CHAPTER-III

ANALYTICAL PERSPECTIVE OF THE TRADE-UNION ACT

1926

The Worker does not sell his labour,
But his labour – power

– Karl-Marx and Engles

3.1. Introduction:

Though labour organisations came into existence in India in the last decade of the 19th century, it was only after the outbreak of the First World War in 1914 that they appeared in the form of modern Trade-Unions. Subsequently, as their numbers increased, membership expanded and they became active in seeking to promote and safeguard the interests of workers, they had to face the open hostilities of the employers and the public authorities. In the absence of any special legislation protecting their status, they received the same set-back under the Common Law as their British counterparts did much earlier. Thus, the interpretations given to Section 120 (B) of the Indian Penal Code dealing with criminal conspiracy, raised considerable doubts regarding the legality of Trade-Unions. Besides, their activities could also be considered in restraint of trade under Section 27 of the Indian Contract Act, which provided, “every agreement by which any one is restrained from exercising a lawful profession, trade or business of any kind is to that extent void”.¹

The legal position of Trade-Unions under the existing statutes and the Common Law became clearer following a decision of the High Court of Madras in 1921. In a case between Messrs. Binny and Company (Managing Agents of the Bukiingham Mills) Vs the Madras Labour Union.² The court, basing its

¹ P.R.N. Sinha, Indubal Shekar, Industrial Relation’s Trade Union, Dorling, p. 350.
² Mess Binny and Company Vs Madras Labour Union – 1921, M.A. High Court.
decision on the Common Law of England, considered the Trade-Unions as illegal conspiracy and issued injunctions on the leaders of the Madras Labour Union restraining them from instigating workmen to break their contracts with their employer, and ordered them to imprisonment. Though the case was withdrawn, the attitude of the courts towards Trade-Unions became obvious. The decision aroused considerable resentment amongst the unionists, and it was rightly apprehended that the history of legal prosecution of the British Trade-Unions during their early days would be repeated in India, also, if the Common Law was not adequately amended by a specific statute guaranteeing to the workers the right to organise. Strong demands were made for a legislation recognising workers’ right to organise and to engage in concerted activities.  

The same year, the Legislative Assembly adopted a resolution moved by N.M. Joshi, the then general secretary of the AITUC urging immediate steps for registration of Trade-Unions and protection of the legitimate Trade-Union activities. Subsequently, the local governments were requested to ascertain the view of public bodies and private persons on certain connected issues such as the principle of proposed legislation, recognition of strikes, protection of Trade-Unions from civil and criminal liabilities. management of unions, and others. After receiving the view of the local governments, the Government of India drew- up a Bill which was introduced in the Legislative Assembly on 31 August 1925. The Bill was passed the next year as the Indian Trade-Unions Act, 1926. The Act with subsequent amendment is still in the force in the country.  

“This Assembly recommends to the Governor General in council that he should take steps to introduce as soon as practicable in the Indian Legislature such legislation as may be  

3 Ibid.  
necessary for the registration of opinion received a draft bill was prepared and published in Sept. 1924.”

After some modification the Indian Trade-Union Bill have been passed by the legislature received its assent on 25th March 1926, it come into force on 1st June 1927, by Act. 3 of the Indian Trade-Unions Act 1964 (38 of 1964) the word ‘Indian’ has been omitted and now it stands The Trade-Union Act 1926 (16 of 1926).

3.1.1. Trade-Union Act 1926 (16 of 1926)

Trade-Union’s in India are governed by the Trade-Union Act, 1926, which is the main legislation that provides various rules, regulation’s and controlling mechanism related to Trade-Unions. The Act to provide for Registration of Trade-Unions and certain respects to define the law relating to the registered Trade-Unions.

Until 1926 no legislature attempt was made in India to delineate the countours of the expression ‘Trade-Union’ any of its synonyms. In 1926 section 2 (h) of the Trade-Union Act 1926, inter alia, define a Trade-Union to mean’s. Any combination, whether temporary or permanent formed primarily for the purpose of regulating the relation between workmen and employers or between workmen and workmen or between employer to employers’ or for imposing restrictive conditions on the conduct of any Trade or business and includes any federation of two or more Trade-Union.

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6 Ibid, pp. 3284.
7 Agreement Case of Employment.
The Analysis of the above definition reveals that the Trade-Union:

1. Must be a combination.
2. Such combination should be either temporary or permanent.
3. It should include any federation two or more federation of Trade-Union’s.
4. Further the definition recognizes that the objectives under its constitutions are or more of the following:
   a. To regulate, relation 1. Between workmen and employer, 2. between workmen to or between employer.
   b. To impose restrictive condition on the conduct of any trade of business, but it is not effect to (1) an agreement between own parties sown business.

3.2. Provision of the Trade-Union Act, 1926:

In pursuit of the primary objective, the Act contains 33-section’s. The provision’s can broadly divided into eight section namely (Fig. 3.1).

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**Fig. 3.1: Provision of the Trade-Union Act, 1926**
3.2.1. **Legal Status of Trade-Union:**

Is registered Trade-Union a legal person? The Answer may be given in affirmative in view of the provisions of the section 13 of the Trade-Union Act 1926. It may pointed out that only a Trade-Union which has been thereby become, legal person and not un-registered Trade-Union, receiving a legal status and advantages and rights emanate from the registration of a Trade-Union under the provision of Trade-Union Act, when a Trade is registered all communications and the notices to a registered Trade-Union may be addressed to its registered office. The registered office means that office of a Trade-Union which is registered under the Act as the head office thereof. Notice of any change in the address of the head office shall be given within fourteen days of such change to the Registrar in writing and the changed address shall be recorded in the register of the Trade-Unions to be maintained in the Registrar’s office. In order to encourage registration a legal status was given to registered unions, conferring certain powers and advantages. The Trade-Unions Act, 1926, grant a legal personality authority to spend fund on Trade Disputes for accomplishing its objectives, protection from criminal prosecution. Immuniting from civil action and validity to the agreement between its members from challenge that its objects are in restraint of trade. Thus the Trade-Unions after registration under the provisions of this Act are granted various rights so.

Trade-Unions Act 1926 Sec. 2 (d)

Trade-Unions Act 1926 Sec. 12

That they may be able to take appropriate action for the attainment objectives for which they have been formed.

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3.2.2. **The Definition of Trade-Union:**

The Trade-Union Act, 1926 – provide for registration of the Trade-Union with the registrar of Trade-Unions of their territory any seven or more member’s of the Trade-Union by submitting their names to the registrar of Trade-Unions and other wise applying with provision’s of the Act with respect to the registration may apply Union Act gives protection to registered Trade-Union in certain cases against civil and criminal action.\(^{11}\)

The definition of the Trade-Union as contained in Section 2(h) of the Trade-Unions Act, 1926 indicates that it is any combination or association of persons based on mutual confidence, understanding and co-operation for safeguarding common interests. It may be any association of workmen or employers. It need not be permanent combination, it can be formed even for a shorter period. The definition itself indicates statutory primary purposes of Trade-Union. As such the Trade-Union is formed primarily for the following two purposes;

Firstly, for regulating the relations between:

(a) workmen and employers; or

(b) workmen and workmen; or

(c) employers and employers

Secondly, for imposing restrictive conditions on the conduct of any trade or business and includes any federation of two or more Trade-Unions.\(^{12}\)

The analysis of the definition of the Trade-Union clearly shows that the purpose of Trade-Union is to maintain balance harmony and proper adjustments in the relations of the persons involved in industrial process and production.

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\(^{11}\) V.V. Giri, Loc. Cit., pp. 11-13.

The purpose of the Trade-Union is not to secure harmony between the employers and workmen only, but it is intended to secure peaceful relations between workmen and workmen and between employers and employers also. In the definition of Trade-Union the regulation of relationship contemplated is in regard to the conditions of service of the employees, which postulates the existence of an employer, who is concerned with the business, trade or industry.\textsuperscript{13} Another primary object of the Trade-Union is the imposition of restrictive conditions on the conduct of any trade or business of its members. However, the use of the word ‘primarily’ in the Trade-Union Act suggests that Trade-Unions can have other secondary objectives as well. A Trade-Union may provide for other objectives also and it cannot be refused registration simply on this ground. As long as the primary objectives are those that are mentioned in the Act, any Trade-Union can claim registration in spite of certain secondary objectives in its constitution. All that we can say is that the secondary and ancillary objectives should not be inconsistent with the primary objects. These objects, of course, must not be opposed to any law or opposed to public policy.\textsuperscript{14}

We can distinguish three classes of objectives, which a Trade-Union can have. The first may be classified as purely economic objectives, i.e., those which relate to questions concerning wages, hours of work, working and living conditions. The second one viz., benefit purpose which includes dispensation of various benefits like sickness and unemployment. The third group consists of social and political objectives.

The model constitution and rules of Trade-Unions cover these three classes of objectives. The Act simply emphasis the supreme importance of the

\textsuperscript{13} Ibid. p. 101.
\textsuperscript{14} Gazette of India, 1925 Pt. V.P. 8 and for the report of sub-committee, and Gazette of India, p. 197.
first type viz., the purely economic objectives. It does not debar Trade-Unions from having others. The registration of any union shall be void if any of its objectives are unlawful.\textsuperscript{15}

The Trade-Unions Act, 1926, in its Section 15 specifically mentions certain objects on which the general funds of the Trade-Union may be spent. It shows that, not only the Trade-Union may be validly constituted for these purposes but the funds may be utilized for the achievement of these purposes. The Trade-Union may validly take necessary and proper steps for attainment of these objects. The most important objects contained in Section 15 of the Act may be listed as below:

(i) The prosecution or defense of any legal proceeding to which the Trade-Union or any member thereof is a party, when such prosecution or defense is undertaken for the purpose of securing or protecting any rights of the Trade-Union as such or any rights arising out of the relations of any member with his employer or with a person whom the member employs;

(ii) The conduct of trade disputes on behalf of the Trade-Union or any member thereof;

(iii) The compensation of the members for loss arising out of trade disputes;

(iv) The allowances of members or their dependents on account of death, old age, sickness, accidents or unemployment of such members.

(v) The provision of educational, social or religious benefits for members including the payment of the expenses of funeral or religious ceremonies for deceased members or for the dependents of members;

\textsuperscript{15} Mathur and Mathur – Trade-Union Movement in India, Chaitanya Publication, 1962, p. 133.
(vi) The upkeep of a periodical published mainly for the purpose for discussing questions affecting employers or workmen as such.\textsuperscript{16}

(vii) The Trade-Union may have political purpose and it may constitute a separate fund, from contributes separately levied for or made to that fund commonly known as ‘Political Fund’ from which payments may be made for the promotion of the civil and political interests of its members such as the payment of any expenses incurred either directly or indirectly, by a candidate or prospective candidate for election as a member of any legislative body constituted under the Constitution or of any local authority before, during or after the election in connection with his candidature or election.\textsuperscript{17}

Thus the Trade-Union may take necessary and proper steps to conduct trade disputes. The expression ‘trade dispute’ means any dispute between employers and workmen or between workmen and workmen or between employers and employers which is connected with the employment or non-employment or the terms of employment or the conditions of labour of any person, and ‘workmen’ means all persons employed in trade or industry, whether or not in the employment of the employer with whom the trade dispute arises.\textsuperscript{18}

The Trade-Unions function as guardians of the workmen and in order to provide security, safety, welfare and healthy conditions under which the workmen may be placed for performance of their duties take steps and fight for better conditions and, if necessary they start legal proceedings in this regard.

\textsuperscript{16} V.K. Kharband, Commentary on Trade-Union Act, 1926, Trade-Union Act, 1926, Sec. 15, Law Publishing House, Alahabad.

\textsuperscript{17} Trade-Union Act, 1926, Section 16.

\textsuperscript{18} Trade-Union Act, 1926, Section 2(g).
The matters for which the Trade-Unions adopt effective measures are concerned with the employment or non-employment or the terms and conditions of employment or the working conditions of any person who may be called workman within the meaning of this Act.\textsuperscript{19}

It indicates that the Trade-Union may have primary objects as specified in its definition as contained in Section 2 (h) of the Act and many other secondary objects as discussed above. What required is that the objects must not be inconsistent with the provisions of the Trade-Unions Act or opposed to any other law in force for the time being.\textsuperscript{20}

It would be desirable to search out certain criterion on the basis of which an association of persons may be determined whether it falls within the meaning and definition of Trade-Union or not. In view of this, it would be fruitful to discuss connotation and denotation of the expression ‘workmen’ which has been defined under the provision of the Trade-Unions Act, 1926. The expression ‘workmen’ means all persons employed in trade or industry whether or not in the employment of the employer with whom the trade dispute arises.

The expression, ‘trade’ and ‘industry; have not been defined under this Act. In the absence of the definition of these expressions the normal meaning should be attached. In the Industrial Disputes Act, 1947, the expression ‘industry’ means any business, trade, undertaking, manufacture, or calling of employers and includes calling, service, employment, handicraft or industrial occupation or avocation of workmen.\textsuperscript{21} This definition of ‘Industry’ as contained in Section 2 (j) has been widely interpreted by the Supreme Court in

\textsuperscript{19} V.G. Goswamy, Labour and Industrial Law, Central Agency, p. 207.
\textsuperscript{20} Workmen (2(S) I.D. Act., 1947, Karnataka Law Journal, Bangalore, p. 4.
Bangalore Water Supply and Sewerage Board V.A. Rajappa laying down triple tests in accordance with which all the institutions, undertakings or organizations where a systematic activity organized by co-operation between employer and employee 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, i.e., making on a large scale Prasad or food, prima facie there is an industry in that enterprise. Consequently professions, clubs, co-operatives, educational institutions, research institutes, charitable projects and hospitals have been covered under the purview of industry. The Supreme Court in this case observed that Government might restructure this definition by suitable legislative measures. Under these circumstances the Industrial Disputes Act has been amended in 1982 and the definition of industry has been restructured on the basis of the principles laid down by the Supreme Court, however, at the same time exemption clauses have also been added to exclude any agricultural operation, hospitals and dispensaries, educational, scientific research or training institutions and institutions engaged in charitable, social and philanthropic services, etc. The amendments were to be enforced from the date to be notified. It may be pointed out that the Central Government has appointed the 21st day of August 1984 on which certain provisions have come into force. But the definition substituted by the amendment has not been enforced so far. There would be no effect or exclusion clauses so added unless a date is notified for enforcement of Section 2(j) as amended by the Industrial Disputes (Amendment) Act, 1982. The definition is very exhaustive and it includes any business, trade, etc. The most important

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22 AIR 1975, SC-548 – Discussion on Industry may be Seem, I.P. Ad. 1941.
question is whether the definition of industry can be utilized to interpret the expression ‘Trade-Union’. There is a difference of opinion on this point. However, this definition may be taken to understand the meaning of Trade-Union probably because both the enactments i.e., Trade-Unions Act and Industrial Disputes Act are intended to benefit workmen or the labour class.\textsuperscript{23} Thus the associations of persons who are engaged in any establishment which carries on any industry may be treated as Trade-Unions within the meaning of this Act, and if they are registered in accordance with the provisions of the Trade-Unions Act, 1926 they cannot be denied privileges and immunities available to them under this Act.\textsuperscript{24}

It may not be irrelevant to mention that definition of Trade-Union as contained in Section 2(h) of the Trade-Unions Act, 1926 is wide enough to cover associations of employers. It has been rightly observed that employers can form organizations much more easily than the workers. They are better educated and can realize the potency of collective and concerted action. Their number is small and hence employers in every country have considerable facilities for formation of association. In our country too, employer’s organizations were founded quite early. Thus as early as 1875 the Bombay Mill Owners Association was organized for their common good. Another such old organization is the Indian Jute Mills Association which was organized in 1887. Later on employers organizations were also established in respect of other important industries.\textsuperscript{25}

\begin{itemize}
\item \textsuperscript{23} S.N. Dhyani, Trade-Unions and the Right to Strike, pp. 101-102.
\item \textsuperscript{24} Trimula Tripathi, Devastanam Commissioner of Labour (1979) 233 (Andra Press).
\item \textsuperscript{25} http://www.indianetzone.com/24/trade-union-movement-in-india.htm on 27-02-2010.
\end{itemize}
Employers, representatives have taken active part in the International Conferences, Industrial Committees of the ILO, Economic Commission for Asia and the Far East. At home they have taken due share in the Indian Labour Conference, the Standing Labour Committee, Minimum Wages Central Advisory Board, Joint Consultative Board of Industry and Labour, Employees’ State Insurance Corporation and the Medical Benefit Council and similar other bodies appointed by the Central and State Governments.

The difference employer’s organizations in India have formed two national federations, viz., The Employers Federation of India and the All India Organization of Industrial Employers. These two federations cover almost all the entire labour force in the organized industries between them. The Government has recognized these two federations as representative of employers in India. Both of these federations are affiliated to the International Organization of Employers, Brussels and have been taking an active interest in its and proceedings.

The Trade-Union Act, expressly excludes such combination of persons from the purview of the expression Trade-Union. In view of the above discussion, the following factors may be taken into consideration, while determining the question whether a particular combination of persons is Trade-Union or not:

(1) The existence of employers and employees, engaged in the conduct of a trade or business. The combination may be formed by the employers or the employees.

(2) The persons concerned must be engaged in industry, trade or business.
(3) The activity in which they are engaged must be organized by co-operation between employer and employees for the production and/or distribution of goods and services intended to satisfy human material want and wishes.

(4) The combination or association must be primarily formed for the purposes of collective action to secure improvement in working conditions by imposing restrictive conditions on the conduct of any trade or business or for the purpose of regulating the relations between the workmen and employers and between employers and employers and between workmen and workmen.

(5) The members of association must be workmen or employers engaged in trade, business or industry.

(6) The combinations or associations of persons must not be such expressly excluded from the application of the Trade-Unions Act, 1926.26

It may be submitted that voluntary associations or combinations or unions of persons who are engaged in the industrial process formed for the purpose of regulating their relations with a view to maintain adjustment and harmony and for the betterment of working conditions may be called Trade-Unions. Thus the Trade-Unions are mass organizations voluntarily formed by working class or capital class.

Although any federation of two or more Trade-Unions is covered under the expression ‘Trade-Union’ but the Act expressly adds a proviso that this Act shall not affect:–

(1) Any agreement between partners as to their business;

(2) Any agreement between an employer and those employed by him as to such employment;

(3) Any agreement in consideration of the sale of goodwill of a business or of instruction in any profession, trade or handicraft.

These three categories of agreement apparently seem to be a basis of combination or an association of persons but such agreements are excluded from the effect of the Trade-Unions Act, 1926, for such agreements are business contracts and objects of which are quite different from that of Trade-Unions.

3.2.3. Incorporation of Registered Trade-Unions:

According to Section 13 of the Trade-Unions Act, every registered Trade-Union shall be a body corporate by the name under which it is registered, and shall have perpetual succession and a common seal with power to acquire and hold both moveable and immovable property and to contract and shall by the said name sue and be sued.\(^27\)

The analysis of the aforementioned provisions would make it clear that when a Trade-Union is registered, it becomes a body corporate meaning thereby an artificial legal person. By virtue of its legal entity certain rights are accorded. Duties are imposed and certain powers are conferred upon which may be called advantages of registration in an ordinary sense. Thus, the following are the advantages or effects of registration of Trade-Union;

(1) Every registered Trade-Union becomes a body corporate by the name under which it is registered. It means that the Trade-Union, after registration under this Act, becomes artificial, legal person having its separate existence from its members of which it is composed.\(^28\)

(2) An incorporated Trade-Union never dies. It becomes an entity with perpetual succession. The members of the Trade-Union change but the Trade-Union


\(^{28}\) Ramendra Nath Choudhary Vs States of Bihar and Other (1954), FIT-528.
remains unchanged. The retirements, withdrawal or expulsion and death of individual members does not affect the corporate existence of the Trade-Union.

(3) The Trade-Union shall have a common seal after its registration.  

(4) The Trade-Union is empowered to acquire and hold both movable and immovable property in its own name. In State Bank of India Officers’ Association v. Commissioner of Wealth Tax, the High Court of Madras held that a registered Trade-Union is an ‘Individual’ as envisaged by Wealth Tax Act and liable to pay wealth tax. Expression ‘individual’ occurring in Section 3 of the Wealth Tax Act would not only take in an individual but also a plurality of individuals which in turn would include a body or group of persons forming a single collective unit knit together by ties of common aim and joint interests who owned property.

(5) By virtue of its legal personality, the Trade-Union acquires power to contract in its own name.

(6) The Trade-Union, being a body corporate, can sue and be sued in its own name.

(7) The Registered Trade-Union is granted immunity from criminal and civil liability in certain cases singled out under the provisions of the Trade-Unions Act, 1926.  

It would not be out of place to say that the above mentioned advantages solicit the members of an association to get in registered as Trade-Union under the provisions of the Trade-Unions Act. Although the Trade-Union becomes a body corporate after its registration just like a company after its incorporation

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29 Section 13, Trade-Union Act, 1926.
30 Kandan Textile Ltd V. Industrial Tribunal AIR 1951, Madras, p. 661.
under the provisions of the Companies Act, 1956, the Trade-Unions cannot be registered under the Companies Act, 1956, or any other enactment. Section 14 of the Trade-Unions Act expressly provides that the following Acts shall not apply to any registered Trade-Union.\(^{31}\)

### 3.3. Perspective Industrial Trade-Union in Respect of Industrial Matter:

In analytical existing the law of the Trade-Union Act to rights of a registered Trade-Union as granted under the different provisions of the Trade-Unions Act, 1926, the Trade-Unions have certain general analytical prospective in respect of industrial matters which are exercised with a view to provide safety, protection and safeguard to its members and for the well-being of the working class. Labour Unions have got the following important rights of representation and taking action on behalf of the workmen:

(a) Right of representation of labour before employer, in works committees, before conciliation, mediation and in arbitrations, before courts and tribunals or labour departments.\(^{32}\)

In *Shramik Utkarsh Sabha v. Raymond Woolen Mills Ltd.*,\(^{33}\) and others, question of decision was whether a representative union under the Bombay Industrial Relations Act, 1946 has the exclusive right to represent the employees of the industry concerned in complaints relating to unfair labour practices under the Maharashtra Recognition of Trade-Unions and Prevention of Unfair Labour Practices Act, 1971. It was held that it is true that an order of the Industrial Court in the proceedings concerned would bind all employees of the first respondent even though there may be some among them who owe allegiance not

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33 Sharmik Utkarsh, Sabha V. Raymond Woolen Mill’s Ltd.
to the representative Union but to the appellant. The objective of the provisions of the BIR Act and the MRTU and PULP Act read together, and the embargo placed upon the representation by any one other than the representative of the employees, who, for the most part, is the representative union, except in matters pertaining to an individual dispute between an employee and the employer is to facilitate collective bargaining. The rationale is that it is in the interest of industrial peace and in the public and national interest that the employer should have to deal, in matters which concern all or most of its employees, only with a union which is the representative of them. It may be that a union which was representative of employees may have in the course of time lost that representative character; it is then open, under the provisions of the BIR Act, for a rival union to seek to replace it.\textsuperscript{34}

The law in India also does not concede an absolute right of representation as an aspect of the right to be heard, one of the elements of principle of natural justice. It has been ruled by the Supreme Court in \textit{Kalindi (N) v. Tata Locomotive and Engineering Co. Ltd., Brooke Bond India Pvt. Ltd., v. Subbraraman, and Dunlop Rubber Co. Ltd., v. Workmen}\textsuperscript{35}, that there is no right to representation as such unless the Company by its standing orders recognizes such a right.

It has been recently observed by the Supreme court in \textit{Crescent Dyes and Chemicals Ltd., v. Ram NareshTripathi},\textsuperscript{36} that the right to be represented through counsel or agent can be restricted, controlled or regulated by statute, rules, regulations or standing orders. A delinquent has no right to be represented

\textsuperscript{34} Ibid, p. 230.
\textsuperscript{35} Kalindi V/s Tata Locomotive.
\textsuperscript{36} Chemical Ltd V/s Ram Naresh Tirupathi.
through counsel or agent unless the law specifically confers such a right. In the instant case the delinquent’s right of representation was regulated by the standing orders which permitted a clerk or a workman working with him in the same department to represent him and this right stood expanded on Sections 21 and 22 (2) of Maharashtra Recognition of Trade-Unions and Unfair Labour Practices Act permitting representation through an officer, staff member, or a member of the union, albeit on being authorized by the State Government. Since Talraja was not authorized by the State Government he could not represent the delinquent at the domestic or departmental enquiry under Section 22 (2). Hence the enquiry officer was justified in law in refusing him permission to represent the delinquent.

In *M.R. Patil and another v. Member, Industrial Court and another*, where on or about 1-4-1992 two recognized workers’ Unions of the Maharashtra State Road Transport Corporation give a joint notice terminating their earlier settlement with the Corporation and submitted their fresh charter of demands. On failure of the management of the Corporation to attend to their demands the Unions served a notice upon the former intimating that the workers would go on strike from the mid-night of 12-4-1993/13-4-1993. A similar notice was also given by the Maharashtra S.T. Chalak Wahak Sanghatan respondent 2, an unrecognized union. In view of the threatened strike the Chief Minister of Maharashtra intervened into the matter and on 9-4-1993 declared an interim relief of Rs. 25 Crores to the workers and asked the Corporation to work out the modalities of its payment. Accordingly, the Corporations held discussions with the recognized unions and decided upon the mode of payment of the interim

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37 M.R. Patil and another V/s Member, Industrial Court and another.
relief, pending final settlement. After obtaining approval of the State Government to the same the Corporation issued a circular on 25-6-1993 and stated making payments in terms thereof.\textsuperscript{38}

Assailing the above circular on the ground that payment in terms thereof would be unjust and more favourable to workers affiliated to other unions, the union filed a complaint before the industrial court, under Section 28 (1) of the Maharashtra Recognition of Trade-Unions and Prevention of Unfair Labour Practices Act, 1971 and along with it filed a petition seeking temporary relief, which by an interim order stayed the operation of the impugned circular. Subsequently, the unions filed a complaint under Section 48 (1) of the Act before the Labour Court alleging that the two appellants and another officer of the State Transport Authority had made payments in times of the impugned circular. After issuing a show-cause notice and considering the replies, the Labour Court issued process against the two appellants herein and discharged the third officer. After unsuccessfully approaching the Revisional Court and the High Court in its writ-jurisdiction the appellants approached the Supreme Court.\textsuperscript{39}

The complaint in the instant case was filed by the union – and not by an individual claiming to be affected by the alleged non-compliance with the interim direction/order of the Industrial Court. Moreover, the union is not a recognized union within the meaning of the Act. The union has not produced any document – much less a certificate issued under Section 12 to indicate that it was granted recognition under the Act to entitle it to file a complaint of facts constituting the offence under Section 48 (I) and, for that matter, to enable the

\textsuperscript{38} V.G. Goswamy, Labour Industrial Law, p. 231.
\textsuperscript{39} Maharashtra Recognised Trade-Union Act., 1971.
Labour Court to take cognizance thereupon under Section 39. Since the provisions of this section are mandatory and the Labour Court has no jurisdiction to take cognizance of any of the offences mentioned in the Act, in absence of a complaint/report in terms thereof the cognizance in the instant case on the complaint of the un-recognized Trade Union without jurisdiction.\(^{40}\)

(b) Right to negotiate and settle the disputes with the employers and sign the settlement and execute them.

(c) Right to hold meetings, conferences post their notices or inspect the place where the members are employed for work;

(d) Right to accept services of notices, summons, etc;

(e) Right to perform other formalities, e.g., attestation of agreements;

(f) Right to obtain legal aid;

(g) Right to collect fees on employer’s premises\(^{41}\)

(h) Right to stage demonstration and strikes. This is not an absolute or fundamental right, but a common law right, hence it is subject to laws regulating the strikes. However this is most important right in the armoury of labour.\(^{42}\)

It shows that the right of Trade-Unions may be classified in two categories. First, the rights of Trade-Unions as re granted under the provisions of the Trade-Unions Act, 1926, and secondly, the rights which are conferred upon them under the provisions of other labour legislation and the constitutional law of the country which may be called general rights of the Trade-Unions. The Constitution of India guarantees freedom of assembly, the right of public


\(^{41}\) G.M. Kothri, Labour Disputes and their Adjudication, pp. 190-200.

\(^{42}\) D.S.N. Dhyanic, Loc. Cit.
meeting or of procession under Article 19(1) (a)\textsuperscript{43}. Unless the law of the land permits formation of association the Trade-Unions cannot be formed. Thus it is the fundamental right guaranteed by the Constitution to all citizens of the State. The Trade-Unions have been given rights so that they may be able to accomplish the objectives efficiently for the betterment of their members.

3.3.1. Settlement of Disputes

Whatever may be the cause of industrial disputes, the consequences are harmful to all stakeholders-management, employees, economy, and the society. For management, disputes result in loss of production, revenue, profit and even sickness of the plant.

Employees would be hard hit as the disputes may lead to lockouts and consequent loss of wages and even jobs. Industrial establishments are pillars of the economy and the economy is bound to collapse if industries are torn by industrial strike. The cumulative effect of all these is felt by society.

A dispute, therefore, needs to be settled as early as possible. Various methods are available for resolving disputes. More important of them are (see Fig. 3.2).

1) Collective bargaining
2) Code of discipline
3) Grievance procedure
4) Arbitration
5) Conciliation
6) Adjudication
7) Consultative machinery\textsuperscript{44}

3.3.2. Collective Bargaining

Collective bargaining is probably the most effective method of resolving industrial disputes. It occurs when representatives of a labour union meet management representatives to determine employees’ wages and benefits, to create or revise work, rules, and to resolve disputes or violations of the labour contract.\(^{45}\)

The bargaining is collective in the sense that the chosen representative of the employees (i.e. the union) acts as a bargaining agent for all the employees in carrying out negotiations and dealings with the management. The process may also be considered collective in the case of the corporation in which the paid professional managers represent the interests of the stockholders and the board of directors in bargaining with the union leaders. On the employer side, it is also collective in those common situations in which the companies have joined together in an employer association for purposes of bargaining with a union.\(^{46}\)

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3.3.3. **Approaches to Collective Bargaining** Collective bargaining has been viewed from three perspectives:

1. As a process of social change,
2. As a peace treaty between the conflicting parties, and
3. As a system of industrial jurisprudence.

3.3.4. **Process of Social Change**: Collective bargaining is understood as a technique of bringing about a change in the balance of power between employers and employees. It helps the inferior social class or group exert pressure on the powerful group for a bigger share in social, economic and political power, as well as for better welfare, security and liberty to individual members. This is the real spirit behind collective bargaining, though in its narrow sense, perceived as a tool for resolving industrial disputes.\(^{47}\)

3.3.5. **Peace Treaty**: Collective bargaining is understood as a peace treaty in a continual conflict. But the peace is temporary as neither side is completely satisfied with the results. Each party would like to break the treaty at the earliest opportunity and come forward with new list of demands, including previously unsatisfied ones.\(^{48}\)

3.3.6. **Industrial Jurisprudence**: Collective bargaining creates a system of industrial jurisprudence – a method of introducing civil rights into the industry requiring that the management deals with the labour by rules rather than by arbitrary decisions. It is this role of collective bargaining which helps resolve industrial disputes.\(^{49}\)

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\(^{47}\) Ibid, p. 96.

\(^{48}\) K. Aswanthappa, Human Resources and Personal Management, p. 563.

\(^{49}\) Ibid, p. 563.
Collective bargaining benefits both employees as well as employers. This means that the basic interests of the management are protected and also the rights of the employees. The two sides have a responsibility towards each other. For example, unions should not expect the management to concede on issues which would ultimately impair the company’s ability to stay in business. Likewise, the management must recognise the rights of employees to form unions and to argue for improved wages and working conditions.

Collective bargaining infuses democratic principles into the industrial world. Workers participate in decisions that affect their work and work life. Thus, collective bargaining may be viewed as a form of participative management.  

3.3.7. Importance of Collective Bargaining In summary, collective bargaining offers the following benefits to both employers as well as employees:
1. It helps increase economic strength of both the parties at the same time protecting their interests.
2. It helps establish uniform conditions of employment with a view to avoid occurrence of Industrial Disputes.
3. It helps resolve disputes when they occur.
4. It lays down rules and norms for dealing with labour.
5. It helps usher in democratic principles into the industrial world.  

3.3.8. Strategic Choices When faced with a collective-bargaining situation, managers are required to make many strategic choices. The more important of them are,

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50 Ibid, p. 563.
1. Managers must decide when to open the negotiations. Sometimes it is advisable to open the talks long before the wage agreement expires if a strike will cripple the business. At other times, it may be advantageous to start negotiations after the agreement expires. Managers must interpret the situation appropriately and make the decision.

2. Managers must examine the possibility of a strike and decide on the ways of handling it, should it occur. For example, managers must examine the necessity of building up inventory and ensuring that distributors have adequate stocks of goods.

3. It is also important for managers to understand which issues to raise first and which to wait for. If the management knows that a particular issue will cause a problem, perhaps it would be advantageous to defer the discussion until progress is being made in the negotiation process.

4. Managers must decide upon the individuals who would represent their side at the negotiating table.

5. Finally, managers need to decide how closely they will follow the agreement, once it is signed.

3.3.9. Collective Bargaining Process Collective bargaining has two facets: (i) negotiating the work conditions that become the collective agreement (contract) describing employee relationship on the job; and (ii) interpreting and enforcing the collective agreement (contract administration) and resolving any conflict arising out of it. Both these aspects are discussed here, though, contextually, the second is more relevant.
The process of collective bargaining involves six major steps (also see Fig. 3).

1) Preparing for negotiations
2) Identifying bargaining issues
3) Negotiation
4) Reaching the agreement
5) Ratifying the agreement
6) Administration of the agreement.

As seen in Fig. 3.3, the environment influences the collective-bargaining process. One environmental factor is the type of bargaining structure that exists between the union and the company. The four major types of structures are:53

(i) one company dealing with a single union, (ii) several companies dealing with a single union, (iii) several unions dealing with a single company, and (iv) several companies dealing with several Unions. The bargaining process is simple and easy if the structure is of the first variety and becomes complicated and difficult in the remaining.

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Another environmental factor influencing a collective-bargaining process is the type of union-management relationship which exists. The relationship may be marked by adversity or co-operation. Co-operative spirit facilitates collective bargaining, whereas non-co-operative spirit impedes the process.  

3.3.10. Preparing for Negotiations Careful advance preparations by employers and employees are necessary because to the complexity of the issue and the broad range of topics to be discussed during negotiations. Effective bargaining means presenting an orderly and factual case to each side. Today, this requires much more skill and sophistication than it did in earlier days, when shouting,

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and expression of strong emotions in smoke filled rooms were frequently the keys to getting one’s proposals accepted.\textsuperscript{55}

From the management side the negotiators are required to

1. Prepare specific proposals for changes in the contract language,

2. Determine the general size of the economic package the company proposes to offer,

3. Prepare statistical displays and supportive data for use in negotiations, and

4. Prepare a bargaining book for company negotiations, a compilation of information on issues that will be discussed, giving an analysis of the effect of each case, its use in other companies, and other facts. From the employees’ side, the union should collect information in at least three areas;\textsuperscript{56}

1. The financial position of the company and its ability to pay.

2. The attitude of the management towards various issues, as reflected in past negotiations or inferred from negotiations in similar companies.

3. The attitudes and desires of the employees.

The other arrangements to be made are selecting the negotiators from both sides and identifying a suitable site for negotiation\textsuperscript{57}.

3.3.11. Identifying Bargaining Issues: The major issues discussed in collective bargaining fall under the following four categories:

1. Wage-Related Issues These include such topics as how basic wage rates are determined, cost of living adjustments, wage differentials, overtime rates, wage adjustments and the like.

\textsuperscript{55} H. John Bernardin and Joyce E.A. Russell, \textit{op. cit.}, p. 597.
\textsuperscript{56} Ibid, p. 589.
2. *Supplementary Economic Benefits* These include such issues as pension plans, paid vacations, paid holidays, health insurance plans, retrenchment pay, unemployment pension, and the like.

3. *Institutional Issues* These consist of the rights and duties of employers, employees, unions, employees’ stock ownership schemes, and QWL programmes.

4. *Administrative Issues* These include such issues as seniority, employee discipline and discharge procedures, employee health and safety, technological changes, work rules, job security, training, and the like.

While the last two categories contain important issues, the wage and benefit issues are the ones which receive the greatest amount of attention at the bargaining\(^{58}\).

The memorandum of settlement reached by a Bangalore-based electrical company and its employees’ association, which became operative from 1st July 1994, covered the following:\(^{59}\)

<table>
<thead>
<tr>
<th>1) Dearness Allowance</th>
<th>17) Attendance Bonus</th>
</tr>
</thead>
<tbody>
<tr>
<td>2) House Rent Allowance</td>
<td>18) Service Award</td>
</tr>
<tr>
<td>3) Weightage</td>
<td>19) Profit Sharing Bonus</td>
</tr>
<tr>
<td>4) Transport</td>
<td>20) Washing Allowance</td>
</tr>
<tr>
<td>5) Revision of wage structure of daily rated and monthly rated employees fitment</td>
<td>21) Employment to next of kin of deceased and Retired Employees</td>
</tr>
<tr>
<td>6) Leave Travel Assistance</td>
<td>22) Privilege Leave</td>
</tr>
<tr>
<td>7) Recognition of Kannada Hitha Rakshana Samithi</td>
<td>23) Accommodation for Employees Association</td>
</tr>
<tr>
<td>8) Retirement Benefit</td>
<td>24) First Aid Facility</td>
</tr>
<tr>
<td>9) Shift Timings and Shift Allowance</td>
<td>25) Family Planning Benefit</td>
</tr>
<tr>
<td>10) Hazards Allowance</td>
<td>26) Provident Fund</td>
</tr>
<tr>
<td>11) Uniforms, Shoes and Stitching Charges</td>
<td>27) Festival Advance</td>
</tr>
<tr>
<td>12) Promotion Policy</td>
<td>28) Housing Loan</td>
</tr>
<tr>
<td>13) Settlement Period</td>
<td>29) Medical Reimbursement</td>
</tr>
<tr>
<td>14) All Other Prevailing Practices to continue</td>
<td>30) Pension Scheme</td>
</tr>
<tr>
<td>15) Education Allowance</td>
<td>31) Retrospective Effect from 1-7-94</td>
</tr>
<tr>
<td>16) National and Festival Holidays</td>
<td>32) Vehicle Loan</td>
</tr>
</tbody>
</table>


**Negotiating** Preparations having been made and issues being identified, the next logical step in the collective-bargaining process is negotiation. The negotiating phase begins with each side presenting its initial demands. The negotiation goes on for days until the final agreement is reached. But before the agreement is reached, it is a battle of wits, playing on words, and threats of strikes and lockouts. It is a big relief to everybody when the agreement is finally signed by the management representatives and the union.⁶⁰

At times, negotiations may break down even though both the labour and the management may sincerely want to arrive at an amicable settlement. In order to get negotiations moving again, there are several measures that may be used:
1. Through third party intervention such as arbitration, and adjudication,
2. Unions tactics like strikes and boycotts, and
3. Management strategies such as lockouts, splitting the union, bribing union leaders, and using political influence.

**3.3.12. Settlement and Contract Agreement** After an initial agreement has been made, the two sides usually return to their respective constituencies to determine whether what they have informally agreed upon is acceptable. A particularly crucial stage is ratification. In this stage, the union-negotiating team explains and puts the agreement to the union members for a vote. If voted, this agreement is formalised into a contract.⁶¹ It is important that the contract must be clear and precise. Any ambiguity leads to grievances or other problems.⁶²

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⁶¹ V/s-12 (3) and 18 (1) ID Act.
⁶² Ibid.
3.3.13. **Administration of the Agreement**’ Signing the agreement is not the end of collective bargaining, rather it is the beginning of the process. The agreement must be implemented according to the letter and spirit of the provisions of the agreement. But in day-to-day stress of the work environment, strict adherence to the provisions may not always be easy. Moreover, it may be difficult to draft a flawless agreement, notwithstanding the exacting efforts of the most experienced negotiators and lawyers specialised in IR. Flaws are allowed to continue till the expiry of the agreement period. Faulty implementation or violation of any provision leads to disputes.

The management is primarily responsible for implementing the agreement, which must be communicated to all affected levels. This could include meetings or training sessions not only to point our significant features, but also to provide a clause-by-clause analysis. Supervisors, in particular, need to know their responsibilities and what to do when disagreements arise. Additionally, managers can be encouraged to notify the top management of any contract provisions that are causing problems so that they can be considered when preparing for the next round of negotiations.63

The HR manager plays crucial role in the day-to-day administration of the contract. He or she advises on matters of discipline and works to resolve grievances arising out of the agreement. In addition, he or she works, with the line management to establish good working relationship with all employees affected by the terms and conditions of the agreement.64

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64 Ibid.
3.4. Method’s of Settlement of Disputes:

Till now, collective bargaining has been taken as a means of arriving at an agreement. Its role in settling disputes deserves a mention in this context.

Collective bargaining creates, as stated earlier, a system of industrial jurisprudence. It establishes rules which the management is bound to implement. Specifically, collective bargaining is:

- A rule-making or legislative process, in the sense that it formulates the terms and conditions under which labour and management will cooperate and work together over a certain stated period,
- An executive process; both management (foreman and supervisory officials) and Trade-Union officials share the responsibility of enforcing the rules.
- A judicial process, for in every collective agreement there is a grievance procedure to settle any dispute concerning the application of the agreement. Where the agreement does not specifically cover the disputes, it may be settled according to the unwritten norms of shop practices. The decisions in these cases act as precedents in a manner similar to the common laws and interpretation of the legislation by the court.

After a dispute has erupted, collective bargaining acts as a peace treaty between the two warring groups. The treaty is invariably a compromise, but helps resolve the conflict nevertheless.65

3.5. Code of Discipline:

The code of discipline defines duties and responsibilities of employers and workers. The objectives of the code are;

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1) To ensure that employers and employees recognize each other’s rights and obligations;
2) To promote constructive co-operation between the parties concerned at all levels;
3) To secure settlement of disputes and grievances by negotiation, conciliation, and voluntary arbitration;
4) To eliminate all forms of coercion, intimidation, and violence in IR;
5) To avoid work stoppages;
6) To facilitate the free growth of Trade-Unions; and
7) To maintain discipline in industry.\textsuperscript{66}

The Third Five Year Plan document notes that the code lays down specific obligations for the management and the worker with the objective of promoting constructive co-operation between their representatives at all levels, avoiding stoppages as well as litigation, securing settlement of grievances by mutual negotiation, conciliation and voluntary arbitration, facilitating the growth of Trade-Unions and eliminating all forms of coercion and violence in Industrial Relationship.

The code of discipline evolved by the Ministry of Labour and Employment is given below.\textsuperscript{67}

\textbf{3.5.1. Code of Discipline in Industry}

The code does not have any legal sanction. But the following moral sanctions are behind it:

\begin{center}
\begin{tabular}{|l|p{12cm}|}
\hline
1) To maintain discipline in industry: (both in Public and Private Sectors) & There has to be (i) a just recognition by employers and workers of the rights and responsibilities of either party, as defined by the laws and agreements (including bipartite and tripartite) \\
\hline
\end{tabular}
\end{center}

\textsuperscript{66} A.M. Sharma, Industrial Relation Conceptual and Legal Frame Work 2\textsuperscript{nd} Edition, Himalaya Publication, Bombay, p. 66.
\textsuperscript{67} Ibid, p. 66.
agreement arrived at all levels from time to time); and (ii) a proper and willing discharge by either party of its obligations consequent on such recognition.

The Central and State Governments, on their part, will arrange to examine and set right any shortcomings in the machinery they constitute for the administration of labour laws.

2. To ensure better discipline in industry:

(a) Management and Union agree:

(i) that no unilateral action should be taken in connection with any industrial matter and that disputes should be settled at appropriate level;

(ii) that the existing machinery for settlement of disputes should be utilised with the utmost expedition;

(iii) that there should be no strike or lockout without notice;

(iv) that affirming their faith in democratic principles, they bind themselves to settle all future differences, disputes and grievances by mutual negotiations, conciliation and voluntary arbitration; provided that the provision regarding voluntary arbitration as aforesaid shall not apply to cases involving security consideration;

(v) that neither party will have recourse to (a) coercion; (b) intimidation; (c) victimisation; or (d) go-slow;

(vi) that they will avoid (a) litigation; (b) sitdown and stay in strikes; and (c) lockouts;

(vii) that they will promote constructive co-operation between their representatives at all levels and as between workers themselves and abide by the spirit of agreements mutually entered into;

(viii) that they will establish, upon a mutually agreed basis, a grievance procedure which will ensure a speedy and full investigation leading to settlement;

(ix) that they will abide by various stages in the grievance procedure and take up no arbitrary action which would by-pass this procedure and;

(x) that they will educate the management personnel and workers regarding their obligations to each other.

(b) Management agrees:

(i) not to increase work-loads unless agreed upon or settled otherwise;

(ii) not to support or encourage any unfair labour practice such as (a) interference with the right of employees to enroll or continue as union members; (b) discrimination, restraint or coercion against any employee because of recognised activity of Trade-Unions; and (c) victimisation of any employee and abuse of authority in any form;

(iii) to take prompt action for (a) settlement of grievances; and (b) implementation of settlements, awards, decisions and orders;

(iv) to display in conspicuous places in the undertaking the provisions of this Code in the local language;

(v) to distinguish between action justifying immediate
discharge and those where discharge must be proceeded by a warning, reprimand, suspension or some other form of disciplinary action and to arrange all such disciplinary action should be subject to an appeal through normal grievance procedure;

(vi) to take appropriate disciplinary action against its officers and members in cases where enquiries reveal that they were responsible to precipitate action by workers leading to indiscipline; and (vii) to recognise the union in accordance with the criteria (Appendix) evolved at the 16th Session of the Indian Labour Conference held in May 1958.

(c) Unions agree

(i) not to engage in any form of physical duress;

(ii) not to permit demonstrations which are not peaceful and not permit rowdyism in demonstration;

(iii) that their members will not engage or cause other employees to engage in any union activity during working hours, unless as provided for by law, agreement or practice;

(iv) to discourage unfair labour practices such as (a) negligence of duty; (b) careless operation; (c) damage to property; (d) interference with or disturbance to normal work; and (e) insubordination;

(v) to take prompt action to implement awards, agreements, settlements and decisions;

(vi) to display in conspicuous places in the union offices, the provisions of this Code in the local language; and

(vii) to express disapproval and to take appropriate action against office-bearers and members for indulging in action against the spirit of this Code.

1) The central employers’ and workers’ organisations shall take the following steps against their constituent units, when they are guilty of breach of the code:

a) to ask the unit to explain the infringement of any provision of the code;

b) to give notice to the unit to set right the infringement within a specific period;

c) to warn and in case of infringement of a more serious nature, to censure the unit concerned for its actions persisting in the infringement;

d) to disaffiliate the unit from its membership in case of persistent violation of the code; and
e) not to give countenance, in any manner, to non-members who do not observe the code.

2) Grave, willful and persistent breaches of the code by any party should be widely publicised.

3) Failure to observe the code would entail de-recognition, normally for a period of one year. This period may be increased or decreased by the concerned implementing committee.

4) A dispute may not ordinarily be referred for adjudication if there is a strike or lock-out without proper notice or any breach of the code as determined by an implementation machinery unless such strike or lockout, as the case may be, is called off.

According to the National Commission on Labour, the code has had only limited success and was obviously not the answer to the IR problems. The code began to rust and the parties were more eager to take it off. They developed an attitude of indifference. As regards the future of the code, the Commission was in favour of giving a legal form to its important provisions regarding recognition of unions, grievance procedure, unfair labour practices and the like. With the removal of these provisions from the code in order to give them a statutory shape, the code will have no useful function to perform.68

3.6. Grievance Procedure

Grievance procedure is another method of resolving disputes. All labour agreements contain some form of grievance procedure. And if the procedure is followed strictly, any dispute can easily be resolved.

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In the meanwhile, a grievance may be understood as an employee’s dissatisfaction or feeling of personal injustice relating to his or her employment relationship. A grievance is generally well-defined in a collective-bargaining agreement. It is usually restricted to violations of the terms and conditions of employment. Other conditions which may give rise to a grievance are:\(^\text{69}\)

1. A violation of law,
2. A violation of the intent of the parties as stipulated during contract negotiations,
3. A violation of company rules,
4. A change in working conditions or past company practices, and
5. A violation of health and/or safety standards.

When an employee believes that the labour agreement has been violated, he or she files a grievance. The grievance needs to be resolved according to a set procedure.

Grievance procedures generally establish the following:

1) How the grievance will be initiated?
2) The number of steps in the process.
3) Who will represent each party?
4) The specified number of working days within which the grievance must be taken to the next step in the hearing.

3.6.1. First Stage:

The aggrieved employee shall, first submit his grievance in writing to his ‘Sectional Head’ (nominated by the management from time to time for this purpose) in the prescribed form. The sectional head should study the grievance

carefully with the least possible delay and the aggrieved employee should be given an opportunity to present his case in person if he requests for the same. If the employee so desires, he may take the assistance of a co-worker or a union representative. A written reply shall be given to the employee before the end of the fifth working day, if reply is not given before the end of the fifth working day, the concerned officer should record reasons for the delay which should be communicated to the aggrieved employee.

3.6.2. Second Stage:

In case the said employee is not satisfied with the reply of the sectional head, or if the Sectional Head fails to give a reply within the stipulated time as in First stage above, he shall be free to register his grievance in writing in the prescribed form with his Departmental Head (nominated by the management from time to time for this purpose). Departmental head shall, after careful study, give an opportunity to the concerned person to present his case before him, if the employee expresses a desire to be heard in person. The employee may be permitted to take the assistance of a co-employee or a Union representative of his choice at the time of personal hearing. The head of the department should study the grievance and the points brought out by the employee in the personal hearing and give a reply at the end of the fifth working day from the day of receipt of such complaint.

3.6.3. Third Stage:

If the employee is not satisfied with the decision of the departmental head or if the latter fails to give any decision within the stipulated period, the employee will be entitled to lodge an appeal to the Divisional Head or any other officer nominated by the management for this purpose. This officer should also
follow the same procedure as prescribed in Stages I and II and a reply should be given before the end of the tenth working day. If the employee so desires, he may be permitted to take the assistance of a co-employee of his choice or an office bearer or Executive Committee member of the Union at the time of personal hearing.⁷⁰

Fig. 4: Grievance Procedure

If the aggrieved employee is not satisfied with the decision of the divisional head, he can refer the case to THE EMPLOYEES’ UNION within 10 days. The Union may discuss the subject if they deem fit, in the periodical management-union meetings which will be held within one month from the day, such reference is made by the Union to the management.

3.6.4. General:

a) If the employee intends to take his case from one stage to another, he shall do so before the expiry of five days at Stages I and II and 10 days at the Stage III. If the employee is not on duty for any reason for any period, that period will not be reckoned for calculating the period.

b) If the employee has to leave the department during working hours on call from any officer with reference to the grievance, prior permission of his immediate superior shall necessarily be obtained.

c) Officers handling grievances at Stages I and II shall associate the concerned Personnel Officer of the Division during discussions on the grievance of the employees. The officer at Stage III shall associate Deputy Personnel Manager in the discussions and settlements.

d) Acknowledgement for receipt of grievances including complaint should be given to the employee at every stage.

e) The decision given in Stages I, II and III in favour of an aggrieved employee will generally be implemented by the management.

3.6.5. Schedule and Procedure for Grievance Handling:

1) Try to avoid problems in your department before they cause grievances.

2) Be a good listener. Even though you feel that the aggrieved worker is wrong, listen patiently to his complaint. Find out what really is the basis of his dissatisfaction. Show interest in his problem.

3) Use a positive, friendly approach. Avoid either aggressiveness or a defensive attitude.

4) Have patience, pounding the table and shouting does not settle anything.
5) Avoid personal consideration. What counts is not who is right, but what is right.
6) Remember that you and the employee will have to work together, to settle other issues in future.
7) Do not get upset or resort to threats. If you and the employee do not come to an agreement, there are further steps to settle the issue.
8) Appeal to the management’s interest. It is in their interest also, to have grievances settled satisfactorily and to keep the morale high.
9) Settle each grievance on its merit. Do not give up one grievances case in order to get a favourable decision in another.
10) Remember that the management too has its rights, that both the workers and the management must live up to the terms of agreement.
11) Keep the aggrieved worker constantly informed as to what is being done about his grievance.
12) Permit the employee to correct his mistake without loss of face or dignity. Present the facts and give the employee time to consider your arguments. An objective decision shall be taken on the facts and circumstances of the case within the framework of rules and regulations of the company.
13) After a decision has been reached on a grievance by the management and the concerned employee, ensure that the decision is carried out expeditiously.

There may be variations in the procedures followed for resolving employee grievances. Variations may result from such factors as organisational or decision-making structures or size of the plant or the company. Larger organisations do tend to have more formal procedures involving a succession of steps. Some general principles which should guide any procedure are:
1) Grievance must be addressed promptly.
2) Procedures and forms airing grievances must be easy to utilise and well-understood by employees and their supervisors.
3) Ego clashes should not be allowed to impede the resolution of disputes.
4) Occurrence of similar grievances must be avoided.71

3.6.6. **Arbitration**

Arbitration is a procedure in which a neutral third party studies the bargaining situation, listens to both the parties and gathers information, and then makes recommendations that are binding on the parties.72 Arbitration is effective as a means of resolving disputes, because it is:
1) Established by the parties themselves and the decision is acceptable to them, and
2) Relatively expeditious, when compared to courts or tribunals. Delays are cut down and settlements are speeded up.

Arbitration has achieved a certain degree of success in resolving disputes between the labour and the management. However, it is not without its weaknesses. Some weaknesses are:
1) Arbitration is expensive. The expenditure needs to be shared by the labour and the management.
2) Judgment becomes arbitrary, if there is a mistake in selecting the arbitrator.
3) Too much arbitration is not a sign of healthy IR.

The labour union generally takes initiative to go for arbitration. When the union so decides, it notifies the management. At this point, the union and the company must select an arbitrator. When considering potential arbitrators, both

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72 Randall S. Schuler, et al., op. cit., p. 599.
the management and the labour will study their previous decisions in an attempt to detect any biases. Neither party wants to select an arbitrator who might be unfavourable to its position.\textsuperscript{73}

After the arbitrator has been selected and he or she has agreed to serve, a time and place for,\textsuperscript{1} hearing will be determined. The issue to be resolved will be presented to the arbitrator in a document\textsuperscript{7} I that summarises the question or questions to be decided, and any contract restrictions that prohibit the arbitrator from making an award that would change the terms of the existing contract.

Each side presents its case at the hearing. Arbitration is an adversary proceeding, so a case may be lost because of poor preparation and presentation. The arbitrator may conduct the hearing much like a court-room proceeding. Witnesses, cross-examination, transcripts, and legal counsel may all be used. The parties may also submit or be asked by the arbitrators to submit formal written statements. After the hearing, the arbitrator studies the materials submitted and the testimony given, and reaches a decision within 30 to 60 days. The decision is usually accompanied by a written opinion giving the reasons supporting the decision.\textsuperscript{74}

3.6.7. Arbitration and the Industrial Disputes Act, 1947:

Section 10-A provides that where any industrial dispute exists or is apprehended and the employer and the workmen agree to refer the dispute to arbitration, they may do so by a written agreement. They can, however, do so at any time before the dispute has been referred to a labour court or industrial tribunal or national tribunal. The arbitrator shall investigate the dispute and submit the report to the appropriate government. Where a dispute has been


\textsuperscript{74} Ibid.
referred for arbitration, the appropriate government may prohibit the
continuance of any strike or lockout which may be in existence at the time of the
reference.\textsuperscript{75}

\textbf{3.6.8. Conciliation:}

Conciliation is a process by which representatives of workers and
employers are brought together before a third party with a view to persuading
them to arrive at an agreement by mutual discussion between them. The third
party may be one individual or a group of people. The alternative name for the
third party is mediators.\textsuperscript{76}

The Industrial Disputes Act, 1947 provides for the appointment of
conciliators. Section 4 of the Act states that the appropriate government shall
appoint such number of persons as it thinks fit as conciliation officers. The main
duty of a conciliation officer shall be to mediate in and promote the settlement
of industrial disputes. The other duties are:
1. To hold conciliatory proceedings;
2. To investigate the dispute;
3. To send a report and memorandum of settlement to the appropriate
government; and
4. To send a full report to the appropriate government setting forth the steps
taken, in case no settlement is arrived at.

The conciliation officer shall submit his or her report within 14 days from
the date of commencement of the conciliation proceedings. The Act prohibits a
strike or a lockout when the conciliation proceedings are in progress.

\textsuperscript{75} Bagre Industrial Dispute Act, 1947, Kamal law House , Kalkatta, p. 476.
\textsuperscript{76} Johan B. Minar and Marry Green Minor, p. 556.
It may be stated that the conciliator has no power to force a settlement, but can work with the parties separately to determine their respective positions, explains a position more fully to the opposition, points out bases for agreement that may not have been apparent previously, helps in the search for solutions, and generally facilitates the reach of an agreement. In effect, mediators act as communications catalyst, and their effectiveness depends on their impartiality and on their capacity to win the trust of both parties.\textsuperscript{77}

3.6.9. Adjudication:

Adjudication means a mandatory settlement of an industrial dispute by a labour court or a tribunal. Generally, the government refers a dispute for adjudication depending on the failure of conciliation proceedings. Section 10 of the Industrial Disputes Act, 1947, provides for reference of a dispute to labour court or tribunal. The Act also lays down rules regarding the composition and powers of labour courts and tribunals.\textsuperscript{78}

Disputes are generally referred to adjudication on the recommendation of the conciliation officer who had dealt with them earlier. However, the government has discretionary powers to accept or reject recommendations of the conciliation officer. It is obvious that once a dispute is referred for adjudication, the verdict of a labour court or tribunal is binding on both the parties.

The system of adjudication is the most significant instrument of resolving disputes. But, it has been criticised because of the delay involved in resolving conflicts. Continued dependence on adjudication deprives the Trade-Unions of their right to recognise and consolidate their strength.


3.6.10. Consultative Machinery

Towards the end, it is essential to refer to the consultative machinery set by the government to resolve conflicts. The main function of consultative machinery is to bring the parties together for mutual settlement of differences in a spirit of co-operation and goodwill. A consultative machinery operates at the plant, industry, State and the National levels. At the plant level, there are works committees and joint management councils. Being essentially bipartite in character, works committees are constituted as per the provisions of the Industrial Disputes Act, 1947, and joint management councils are set up following the trust laid down in the Industrial Policy Resolution, 1956. At the industry level, there are wage boards and industrial committees.79

Labour advisory boards operate at the state level and at the all India level there are the Indian Labour Conference (ILC) and the Standing Labour Committee (SLC). The bodies operating at the state and national levels are tripartite in character, representing government, labour and management. Important legislative proposals are discussed and recommended by the ILC and SLC.

3.6.11. Industrial Employment Standing order Act, 1946:

The Employer of every Industrial establishment covered under the Act. Is required to submit to the certifying officer five copies of the draft standing order proposed by him for adoption in his industrial establishment. The draft should make provision for every matter with consultation of the Trade-Union Act, 1926 a model standing order’s have been prescribed, it should be in conformity with the model.80

1) Classification of the workman, for Exam, whether permanent, temporary apprentice, probationary etc.

2) Manner of intimation to workmen period’s and hours of work, holidays, pay days and wage rate.

3) Shift-working.

4) Attendance late coming.

5) Condition, procedure’s in applying for and the authentic which may grant leave and holiday.

6) Requirement to enter-premises by certain gates and liabilities to search.

7) Closing and re-opening and section of industries and temporary closer right and liabilities to search.

8) Closing and re-opening of section of industries and temporary closer right and liability of the employer’s.

9) Termination and employment and procedure for disciplinary action.

10) Suspension and dismiss for miss conduct and acts with constitutions.

11) Means of redress for workmen against un-fair labour proactive to labour.

12) Any other matter probe.  

3.6.12. Right to Strike:

The right to strike is not one of the fundamental rights recognized by the constitution and would not come within the ambit of Act (19(1) © of the constitution of India. There for in they country no body including workmen has a fundamental right to strike. However, strike and lock out are weapon’s in the armory of labour and the employer in the process of collective bargaining all over the world.  

81 1994 1 LLJ 1004 (All) See also sample Singh V/s Artificial Lime Mfg. Corpn. Of India, 1995, ILLJ 81 (All).

82 G.M. Kothari, A Study of Industrial Law, p. 144.
Thus right of the strike of the employees and right to lock out the company by the employer regulated by the right to strike and right to lock out restricted by the proper industrial legislation.

The strike and lockout V/s 22 and 23 prohibited the commencement of strike by the worker Trade-Union under provision of Trade-Union Act 1926, worker’s union serve a notice to the management before striking 15 day’s for legitimate grievance of the works men is recognized by the in Industrial jurisprudence.\(^83\)

3.6.13. Factory Act, 1948:

The Trade-Union is a watch dog of the working condition of the Employees under the provision of the Factory Act 1948. The Government had tried to implement as many as provision of the International Labour Organization (ILO) code of Industrial. Hygiene’s as were practicable under Indian Condition; and the provision’s relating to the periodical medical examination of young person’s and the submission of plan’s of factory building reconnected under the International Labour Convention.\(^84\)

The Grant to State government of the power to make rules requiring the association of the worker’s (Trade-Union’s) in the Management of arrangement for the welfare of the worker’s.\(^85\)

The objective of the Act to protect human being subject to unduly long hour’s of bodily strain or manual labour. It also provides that employees should work in healthy and sanitary condition manufacturing process will allow and that precaution should be taken for thing safety and prevention of accident. The

\(^83\) AIR 1972, SC 1216.
\(^84\) G.M. Kothari, A Study of Industrial Law, pp. 250-55.
\(^85\) V.V. Giri, Loc Cit., pp. 142-43.
Factory Act 1948 is a social enactment to achieve social reform and must receive liberal construction.86

3.6.14. Constitutional Validity:

In J.K. Industries Vs Chief Inspector of Boiler the appellant challenges the constitutionality of provision (11) to section 2 (n) of the factory Act, 1948. On the following grounds.87

1) Provision (I) Confer’s absolutes, unfettered and unguided power’s upon the inspector of the factory’s to pick-up and choose any one of the director’s of a company for prosecution and punishment in connection with breach of any of the provision of the Act by a cleaning fiction where the director’s in him self not responsible for the contra version and provision (II) is, therefore, violative of Articles 14 of the Indian Constitution.

2) The various liability imposed by section 92 on the occupier (notified director) violates the Articles-21 of the Indian Constitution.

3) Provision (II) to section (2) (n) violate articles 19 (1) (g) of the Constitution of India rejecting the said contention, the Supreme Court held.

While deciding the causes, before the Hon’ble Supreme Court the validity of the said provision (II) to section (2) (h) with reference to Articles 19 (1) (g), the court observed that the Article-19(1) (g) of the constitutional guarantee to the citizen to right to practice any profession or carry on any business any occupation. The right is however, is subject to reasonable restriction imposed under (6) of the Art-19. The result imposed preamble (11) it at all it may be called a restriction has a direct nexus with the subject sought to be achieved and is therefore, a reasonable restriction within meaning clause (6) of the Art-19

86 Worker Manager, Central Rly Workshop, Jhansi V. Vishwanath, AIR, 1970, SC 488.
87 J.K. Industries V/s Chief Inspect of Boiler.
provision (II) to sections 2 (n) is thus, not ultra virus 1 Art-19(1) (g) of the Constitution. 88

3.6.15. Social Security for Working Class:

Lord William Beveridge, who consider “want, disease” “ignorance” squalor and idleness as the five giant on the road to social security which should be attacked and killed defines “Social Security”, as a “Security of Income to take the place of earning when they were interrupted by unemployment sickness or accident, to provide for retirement through age, to provide against loss of support by death of another person and to meet exceptional expenditure, such as those concerned with birth, death and marriage. 89

There are generally two pillar’s or methods of social security social insurance and social assistance approach to these method’s have not always uniform, but their broad features can be identified. Trade-Union make pressure to implement the social security scheme in the industrial establishment.

They at present the important social security legislation’s in the country for industrial worker’s campus. The Workmen Compensation Act, 1961, The Employees State Insurance Act, 1948, the Provident Fund and Miscellaneous Act 1952 Payment of Gratuity Act 1972.

India does not yet have a comprehensive and codified social security scheme’s covering all citizen’s of the a limited comprehensive scheme covering the Industrial worker’s. In the regard the Trade-Union of Established Industry had legal entity to the management for any adequate facilities of the working classes. 90

89 Lord William Beveridge, Report of Social Insurance and Allied Source George Allen and Union London (1942), Port, V. p. 120.
90 Gazette of India, 1922, Part V, p. 313.
3.7. **Trade Union Amendment Act:**

The industrial relation’s are statutorily governed today by the Industrial Dispute Act which provides elaborate machinery to settle industrial disputes by a legal mechanism that has been working for the lost four decades. The law has been amended on several occasion taking into consideration the experience of its implementation. There is no doubt a need for reviewing of the experience of working of the Act and providing a new comprehensive law to settle the industrial dispute in an expeditious and just manner.

It has been admitted both by the Trade-Union’s as well as by the Employer’s that Industrial Dispute Act, 1947 has failed to improve the industrial relation’s climate in the country. The legal machinery provided is extremely dilatory and heavily loaded against worker’s. Before the bringing forward this bill there was some committee to set up and discussion with central Trade-Union’s by the Union-Minister in which most of the Trade-Union suggest their proposal new amendment of the Trade-Union Act, 1926.

**3.7.1. Trade-Union Act 1926, Amendments on the basis of the Ramanjum Committee Recommendation following Amendment proposed:**

1) The law now permits an association of seven employees in an establishment to form a Trade-Union. It is proposed that a union should have 10% of or 100 worker’s, whichever is less to registered the government also proposed to register a union with a Seven Member’s, if a unit has 70 Worker’s to protect the interest of the worker’s in a small unit. The government’s logic is to allow worker’s freedom, but reduced the member’s of the Trade-Union’s.

2) To bring about discipline in Trade-Union, the Government has decided to make it the Government has decided to make it mandatory to hold election of
the office bearer’s and member’s of the executive committee once in every three year’s or earlier if the member desire.

3) At present, out sider’s are permitted to the extent of 50% of the strength of the office-bearers of Trade-Union. The government proposed to bring his down to one third or two-third, whichever is less. The committee was of the view of that if worker’s wanted to choose their leader’s from out sider’s, no substantial benefit accure. Even of the out sider are totally eliminated, there is no guarantee that inside leadership will not be subject to remote control of the outsider’s. than committee recommended that the number of out sider’s be restricted to one-third.

4) The government proposed to like the membership fee from 25 paise to Rs. 1 per month. Here, it is relevant to make a mention of the effort at the Amendment of the Act. The Amendments of the Trade-Union Act 1926, actually incorporated in it.91

3.7.2. Trade-Union’s Amendment Act., 1947:

The employer’s to recognise the Trade-Union’s, there should be imposing a legal-obligation for the recognition of the Trade-Union. Ever since the enforcement of the Indian Trade-Union Act. 1926. Nothing concrete work was don fill the middle of 1940. In the year 1946 the Government of India after consultation of the State-Government Association of the Employer’s and Trade-Union leader’s Government of India introduced Trade-Union (Amendment) Bill in central legislation in the year 1947 by providing compulsory recognition of Registered Trade-Union’s its report on 28 February, 1947. The select committee made some important suggestion. On the basis of which the bill was

passed on 13 November, 1947. It received the assent of the Governor General on 20th December 1947.\textsuperscript{92}

The Indian Trade-Union’s (Amendment) Act. 1947 provides a compulsory recognition of the Trade-Union a certain prescribed conditions and introduced a penalties for certain unfair labour practices on the part of both sides employers employees. A registered Trade-Union could apply for recognition to the employer and if failure to obtain recognition in their three month’s. the union can approach to the labour court established under the Act.

If the labour-court was satisfied that the Trade-Union fulfilled the condition of the recognition of the Trade-Union’s. The court order for recognition. The Trade-Union empower to negative with the management of industries. With respect matter with employment or non-employment, term’s and condition of the labour all member of the working classes.\textsuperscript{93}

\subsection*{3.7.3. Trade-Union’s Bill, 1950:}

The question of the amendment of the Trade-Union’s Act 1926 was again discussed at 11 meeting of the standing labour committee in 1949 and other amendments were suggested at the Labour Minister Confect in 1949. The bill provided for the Registration and Recognition of the Trade-Union and define a law relating to Registration and recognition of the Trade-Union and certain unfair labour practices. The bill was comprehensive and covered many important issues relating to tradition and again it was discussed 10 session of the Indian labour conference in March 1950. Later as it was referred to the select committee which was admitted its report on 1 December, 1950, but the bill

\textsuperscript{92} P.R.N. Sinha, Indubal, Shekar, Industrial Relations Trade-Union’s and Labour legislation, p. 351.
\textsuperscript{93} Ibid, p. 352.
lapsed owing to disillusion of the parliament. Some minor amendment were introduced in the Act of 1926 in 196 and 1964.  

3.7.4. **Industrial Relation bill, 1978:**

On the basis of the recommendation of the 1st National Commission on labour (1969) the Central Government Consult with the state government and Employees and Employer’s Association to framed comprehensive Industrial Relation bill on 1978 but the bill could not be passed.

3.7.5. **Trade-Union (Amendments – Bill, 1982):**

The Trade-Union bill contain the provision relating machineries for the resolution of inter and intra-union disputes, modification in the procedure in the procedure for the registration and cancellation of registration are reduction is the proportion of the out sider’s in the exceptive of the Trade-Union’s. This bill also could not be passed.

3.7.6. **The Trade-Union (Amendment Act-2001):**

After a long time gap that some notable amendments were inter reduced in the Act by the Trade-Union (Amendment) Act 2001. The amending Act are partly incorporated some provision’s of the earlier bill’s which could not be passed and partly. A few recommendation of the First National Commission of Labour Amending Act, 2001 viz.,

1) Requirement of 10% or 100% of workmen (whichever is less) employed in a establishment or industry with a minimum of only 7 person’s as a member’s for being eligible for registration as a worker’s Trade-Union in place of only 7 person’s provided earlier and subsequently maintenance of this membership after registration.

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2) Election of member of the executive and office-bearer of the Trade-Union at an Interval not more than 3 year’s prescribing minimum subscription for rural, un-organised and other worker’s.

3) Designation of appreciate courts.

4) Limiting the proportion of outsider’s to 1/3rd of the total office bearer’s or 5-which ever is less generally and 50% in the un-organised sector.

5) Debarring member of councils of minister or person’s holding office of profit in the union or state (not employed in a establishment a industry with which of Trade-Union is connected) from membership of the executive or office bearers of the Register Trade-Union.  

3.8. Conclusion:

In the fact the Indian Trade Union Act, 1926 in the custodian of the rule of law. The need for a trade union legislation was felt of units at an early stage of trade union development of in our country. Through the legislative and executive organ’s furnish strength and continuity to the ford –governance system. It is the Trade Union Act, 1926 that guard the protection of the working classes in India.

It may be desirable to mention that the Trade Union Act, 1926 provided for registration of trade unions complying with various specified requirement. The definition of the Trade Union as continued in section 2(h) of the trade Union Act, 1926.

The trade union registered under the Act, it’s a legal person under the possession of Sect. 13 the Trade Union Act, receives a legal status and thereby

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legal person and un-registered Trade Union accord if it is an corporate body by name under which it is registered and perpetual succession and a common seal with power to acquire and both movable was immovable property.

In addition to analytical perspective of the Trade Union Act, 1926, registered Trade Union Act, 1926. The trade union have general perspective in respective of the industrial matters and all well being of the working class labour union have got very important right for representation of labour force before employer. In works Committee, conciliation labour court, labour tribunals, labour departmental right to state for this is most important right in the armory of the labour. It was after along gap that some notable amendments were introduced in the Act, by the Trade Union (Amendment), Act 2001.

With the rapid Industrialization of the country the problems of the industrial relation have multiplied. In many industrial countries the system of the collective bargaining has been adopted to resolve the problems of the payment of wages, working conditions firing benefits, social security legislation, personal. Issues such as discipline, promotional opportunity, etc., India which is passing through transition has, however, adopted adjudication system as an alternative of collective bargaining. Further, the law relating to industrial relations is regulated not only by the industrial. Dispute Act 1947, Industrial Employment (Standing Order) Act, 1946 with the needed of the Trade Union Act, 1926 and State Labour legislation but also by the Indian constitution.

From the above perspective analysis of the trade union Act. 26 of can be summed up that growing awareness of the Trade Union knowledge to the working classes for the protecting of the right of the working classes.