which he can contest by himself or through the representative of the union or through lawyer. Thus an individual dispute cannot per se become an industrial dispute, but it may become one if it is taken up by a trade union or a number of workmen. There should be community of interest of the workmen of the establishment, with the concerned workmen who has raised a dispute.

This principle was upheld in Western India Match Co. Ltd. V. Western India Match Co. Workers Union. The Learned Judge, Mr. Shelat stated that “the community of interest does not depend on whether the concerned workman was a member of the union or not, at the date when the cause occurred, for even 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.

In India, the judiciary has a control on collective bargaining to some extent, when the dispute is referred to it for arbitration. Also there are certain preconditions for free collective bargaining. In this context it is necessary to examine the provisions of the Trade Unions Act. The Trade Unions Act, 1926 does not provide for recognition of workers unions. In view of Ratna Sen’s recognition is the process through which management, acknowledge and accept a trade union as representative of some or all of the workers in an establishment or industry and with which it is willing to conduct discussions on all issues concerning those workers. When this acceptance also includes the willingness of the management to bargain with that or other unions, they may be termed as bargaining agent or agents. The existence of a trade union in an industry is absolutely necessary benefiting both the management and the workers. One union one industry is extremely appreciated concept

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and it was in vogue for decade past. The Trade Unions Act can not be said to be self contained code and requires to be amended in many respect. The Trade Unions Act provides for registration of Trade Unions maintenance of certain record such as membership registration, minute books of executive committee meeting and that of general body and special general body meetings, maintenance of accounts. It's by laws and Constitution provides for accountability of its members and office bearers, election, expulsion of office bearers and the like.

There was no law at the central level which provides for employer recognising unions. Accordingly recognition means the employer recognizes the right of union to negotiate with him in respect of matters affecting either the common or the individual interests of its members. The central labour ministry formulated a Code of Discipline evolving acceptance by the organization of employers and workers in all industries in the private sector, except the banking and the newspaper industries, at the 15th session of the Indian Labour Conference held at Nainital in May 1958, which became effective on 1st June 1958. The Code has also been accepted by all companies and corporations in the public sector except the ports and docks, defense undertakings and railways. The Code of Discipline has no statutory force but the agreements between the organizations with active participation of the states continue to play a significant role. This Code of Discipline is a balanced policy maintaining discipline in public and private sector industry. Under it, bipartite and tripartite agreements are arrived, at all the levels from time to time. It spells out different liabilities on the part of management and unions for industrial peace, better production and better working conditions for workers.

Before the passing of Second Five Year Plan, the Government machinery for implementation of developments in industrial sector was inadequate. There were many instances of non-observance of

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awards on the side of some employers and indiscipline among the workers. Taking into consideration this situation the Second Five Plan has stated¹¹, “while the observance of stricter discipline, both on the part of labour and management, is a matter which cannot be imposed by legislation. It has to be achieved by organisation of employers and workers by evolving suitable sanctions on their own. Some steps, legislative or otherwise in case of rank indiscipline require to be thought of”.

In the year 1957, the Government changed its attitude from legislation to voluntary arrangements. The need was felt to create awareness between Government, employers and worker, to realize the obligations under labour laws and also to improve an attitude in them for accepting their responsibilities and discharging them. In this context the question of discipline in industry was discussed in the Indian Labour Conferences and the Code of Discipline. Because of this Code, the parties are refrained from taking unilateral action in connection with any industrial matter. It provides promptness in utilizing the existing machinery for settlement of disputes. This Code of Discipline also adjure strikes and lock outs without notice and without utilizing all avenues of settlement. It encourages voluntary arbitration for settlement of disputes mutually instead of raising a dispute or litigation. For that purpose, the employers are required to recognize the majority union in an establishment or industry and set up a mutually agreed grievance procedure. The workers are not to resort to go-slow, coercion and intimidation and the like practices. Unfair labour practices on the part of employers and workers should be given up. The employers and unions both are required to take appropriate action against their officers and members, who will be found indulged in acts against the spirit of the code.

In the early years, this code of focused the attention of the parties mainly on their obligations under the various labour laws and

¹¹ Second Five Year Plan, p.378.
also imposed on them strict observance of these and other obligations associated with work in an industry.

This Code of Discipline lays down criteria of Recognition of Union for collective bargaining agent. But with the growing multiplicity this criterion lost its effectiveness. Union rivalries also increased; if one union was recognized, the other workers formed a common forum to claim majority. In such a situation the management had very little option. If more than one union is in existence, the majority union becomes a recognized union under the Code of Discipline. The other union also gets certain rights to protect the interest of workers except the aspect of collective bargaining.

By attaching considerable importance to the matter of recognition of unions the report of the National Commission on labour\(^\text{12}\) has stated that industrial democracy implies that the majority union should have the right to sole representation i.e. the right to speak and act for all workers and to enter into agreements with the employer.

The need for a provision for recognition of unions was stressed in the Second Five Year Plan. As there was no legislation for recognition of unions, the Code of Discipline provided for a voluntary basis for recognition of unions. According to the criteria laid down in the Code of Discipline, a union claiming recognition should have been functioning at least for a period of one year having a specified membership. In case more than one union is functioning in an establishment, the membership of all eligible unions is verified by the Chief Labour Commissioner (Central) if the establishment falls under the Central sphere, or the State Implementation officer the State Labour Commissioner in other cases, in accordance with the procedure evolved at the tripartite Standing Labour Committee. Once a union is recognized under the Code it is entitled to enjoy this status of recognised union for at least two years from the date of

recognition. However such recognised unions are under strict constraint to observe the condition so laid down in tripartite agreement. A union which does not observe the Code can be de-recognised.

The Government of Maharashtra has realised the need for a provision for union recognition. It enacted the Bombay Industrial Relations Act in 1946 (BIR Act) for specified industries namely textiles, sugar, transport, certain municipal corporation, silk, banking and the like.

The BIR Act under Section 13 provides for the classification of registered trade unions as 1) Representative Union having a membership of not less than twenty five per cent of the total number of employees in any industry in any local area. 2) Qualified Unions having a membership of not less than five percent of the total number of employees employed in such industry in the said area. 3) Primary Unions having a membership of not less than fifteen percent of the total number of employees employed in any undertaking in such industry in the said area. Unions in each category enjoy certain privileges and obligations also. The representative union has a right to represent all employees in such industry. It can appear or act on behalf of any employee in such industry or it can make all employees bound by any agreement, settlement, submission or award to which it is a party in such industry.

The Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1972 (MRTU and PULP) provides for recognition of trade unions for promoting collective bargaining agents. Other important objects are prevention of certain unfair labour practices on the part of the employers, employees and trade unions and the prohibition of certain strikes and lock-outs. The MRTU and PULP Act applies to every industry to which the Bombay Industrial Relations Act applies for the time being and to every industry to which the Industrial Dispute Act, 1947 applies and in respect of which the State Government is the appropriate
Government. Under Section 11 of the MRTU and PULP Act, a union which has a minimum membership of 30 percent of the total number of employees employed in any undertaking and which has been issued a certificate of recognition is called a Recognized Union. Further, there shall be only one Recognized Union, the union having the largest membership in respect of the same undertaking.

5.4 RIGHTS OF RECOGNISED AND OTHER UNIONS: –

A union recognized as the representative union under any procedure, should be statutorily given, besides the right of sole representation of the workers in any collective bargaining, certain exclusive rights and facilities to enable the sole bargaining agent to effectively discharge its functions to achieve its objects establishing industrial peace. These rights have been incorporated in Section 20 of the MRTP and PULP Act. Same principles have earlier being incorporated in BIR Act, in which representative unions assumes the status of the sole bargaining agent of the employees in the industries where BIR Act is applicable. These rights of the recognized unions are as follows:–

i) to raise issues and enter into collective agreements with employers on general question concerning the terms of employment and conditions of service of workers in an establishment or in the case of a representative union, in an industry in a local area:

ii) to collect membership fees/subscriptions payable by members to the union within the premises of the undertaking or demand check-off facility;

iii) to put up or cause to be put up a notice board on the premises of the undertaking in which its members are employed and affix or cause to be affixed thereon, notices relating to meetings, statements of accounts of its income and expenditure and other announcements, which are not abusive, indecent, inflammatory or subversive of discipline.
iv) to hold discussions with the representatives of employees who are the members of the union at a suitable place or places within the premises of office/factory/establishment as mutually agreed upon.

v) to meet and discuss with the employer of any person appointed by him for the purpose, the grievances of its members employed in the undertaking.

vi) to nominate its representatives on the grievance committee/constituted under the grievance procedure in an establishment.

vii) to nominate its representatives on statutory or non-statutory bipartite committees like works committee, production committees, welfare committees, canteen committees and house allotment committees.

viii) to inspect, by prior arrangement in an undertaking any place where any member of the union is employed.

The judiciary has also recognized these rights through its decision. The Supreme Court in Balmer Lawrie Workers Union Bombay and another Vs. Balmer Lawrie and Co. Ltd and others\(^\text{13}\) has held that the recognized union can collect union funds incorporating such a clause in their wage agreement. It is permissible for them to receive certain percentage of amount from the arrears paid to the workmen on the basis of settlement.

5.5 CHARACTERISTIC FEATURES OF THE TRADE UNIONS ACT, 1926:

The ILO adopted convention No. 87\(^\text{14}\) on 9\(^{th}\) July 1948 [in its 31\(^{st}\) session held at San Francisco] relating to freedom of association and protection of the right to organize. The convention contemplates that workers and employers without any distinction shall have the

\(^{13}\) 1995 Lab I C 242.

right to establish and to join organizations of their own choice without any previous authorization. For their organization, they can jointly form any federation or confederation which shall have a right to seek affiliation with international organizations of workers and employers. These organizations shall acquire the status of a legal personality and shall not be liable to be dissolved or be suspended by any administrative authority and also that, they can draw up their constitution and rules to elect their representative in full freedom to administer their activities and formulate programmes without any interference which would restrict this right or prevent its lawful exercise. All this is subject to the respect of the law of the land.

ILO convention 98 also deals with Right to organize and collective bargaining. Although, India has not ratified ILO convention No. 87, 98 for technical reasons, the State does not impose undue restriction on the freedom of association. The Constitution of India has upheld their principle in Art 19 (1) (c) which guarantees to the citizens of India, the right to form association or unions.

India is a socialist and democratic country. These two aspects are very close to the aim and objectives of trade union movement. In view of S.D. Punekar, democracy implies rule by the people, of the people and for the people. Industrial democracy implies self-government within industrial units. The main elements of industrial democracy are association of the working people, voluntary character of the association, basis of equality, fulfillment of essential demand of the people, re-orientation of the principle of majority rule and freedom to share in decision making. The author further stated that applying these ideas to trade unionism it is found out that workers voluntarily organize themselves in unions on the basis of equality to secure acceptance of their essential demands and the principles of majority rule and participation in decision making.

\[^{15}\text{supra note 4.}\]
On this background, a Trade Unions Act 1926 section 2(b) defines a trade union. A trade union is a combination, temporary or permanent. It is not only a workers union, but also an employers union. Both workmen and employer can form trade union. The Act provides for the registration of trade unions and defines the law relating to registered trade unions. Machinery has been set up under the Act to deal with entire aspects concerning registration including mode of registration, eligibility conditions, cancellation and the like. Under the present law registration of union is not compulsory. However the unregistered unions would not in any way be illegal. But the benefits including immunity to office bearers from civil and criminal liability conferred by the Act on registered trade unions will not be available to unregistered trade unions. But as a practice for all along since 1926 onwards the trade unionists as a rule registered their trade unions. This act also lays down the object of a trade union. Its main object is to regulate relations between workers and employers. Section 15 which lay down, the objects of the trade unions, provide the heads under which the funds of the union can be spent. The union has the option to constitute a separate fund for political purposes.

Thus under section 15 it can be inferred that the trade unions do not only pursue economic interests but also political, social and welfare objectives. In furtherance of the objects the Act gives immunity to the members of a trade union from Civil and Criminal liability. This enables unions to undertake and discharge their day to day and legitimate functions. One such function is to safeguard union funds and better utilization of the same for legal aid, welfare of their members and serve the other social functions so incorporated in its constitution.
5.6 TRADITIONAL ROLE AND FUNCTIONS OF THE TRADE UNIONS:

The basic function of a union is to promote and protect the interests of its members. The union gets strength, economic or otherwise, from the funds and general support provided by its members. The union has to endeavor to provide better terms and conditions of employment. It has to promote their economic and social interests in order to provide them better standards of living. It is also the function of trade unions to arrange for welfare activities such as organizing mutual benefit societies, co-operatives, employment assistance, libraries, games and cultural programme. The trade unions provides for educational, social and religious benefits for their members and for the dependents of the members. These are among other activities, the activities of the trade union on which the general funds can be spent.

The trade unions have to play role on various fronts like social, economic, civil and political. Unions have realized that unless their voice and weight is brought to bear upon the Government, the workers interests are bound to suffer. Therefore in many countries the political process of Government and participation in it is increasingly attracting the interests of the union. Political situation differs from country to country. Therefore whether a union should get directly associated with a political party or have its own wing would depend upon the circumstances prevailing in each country taking all these activities in consideration. Trade Union Act permits constitution of a separate fund for the political purpose. It may be incidentally noted that the militant trade union leader Lake Wallace rose to the position of President of Poland mainly through the support of his trade union members. In ruling labour party of U.K. the number of permanent trade union leaders play dominant role. In India, the large number in
ruling CPI (M) and its alliance parties in three states in West Bengal, Kerala and Tripura are trade union leaders.

In addition to the role of trade union in the interest of their members/ workers, they must owe certain responsibility towards protecting the interest of the community. This role will change depending upon the state of economic and social development from country to country. It will further depend upon the strength of the union, both organizational and financial. The trade union should accept certain responsibilities towards the community.

In the opinion of K.D. Srivastava the real progress of trade union functioning lies in the union’s ability to assume social responsibilities of their members with those of the community which can come only through the building up of the internal strength of the unions. It will be the task of the trade union leadership to improve the range of their services as much as the method of operation with these ends in view.

The most important role of a trade union is collective bargaining, which is dependent upon mutual consent. Collective bargaining in the beginning emerged as a method of trade unionism in industries to determine wages and other terms and condition of labour. In a number of sections of IDA the importance of collective bargaining is reflected. Under Section 2 (p) of IDA, collective agreements to settle disputes can be reached with or without recourse to the conciliation machinery established under the Act. An agreement with one trade union is not binding on members of another or other union(s) unless arrived at during conciliation proceeding, the other union(s) including a minority union can therefore, raises an industrial dispute.

Section 36(1) of IDA deals with workers representation, under this section a collective agreement is binding on the workers who have negotiated and individually signed the settlement. Therefore, it

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is not binding on workers who do not sign the settlement or authorize any other worker to sign on their behalf.

However under Section 18 (3) of IDA a settlement arrived at in the course of conciliation proceedings is binding, not only on the actual parties to the dispute but also on the heirs, successors or assignees of the employer on the one hand and all the workers in the establishment including present and future workmen, when parties face to settle the dispute, the matter is referred to adjudication.

Thus collective bargaining is very precious right available to recognized trade union because refusal to bargain collectively, in good faith, with recognized trade unions is an unfair labour practice under section 2 (ra) of Schedule V of IDA and it is punishable under Section 25 (u) with imprisonment for a term which may extend to six months or with fine upto Rs. 10,000/- or both. Collective bargaining takes place at national, industry or firm/plant levels.

Mr. V.S. Venkata Ratnam has stated important fact in this regard that only 2% of the total workforce or about 20% of the organized labour force is covered by collective bargaining. In unorganized sectors, unionization is low and collective bargaining is rare.

The workers can resort to the weapon of strike for asserting their bargaining power and they can impose their collective demands upon an unwilling employer. When all other avenues for settlement of industrial disputes as provided in the Industrial Disputes Act, 1947, proves futile, the workers can use strike as a weapon of last resort.

5.7 PRESENT POSITION OF THE TRADE UNIONS:

India continued with its protected economic policies till 1990. In June 1991 Government initiated economic reforms which
introduced the concept of LPG. Due to this widespread and comprehensive changes took place in Indian Economy. The important feature of these economic reforms is withdrawal of government from its regulatory role in industrial sphere. The trade barriers and hurdles in capital mobility were removed and the process of globalisation started. In the foregoing chapters this aspect has been discussed in detail.

The norms of competitive market economy have changed the scene of industrial relations throughout the world. The main actors of industrial relations are workers and employers. In the changed industrial scenario these actors are forced to change their traditional role. They are deviating from their traditional role and have to adopt a new role. This changed role of trade unions has been appropriately described by Prof. K.B.L. Srivastava stating that “Trade unions are struggling to prove their worth; they have not been able to protect the interests of their members nor identify themselves as social partners in the business. Gone are the days of confrontation at the bargaining table, since today, the parties are sitting in the same sinking boat and their very survival as organizations is at stake.”

The same view has been expressed by Prof. J.S. Sodhi, stating that the recent economic policies have far reaching implications on the future of trade unions in India. Their future is also subject matter of debate the world over, since trade unions have the potential of contributing to economic growth. Their traditional roles of protecting the workers from arbitrary treatment are no more main concerns and issues of industry and their managements. The industry is primarily concerned with excelling in the highly competitive global environment. The use of latest technology which is essential today has considerably reduced the role of the mass production worker with adverse impact on the unions. The unions

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are now expected to shift to a more co-operative role of increasing productivity and quality. The unions therefore are surviving only in those countries where the shift in role is taking place; otherwise their base is sharply dwindling.

The trade unions and their federation in Public Sector undertaking as banking, insurance, oil companies, transport and the like have maintained their strength and rigour fighting the evils of LPG. The Government of India is constrained to give weightage to their resistance and there are signals not only in India but in the developed countries to sincerely reappraise and evaluate the process of LPG. The New Economic Policy, which is also known as 'Economic Restructuring or Structural Adjustment Programme [SAP] has many effects on employment and labour market. In the third chapter of this thesis, it is discussed at length that one of the effect of NEP or Globalization is increase in Voluntary Retirement Schemes.

For proper implementation of NEP Government also introduced various structural changes in the various sectors of the economy. Exit Policy in one of them. VRS is one of the features of exit policy. LPG brought with it capital intensive technologies, modernization and automation of manufacturing process, use of costs and labour saving devices and the like. Due to this, the workers have become redundant and labour laws became obsolete. The employers for protecting the workers and running the business effectively bypassed the stringent provisions of the IDA in section 9 regarding notice of change and Chapter VB concerning special provisions relating to Lay-off, Retrenchment and Closure of certain establishment which is not seasonal nature and not less than 100 workmen are employed in it. Thus for carrying out lay-off, retrenchment and closure in such establishment prior government permission is necessary. In most of the cases Government did not give permission.
In the short run, workers also found VRS useful for various reasons since the trade unions became meek spectator losing their strength for confrontation. Workers who have no hold on core jobs and otherwise their service record is unsatisfactory in many respect succumb to VRS without any resistance. As a result of this the enterprise can downsize the workforce. Employers can get rid of excess manpower through this technique.

In the wake of LPG, the trend of employment also changed. The permanent jobs are on the decline. Jobs are available on temporary, casual or contract basis. Outsourcing of production activities is also on the rise. All these aspects have been studied in Chapter IV of this thesis under the heading New Deal Pertaining to Contract Labour and Outsourcing a Judicial Perspective. This has resulted in increase in unorganized sector workers with no protective laws for employment. There are discouraging signals from judiciary. The state continues to be ineffective in day to day deteriorating situation emerging from outsourcing in India.

All this has adversely affected the trade union movement throughout the world especially in India. This changed nature of employment has affected the role, functions and strength of the trade unions. The scholar Richa Sharma has stated that the experiences of most developed and developing countries highlight that economic restructuring is having an adverse impact on trade unionism. A common phenomenon across the countries seems to be that trade unions are facing increasing difficulties in defending and extending their organizational base in the present structural and economic transformation and with changes in managerial strategies and organization. Trade unions are feeling a need to suit their philosophy, behaviour and practices to the pragmatic needs of the newer economic realties.

International competitive pressures required the firms to review the emerging technologies and the future prospects. The trade unions have also realized that the technology change is beneficial to workers and also for the enterprise. But it leads to job losses. Therefore trade unions cannot take any specific stand.

Trade unions emerged when the working conditions were humiliating. Now this situation is changed. Industrial workers are working in better work conditions with improved skill, less physical work, with increased production and sufficient wages.

At present the composition of workers in an establishment is also changed. Technological changes brought with it change in category of workers. A large number of engineers and technicians with specialized knowledge who can be placed in the non-bargainable categories are being appointed. Thus Blue Collar employees are replaced by white collar employees. Women employees have entered in the field which was earlier prohibited or dominated by male workers.

The social and economic image of a worker has also changed. This has reflected in changed relation and attitude of the management towards worker or a trade union. Even government attitude has also changed.

The Structural Adjustment Programme (SAP) which was initiated under Economic Reforms of 1991 has changed even the future of the trade union movement. The overall effect of this change in economic policies, external pressures, technological changes and downsizing and casualisation of workforce has further weakened the already weak trade union movement. Various reasons which can be assigned for the present position of trade unions are listed below.
5.7.1 DECLINE IN MEMBERSHIP:

From various studies it is found out that only 8% workers are working in the organized sector. Due to SAP this number is further decreased pushing them into unorganized sector as mentioned earlier increasing number of white collar employees can not be attracted to the unions. New categories of workers such as women workers, young people and highly educated and skilled employees, technologist are less interested in the traditional concept of trade unions. The changed life style and social status of workers has also resulted in decline in membership. They do not want to get involved into strikes which will result in job loss or loss of income. For workers collective demands they were earlier resorting to the weapon of strike through collective bargaining, now there is change in traditional attitude. They even refrain from any strife with employer.

One more reason for the decline in membership in view of Mr. K.R. Shyam Sundar21 "women, contingent workers including part timers, temporary, casual and contract workers immigrants, youth workers in the informal sector constitute a segment which trade unions, due to several reasons (numerical insignificance, gender and racial bias, absence of permanent points of contact among others), historically neglected in union organization drives. But these workers now matter because their numbers are increasing and they constitute marginal and socially vulnerable sections that urgently need ameliorative action from social agents. There are constraints inherent in organizing these types of employment categories. These flexi categories are created because they are both non-unionized and non-unionizable, thus easily manipulative and least costly to organize, two, they do not enjoy long term employment in a particular firm and are difficult to contact, three, they often have dual employers, principal employers and contractor, which create

legal issues as to responsibility for workers welfare, four, women perform multiple roles and often prefer flexible work, neither amenable to unionization.

Under the LPG model the informal sector workers are increased. For a long time trade unions have neglected these informal sector workers. While forming the union in such a sector has many constraints. As generally the informal sector is small in size, widely scattered, unstable, heterogeneous, complex in nature and most of times it is invisible. So these factors are not conducive to form their union. Many times employment relationship does not exist therein because self-employed persons constitute a significant part of informal sector. Also, that the problems and issues of formal sector workers and informal sector workers are different.

Now a day the management deals with the workers directly, without the intervention of union. The workers also do not depend upon selfish, politically motivated union leaders. Thus the management and workers can interact directly with each other. It shows apparent reverses to trade union movement in the country.

5.7.2 NEW TRENDS IN COLLECTIVE BARGAINING:-

Industrial adjudication through sections 2(k), 10(1), 12(5) of the IDA 1947 has evolved legal principles of adjudication regarding collective bargaining. The trade union representative resolved within their respective trade unions as to their demands against the employer primarily within the framework of schedule IV of the IDA 1947. The profits in the industry, financial capacity to pay and the strength the union, has acquired significant role regarding financial gains and benefits through collective bargaining. The industrial peace, optimum or higher productivity and welfare of working class are some of the objects achieved through collective bargaining. In course of time industrial adjudication laid a strong foundation in respect to collective bargaining and large numbers of disputes were
referred to industrial tribunal for adjudication. In respect to computation of gross profits, system in fixing dearness allowance and region cum industry principle, the Hon'ble Supreme Court has evolved a perennial law through Unichem Laboratories Ltd v. Their Workmen. During the passage of time and more particularly for the last fifteen to twenty years the process of collective bargaining has totally shifted from Industrial Adjudication evolving mutually agreed settlements. The more organized trade unions achieve better financial and other benefits on large scale which is dependent on financial capacities of the employer on individual basis.

On the background of LPG, the future for the earlier dominant concept of collective bargaining by sole bargaining agent and / or recognized unions has changed. The public sector undertakings such as coal, steel, cement, banking, posts, ports and docks and insurance government employees posses maximum strength for bargaining under schedule IV of IDA or otherwise under custom or usage so prevalent.

Private sector undertakings such as plantations, engineering, mines and petro-chemicals, they resolve themselves their wage pattern and other benefits. The employer in both the sectors, show keen interest to grant maximum benefits to the workers engaged in respective core activities. However at the cost of that the unions loose the strength of its members engaged in non-core activities of the enterprise and the employer out of such bargaining have introduced contract labour system and even outsourcing them in respect of the workers deployed for non-core activities. This leads a step ahead in the process of withering collective bargaining through arbitration. A stage is likely to emerge of individual contracts between the workers and the enterprises engaged for core activities for his terms of employment including wages.

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22 1972 Lab I C 1012.
Now there is a trend in favour of the enterprise level bargaining as against the industry cum region basis which was prevalent in the days of past. The industry level bargaining was a common feature in these public and private sector undertakings. The First National Commission on labour has also recommended industry wise recognition for collective bargaining wherever it was possible. The present trend is shifted towards the decentralized bargaining and negotiations which are being conducted at the enterprise or plant level. This enterprise level bargaining provides for the flexibility in respect of jobs i.e. scarifying jobs against increase wage and the like. This indicates the trend towards a concessional bargaining. Hence the future of collective bargaining is on the verge of withering away.

5.7.3 CHANGED STRATEGIES OF PRODUCTION:-

Under the competitive conditions, the employers are adopting changed strategies of production. They are using cost effective devices. The employers rationalize their manpower need by downsizing and outsourcing and subcontracting and by implementing schemes like voluntary retirement. Outsourcing production process to other small units has helped in reducing large scale, mass production thereby weakening the organizing capacity of workers. The casualisation of labour and appointment of contract labour has increased insecurity. They can not take recourse to trade unions and law. Thus changed strategies of production by various means weakened the trade union movement due to which the employers have become powerful.
5.7.4 SHIFT IN TECHNOLOGY:-

The employers undertake technology upgradation and or make a change in existing technology in order to increase productivity and quality. Due to this shift in technology they can downsize the undertaking. So technology upgradation is labour saving which results in displacement of labour. Sometimes the employers switch their production to technology goods and services it amounts to diversion and reallocation of labour. Hence old workers are replaced with new skilled workers. Such workers are less motivated in joining the unions.

5.7.5 THE CHANGE IN GOVERNMENT'S ATTITUDE:-

Prior to 1970 Government's labour policies were committed towards full employment. There was a shift in labour policy which is noticed in Seventh Five Year Plan documentVol. II Para 5.26 stated “while maximizing employment generation, requisite attention has to be directed at improvement of labour productivity through adoption of up-to-date technology in productive process in major sectors and corrective measures for industrial sickness”.

Under the LPG trends in 1991 the Government has withdrawn to a large extent its regulatory role and involvement in productive sectors to grant more freedom to the industrial enterprises to bring about changes in technology and rationalize its manpower requirements. The purpose of increasing productivity and quality is achieving the goal of growth under competitive conditions.

5.7.6 MULTIPLICITY OF UNIONS: –

In India trade unions are dominated by political parties which have increased intra and inter-union rivalry. Outsiders have hold in

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23 www.planningcommission.nic.in.
the unions. These outsiders have close link with political parties. In view of H. Das\textsuperscript{24} outsider's imports extraneous considerations into the trade union movement and multiplicity of the unions is the outcome of their efforts to establish their own unions and thereby increase their political influence. The social distance between the manager and the worker has also played its part for emergence of outsiders. In a tradition bound society which gives due importance to authority, the distance between the manager and the worker has been substantial. This gap has therefore been filled by politicians turned union executives.

Multiple unionism results in multiple enrolment in unions. This multiple unionism weakens the trade union movement, since at the plant level small sized unions are formed without effective organization and poor financial position. These unions are unable to protect the rights of its members.

This multiple unionism also leads to union rivalries. Due to this unions are forgetting their legitimate functions and weaken their strength in collective bargaining.

\textbf{5.8 INTERNATIONAL IDEOLOGICAL PERCEPTION OF TRADE UNION:-}

It is absolutely necessary to explore the functioning of trade unions in China and to compare same with trade unions in India. At the outset it is stated that the problems faced by the workers in China and as well as in India are similar in nature in many respects. Various studies and research articles present at a time provide biased views about trade unions in China. Incidentally outside students and scholars have almost no inside access to trade union movement in China regarding its achievement and failure in the matter of wellbeing of Chinese work-force.

\textsuperscript{24} H. Das, "Trade Union Activism - Avoidable or Inevitable". JJIR, Vol. 35 No.2 Oct. 1999, p 230.
5.8.1 CHINESE TRADE UNIONS:-

As per the report of the National Commission of Labour\(^{25}\), there exists All China Federation of Trade Unions [ACFTU] which consists of 31 provincial level trade unions, 16 industrial trade unions and more than 900,000 grass root trade unions. A total of 103 million workers belonged to the trade union by the end of last year i.e. 2001 or so.

These figures might have increased in the year 2007. There is no multiplicity in the trade union organizations therein China like India. The ACFTU is obviously a distinct nation-wide organization than the ruling party and the state. China has introduced economic reforms in the year 1978. The number of multinational companies established their manufacturing unit in china. It has attracted substantial amount of foreign direct investment through its influence on the financial giants abroad, assuring and providing them with excellent infra-structure. It has entered into Memorandum of Understanding with the MNC’s and providing contract of work to the workforce within the framework of its laws.

The ACFTU play a very decisive role in safeguarding the workers and strict enforcement of work contract signed between the entrepreneur and the workmen. It also protects their members in the matter of lay-off compensation, unemployment compensation, diversification of production of jobs. The ACFTU is not engaged in collective bargaining and/or adjudication thereto like in India and so mainly provided in IDA.

The critics Ms. Anita Chan\(^{26}\) has evaluated the effectiveness of the Chinese trade union federation and considered its engagement with the international community. She finds out that ACFTU is a “Socialist State Bureaucracy”. However with an encouraging observation the author states that ACFTU has been fighting hard to

\(^{25}\) supra note 1 p 212.
\(^{26}\) Anita Chan, Issue 19 – Analysis –China and the International Labour Movement - www.gbcc.org.uk.
elevate its status over the last two decades and has attained some success. She has narrated the plight of Chinese workers which can't be said to be free from bias. China has become a world economic power and achieved maximum co-operation of workforce. At the same time it is vividly seen that there is alarming problem of unemployment and that of laid-off workers, breach of contract, poor employment in certain areas and crisis arising out of fast urbanization. The people in rural China resist the laws against their migration to urban China through violent demonstrations. The trade union movement in China can be in nutshell compared with Indian trade union movement as detailed below.

5.8.2 INDIAN TRADE UNIONS: -

The trade union movement in India has a history of hundred years. The Trade Unions Act of 1926 is at the foundation of the trade union organisation. The trade unions in India function through number of federations such as INTUC, AITUC, CITU, HMS, BMS and the like. The trade unions in Public Sector undertakings in India are very strong, assertive and are successful in restraining the evils of LPG in the matter of their employment and non-employment among other things. Besides some sections of labour leaders in India are vociferously arguing Umbrella Legislation for unorganized sector.

5.8.3 COMPARISON: -

Both in India and China there is no proper implementation of labour laws. The states have the sympathies with the employers. Unemployment in both the countries has immensely increased and the trade unions have no control over it.

In China, they have brought large scale lay off under the guise of terms in the service contract. In India there does not exist a rule
of hire and fire. However, MNCs and other entrepreneurs have found out the device of VRS throwing huge number of workers out of employment. Additionally in both the countries it is seen that number of manufacturing units are illegally closed down, rural folk in both the countries are strenuously attempting to migrate urban areas. However, in China there is prohibition against their migration which is not free from difficulties.

The trade unions in India are democratic and talk through many faces. They propose to strengthen themselves by their open allegiance with different political parties against this the loyalty of ACFTU is to the ruling communist party of China. However, the leaders like Zhang Junjiu (Vice Chairman and First Secretary of the Secretariat, ACFTU)\textsuperscript{27} has vehemently argued that the changes in international politics and economy, especially the process of economic globalization have exerted great impact to international labour and trade union movement. He has suggested that, facing with the challenges arising from economic globalisation, trade unions from all countries should enhance solidarity and explore counter measures together.

This message is required to be appreciated by the Indian trade union movement.

5.9 CONCLUSION:-

The concluding part of this chapter assumes maximum significance. Because the LPG policies have detracted economic balance in the society in general and the working class in particular as a result of this, trade unions have lost their strength. The sweeping changes being brought about by LPG during the last decade has shown discouraging results in India as well as in China, the senior player in this field, and also in western countries. As

\textsuperscript{27} Zhang Junjiu, Key Note Speech at the Opening Ceremony - www.acftu.org.in.
reported in the article ‘Labour in the new economy’. Trade union movement in western countries, especially in the U.S. and U.K. has been losing strength since the 1980s. Outsourcing has virtually put the trade union movement in developed countries into further disarray. Several firms in developed countries have announced major job cuts in the last several months. Job losses due to outsourcing have become a highly sensitive political issue in the United States and Europe, raising strong waves of public protest.

The ongoing economic changes have increased employment opportunities for certain sections of labourers everywhere in the world including India, China and other developing countries. But this does not strengthened the position of labour. Due to this the bargaining power of labour in developed and developing countries has been further weakened. Trade unions in formal sectors such as Multinational Corporation, public sector undertakings, transport, and electricity are represented by organized trade unions. These trade unions are either affiliated to national federations or unit or state level unions. However the strength of the construction workers engaged in construction of houses in urban and rural areas in immensely increased. The workers engaged in building roads, dams and in other projects are unionized. However their employment is contractual and last for a specific period according to the projects. The enactment for these workers is almost remained unimplemented. They are the most sweated workers in India.

The plantation workers engaged in sugarcane cutting, tea-leaves plucking, horticulture and also the women garment workers have their own unions which have limited bargaining capacities. These workers lead a miserable life. The farm labourers have their own law.

In a vast country like ours the young population every year is increasing and they search for in jobs. Their efforts are frustrated and more so because of implementation of LPG. There is no

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expansion of employment in public and private sector. It has been discussed in this study that employment avenues are decreasing and Government of India being aware quite closely has assured that targeting ten million employment opportunities per year over the tenth plan period.

The trade unions functioning in different sectors as above should not remain meek spectator to the devastating situation of unemployment and even down sizing their own concerns. The workers are thrown out of employment without observing mandatory provisions of statute and their trade unions are not in position to assert and establish their rights. The organized trade unions stand separated from the public at large.

Mr. Debashish Bhatterchejee in his treatise has rightly observed that “the future role of the trade union movement is linked with a broader concern for ensuring the social cohesion of working people in a large and diverse country. We examine union strategies in the private corporate sector, in public sector enterprises and in the informal sector. It is imperative for the trade union movement to concentrate on organizing the unorganized, so as to create secure incomes and safe working conditions for those with irregular and precarious jobs”.

The erudite scholar Rohini Hensman in her essay has strongly supported the above averments stating that overwhelming majority of workers in India belong to informal sector. Their status as worker ought to have been established legally and if they are brought within the reach of trade union movement they would influence the policy of the state and could even protect the workers in formal sector. She had further vehemently criticized observing that trade unionist pretend that the downwavel pressure in labour

standards in being exerted by foreign capital and the W.T.O., when it is fact done by domestic business lobbies.

Mr. M.K. Pandhe31 has observed that “the policies of globalization have played havoc in the developing countries and the government policies are increasingly dictated by MNCs and advanced capitalist countries. Consequently global as well as national inequalities are increasing adding to the army of poverty stricken population. The international trade union movement must pay more attention to the problems faced by the working class in the developing countries.

A prudent Indian ought to have conceded to the above observation of the veteran trade union leader.

As a sequel to LPG having the force of pervasive constraints on economy, productivity, employment and unemployment at the national and international level the trade unions are required to play a very decisive role keeping watch on advantages and disadvantages of LPG world over. In future the trade unions are required to be more organized and increase their strength so as to dictate the state policy in the interest of working class in particular and society at large in general. Trade unions should play a vital and constructive role in improving the quality of life of the workers.

In the words of Basudeb Sahoo32 “the changes following globalization and structural adjustment programme reflect shift of emphasis from permanent to contract labour, from manufacturing to service sector and from common labour to educated employees. This has effected a change in the attitude and approach of the trade unions. Trade Unions in future cannot continue to concentrate their attention on wage increase alone; they shall be forced to look to the security of jobs of their employee’s creation of gainful employment”.

31 M.K. Pandhe, General Secretary, CITU, People’s Democracy, May 21, 2006 Vol. XXX No. 21.