Chapter 3

INDUSTRIAL RELATIONS, TRADE UNIONS AND THEIR STRATEGIES AND LABOUR LAW - A CONCEPTUAL FRAMEWORK

INDUSTRIAL RELATIONS - MEANING

Industrialization has transformed the life of mankind in more ways than is visible to us. It has enriched the life style with material comforts not even imagined possible a century ago. The totality of change industrialization has brought about in all parts of social system is astonishingly awesome. One such significant change that has ensued the industrialization process is witnessed in the work life of a large section of mankind.

In primitive and agrarian societies issues related to work and work life were handled in a societal set up with the help of typical family arrangements and/or political institutions working within the society entrusted with the responsibility of maintaining the class differentiation based on occupational structure. The transition to industrial society created a distinctive group of workers and managers whose relationship is outside the purview of family arrangements and is distinct from political institutions functioning in a society although family and political institutions in differing degrees in different societies shape and control this relationships. This distinctive character of work life has given rise to a whole range of interactions among persons and groups of industrial society creating a sub-system within the larger social system which can be described as an industrial relations (IR) system.

Discussion on IR especially issues affecting labour peace and warfare were the centre of attraction of scholars from various discipline from the time of industrialization in early 19th Century. But the subject of IR was put forward systematically and analytically by Karl Marx in 1860 when he predicated rise of trade unions with the development of industry and increasing miseration of proletarians. As most of the issues at that stage referred to economic variable IR was considered as a sub-system of economic system. The analytical frame work of this subject was extended to boundaries of many other disciplines like sociology, psychology, management etc. With the initiation of institutional approach by Clark Kerr (" The model of trade
union” E.W.Bakke and Clark Kerr (ED.) “Unions Management and the Public” - Brace and Company, New York, 1948, it was realized that industrial relations is a distinct field rather than part of merely broad economic frame work, but it is an inter disciplinary field which means it requires an integration of principles of various other disciplines to explain its complex processes and consequences generated in it. This inter-disciplinary nature of industrial relations created an atmosphere of confusion as to what is exactly included and what is not included in IR. As many disciplines were involved in defining various issues in IR the task of delineating the exact boundaries of the subject become so frustrating that some scholars opined that no worthwhile theories of IR can be formulated as the factors involved are so numerous and occurring in so many combinations and permutations.

The systems approach to industrial relation propounded by John T. Dunlop was the first ever effort at providing an organizing frame work for IR which analyzed the environmental context to IR, explored the characteristics and inter relationships between various actors and provided a framework of the rules governing employment relationships.

DUNLOP'S APPROACH TO INDUSTRIAL RELATION

Dunlop argues that an industrial relation system is a separate and distinct analytical sub-system of an industrial society like any other sub-system, for example, the economic sub-system, the political sub-system etc. It is closely interlinked with the larger social system. But for analytical purposes some assumptions regarding the state of social system have to be made to understand the functioning of the IR system. It is logically an abstraction not concerned with behaviour as a whole of the actors participating in it, but designed (1) to highlight the relationships, (2) to focus attention upon critical variables, (3) to formulate propositions for historical enquiry and statistical testing.

STRUCTURE OF AN IR SYSTEM

In analytical approach to IR, system comprises of certain actors, certain contexts, an ideology which binds the system together and rules created to govern the actors at the work place and work community.
The Actors

(1) A hierarchy of managers and their representatives in supervision

(2) A hierarchy of workers and their representatives

(3) Specialized governmental agencies as well as specialized private agencies created by the first two actors

The Contexts

The actors in an IR System interact in certain given context which provides an environment to an IR System. These contexts are the outcomes of the functioning of a complex network of various sub-systems in a larger society and can be explained by the existing IR system. These contexts are provided by (1) technological characteristics of the work place and work community (2) the market or budgetary constraints which bind the actors (3) the locus and distribution of power in the larger society between various groups and sub-groups.

(1) The technological context: The diverse features of technology of the work place are very critical in determining managerial and worker hierarchy - their form as well as operations and the Government agencies that arise. More importantly they influence the substance of rules evolving in an IR system. These features include the type of product or service created, size of the work force, place of work - urban or isolated area, the accident potential, skill levels and education required, promotion of various skill levels, employment of women and children etc. It is clear that essentially seven characteristics of the technical context play a major role in influencing the industrial relations pattern of any unit, industry or society. Four of these define workers and managers in relation to the type of work place and the remaining three depend on the type of operations that the actors perform. These can be described as (1) fixed or variable work place (2) relation of work place to residence (3) stable or variable work force and duration of work operations (4) size of work group (5) the job content (6) Nature of operations in terms of control by the workers over machines or machine paced operations & (7) working hours.
The market context or budgetary constraints: This context includes market conditions as well as budgetary constraints an enterprise has to face. The market conditions vary through a full spectrum of pure competition, monopolistic competition, oligopoly and monopoly. A non-profit organization not operating for any specific market has nonetheless to face budgetary constraints. These constraints may be local, national or international. The market conditions referred to here include product market as well as the factor market particularly labour markets. This context affects the rule making especially the compensation rules and rules relating to product market arrangements.

The Power context: The locus and distribution of power in the larger society is the third important analytical feature of the environmental context in Dunlop's system approach. Distribution of power outside the IR system which is given to that system tend to shape and structure IR system.

In Dunlop's analysis establishment and administration of rules is a major concern or output of the IR system. These rules consist of procedure for establishment of rules, the substantive rules and the procedure for deciding their application to particular situation. The procedures and the authorities for making and administration of the rules governing the work place and work community is a critical and central feature of an IR system. These rules are treated as an independent variable to be explained theoretically in terms of other variables of the IR system. The creation of these rules in the system results in evolution of a special group of experts or professionals within each hierarchy of actors with responsibility for the administration of the vast network of rules.

IDEOLOGY

Dunlop's framework for IR system begins with three actors, their interaction within environmental contexts, goes on to explain the procedure and establishment of the rules, as a final output of the working of the system and ends with one integrating element of the system "the Ideology". In his analysis, an ideology is a set of ideas and beliefs commonly held by the actors that help to bind or integrate the system together as an entity. A stable IR system requires a congruence or compatibility among the view or idea of each actor and the rest of the system. In algebraic form the main components of IR system as given by the Dunlop can be presented as
This comprehensive analytical framework developed by Dunlop generated debates as to its applicability and its shortcomings. Particularly noteworthy were the criticism pointed out by the industrial sociologists who objected to this approach on the ground of non-consideration of behavioral science related factors in formulation of the theory. Margerison\(^1\) argues that the system approach is too much concerned with resolution of industrial conflict rather than causes for its generation. The main focus is on handling consequences of conflicts rather than nature and development of causes of conflict. Kingsley Laffer\(^2\) pointed out that the systems approach underestimates the importance of certain factor like organization structure in which the rules reflect much less accommodation of basic conflicts. Woods and others\(^3\) argue that in systems approach power is located in the political system forming a part of the external environment which is a given context for the IR sub system. But in fact power constitutes a fundamental element of the IR system itself.

Another important contribution to IR theory is by group of institutionalists known as the Oxford approach. The institutional approach initiated by Alan Flanders "(Industrial Relations - what is wrong with the system ?" - Faber and Faber, London, 1965 page 16) Flanders emphasizes the role of various institutions especially that of collective bargaining in IR of any country. He questions whether there is anything like a "system" in IR of any country and argues that IR at any place or time are shaped and molded by the interaction of the various institutions. This approach is also criticized as too narrow a viewpoint about IR with over emphasis on political process of collective bargaining which was conceived in a specific contextual background with specific problem in mind. Analytically this approach can be described as

\[
\begin{align*}
    r &= f(b) \quad \text{or} \quad r &= f(c) \\
\end{align*}
\]

where

\[
\begin{align*}
    r &= \text{rules} \\
    b &= \text{collective bargaining} \\
    c &= \text{conflict resolved through collective bargaining} \\
\end{align*}
\]
With the increase in the complexity of industrialism, the nature of IR issues presented a complexity which was very difficult to be explained by the prevailing analytical framework. Many scholars emphasized its inter-disciplinary approach and the complex network of variegated sources out of which IR takes shape. As the comparative approach to the study of IR attracted attention of scholars the nature of IR was recognized as an expression of the society in which they operate, especially its characteristic features and the power relationships in it. The important characteristic features of a society whether economic, legal, political, cultural rational or irrational, historical and traditional, psychological and sociological all are reflected into a particular state of industrial relation.

One major difficulty with existing systems theory lies in its prediction of emergence of a shared ideology due to the shared understandings between actors on both the sides which is the result of the process of rule setting and sharing common experiences and interaction. But events and decisions at bargaining level are not the sole determinants of IR in any country. Decisions taken at the top level without involving the bargaining level have an important bearing on IR outcomes. These decisions may not reflect shared understanding and shared ideology because today's firms are not extensions of the entrepreneur but interests in today's firms vary both horizontally and vertically. Kochan and others (Thomas A. Kochan, Robert B. Mckersie, Peter Cappelli - I.R., Volume 23, (1) - Winter, 1984, Regents of the University of California) lists the following as an unexplained anomalies in the current American IR system which are also found in many other countries' IR systems. (1) Decline in Union membership and growth of non-union sectors (2) changes in managerial values and strategies with respect to unions, (3) experimentation of shop level participation (4) managerial initiatives in personnel practices (5) change in the role of Govt.

The argument is that to explain these anomalies, it is necessary to understand the process of paradigm shifts in the traditional approach.

- Increase in the active role played by the management in shaping the IR rather than merely a reactive role

- There are different levels of decision making within the management, labour and govt. organization with their independent effects on IR outcome.
These shifts necessitates some modifications in the traditional systems approach to IR and here the notions of strategy and strategic choice add an important dynamic element to the theory of IR.

**What are strategies?**

Miles and Snow (1978) formulate the notion of strategy as consistent patterns in streams of decisions or actions. Their stages include a) formulation (intention) b) implementation (reworking the design of an institution or organization) c) formation (unintended by-products of decisions affect action). So far as industrial relations are concerned, strategies are long run policies which are developed in order to preserve a change in the procedures, practice and results of industrial relations usually over several years (Thurley and Wood, 1983 - Page 197 - 8). The notion of strategy encapsulates the idea of an overall design within social action and rationality and calculus in the patterning of decision (Poole, 1980).

**What are Strategic Choices?**

Most of the traditional literature involving the use of strategy in IR focuses on the process of forming strategy rather than actual content or outcome associated with strategies. In Kochan analysis strategic decisions are those which alter the parties role or its relationship with other actors in IR system. It is not a complete substitute for explanatory power of environmental variations or changes, bargaining structures and organizational characteristics. But it is an important intervening additional variable that contributes to an understanding of the dynamics of an IR system.

Strategic choices of actors are found to be rooted within a multiplicity of environmental, organizational and institutional and processional conditions (I.R. - origins and patterns of national diversity, Michael Poole - Routledge and Keganpaul, London, Boston and Henley). Poole explains the overall framework of IR at any level and in any country with the help of following diagram.
Table 3.1
Framework of I.R.

Whereas the strategic choices are shaped by the above mentioned factors and processes and actually results into a variety of outcomes, the levels at which the strategies are formulated is clearly explained in the IR strategy matrix as presented by Kochan.
### Table 3.2

**Industrial Relations Strategy Matrix**

<table>
<thead>
<tr>
<th>Decision Level</th>
<th>Nature of Decisions</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Employers</strong></td>
<td><strong>Unions</strong></td>
</tr>
<tr>
<td>Macro/GLOBAL</td>
<td>The strategic role</td>
</tr>
<tr>
<td>for key</td>
<td>of Human Resource</td>
</tr>
<tr>
<td>institutions</td>
<td>policies on unions,</td>
</tr>
<tr>
<td></td>
<td>investments, plant</td>
</tr>
<tr>
<td></td>
<td>location, new</td>
</tr>
<tr>
<td></td>
<td>technic and outsourcing</td>
</tr>
<tr>
<td>Employment</td>
<td>Personnel policies,</td>
</tr>
<tr>
<td>relationship</td>
<td>and negotiations and</td>
</tr>
<tr>
<td>and IR system</td>
<td>strategies</td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td>Workplace</td>
<td>Contractual or</td>
</tr>
<tr>
<td>level -</td>
<td>bureaucratic and</td>
</tr>
<tr>
<td>individual</td>
<td>individual employe /</td>
</tr>
<tr>
<td>and groups</td>
<td>workgroup participation</td>
</tr>
</tbody>
</table>

With increasing competition strategic choices exercised by the management seem to emerge as the most far reaching decisions for IR system. The shift from a growth market to a mature one or throwing open the doors of competition requires shift in emphasis away from industrial peace to reducing labour costs, streamlining work rules and increasing productivity. It also involves decision as to choice of technology as well as choice of location. This choice may alter the pattern of union organization within a firm and change the process of collective bargaining. But these managerial decisions though taken unilaterally are affected by current state of IR. The motivation of the management to change the existing pattern of labour management relationship and collective bargaining depends on whether wages and labour costs have been taken out of competition. The ability to change the pattern is dependent on current unionization and extent of decentralization of collective bargaining. Different strategies have to be adopted in different situations by the management when it is facing the problem of product market changes. But an important implications of all these analysis is that IR in Duplop's theory emerge as "Cohesive integrated system" over a period of time whereas Kochan etc. add the dynamic element of strategic choice to this notion of system and gives an explanatory framework for continuous changes taking place in the IR system.
THE SOCIAL CONTEXT OF IR

It would be interesting at this point to explain in brief the inter relationships developed by Dunlop between an IR system and the social system as a whole on the basis of the analogy of relations between the economic aspects of behavior and totality of social action explored by Prof. Talcott Parsons in "Economy and Society, a study in the Integration of Economy and Social Theory" (London Routledge and Kegan Paul, 1956). Any social system is differentiated into four primary functions or is confronted by four basic system problems.

1. The adaptive function - control of environment for achievement of goals of the system for the society as a whole is reflected in the Specialized sub-system of economy which by producing income or wealth contributes to the adaptive needs of the society. Likewise adaptive function of an IR system contributes a set of rules. There is a common ground where both the sub-system overlap like the wage determination but both also have distinctive scope. The economy provides the context to the IR system and rules of IR give technical co-efficient for the economy.

2. The Goal gratification function - This is performed by the polity. Its contribution is power which helps to attain the goals of the society. The polity of the society defines power distribution and provides an element to the IR system. The same power distribution in an IR system contributes to the achievement of stability and survival which helps the wider social system to achieve its goals.

3. The integration function in both the system - the social system and IR sub-system are both closely related to each other. A high degree of solidarity in the society contributes to a healthy IR system and a conflict minimized IR system may contribute to the solidarity of the society.

4. The tension management function - is also closely related in both the system. It implies preservation of values of the system against cultural and motivational processes. The values and motivation within the social system which generate prestige as its specialized output may be in congruence with
which generate prestige as its specialized output may be in congruence with those in the IR system or may be incompatible. Incompatibility will generate conflicts and instability resulting into change in one or other or both.

THEORIES OF LABOUR STRATEGY AND TRADE UNIONISM

The strategies espoused by any Labour Movement are shaped by choices and linked with distinctive orientations - especially instrumental and radical, and with the wider cultural and ideological environment. Choices are subject to a series of constraints. Most of the strategic choices are directed at promoting interests of the working people in one or more of the three primary areas.

1) The ownership of the employing enterprise
2) The administration of work activities and levels and systems of remuneration
3) The legislative and other governmental actions that affect regulation of the employment relationship and macro level policies on employment social security and re-distribution of national dividend.
Table 3.3
STRATEGIES OF LABOUR - MEANINGS AND CHOICES

<table>
<thead>
<tr>
<th>General Categories of Social Action</th>
<th>Outcomes</th>
<th>Levels</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Cultural Values and Ideologies</strong></td>
<td><strong>Outcomes</strong></td>
<td><strong>Levels</strong></td>
</tr>
<tr>
<td>1) Instrumental Rational</td>
<td>1) Instrumentalism - Safety and welfare, pay and working conditions, hours and holidays, participation in management, job regulation</td>
<td>1) Macro or Global</td>
</tr>
<tr>
<td>Commitments to 'economism', 'pure and simple unionism' trade unionism under 'collective bargaining'</td>
<td></td>
<td>Political roles</td>
</tr>
<tr>
<td>2) Value Rational</td>
<td>2) Radicalism / Religious fundamentalism / Nationalism advancement of workers rights through political and economic action, e.g. nationalisation, self management</td>
<td>Union Organising</td>
</tr>
<tr>
<td>Primary commitments to Political (radical) religious, nationalist or other similar aims</td>
<td></td>
<td>Public Policy objectives</td>
</tr>
<tr>
<td>3) Affective</td>
<td>3) Solidarism - not strategic but can intensify support for aims under (1) and (2)</td>
<td>Economic Policies</td>
</tr>
<tr>
<td>Commitment to solidarity of community, trade union or work group</td>
<td></td>
<td>I.R.System</td>
</tr>
<tr>
<td>4) Traditional</td>
<td>4) Conservatism</td>
<td>Collective bargaining of policies and negotiating strategies</td>
</tr>
<tr>
<td>Concern over the maintenance of craft privilege or for survival of the union as an organisation</td>
<td></td>
<td>Work Place</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Employee participation - new technology - work of organisation design</td>
</tr>
</tbody>
</table>
Depending on the strategic objectives, trade unions are classified in three principle types:

a) Trade Union under Collective bargaining - instrumental purpose is predominant in this category and there is a high degree of independence from the State and the functions are mainly oppositional in nature. Four conditions help in establishment of this type of trade unions:

1) High Degree of Industrialization

2) Market principles of resource allocation and prominent private sector
3) Democracy with two or more multi party system - this helps in a successful separation of political and industrial objective of labour.

4) Pluralism rather than Corporatism - is more appropriate institutional context for collective bargaining. Pluralism is circumscribed state influence in a largely fragmented and decentralized political economy. This is possible when there is commitment to freedom of association, democratic political structure, laissez faire economic system, counter-balancing powers amongst all the actors in the IR system, durability of collective bargaining institutions etc. Corporatism is more common in countries with economic planning.

b) Disjunctive type of trade union with political, religious or nationalist objective - value rational purpose is predominant with political character as its main feature. The extent of independence from the state and management in this type of trade union varies from organization to organization.

c) Trade under socialism - this type of trade unions have integrative character and a very high degree of dependence on the state or management or both.

For the category 'a' trade unions, their internal governance whether democracy or oligarchy within the union depends on certain analytical parameters as follows:

a) Environmental conditions
b) Political culture and system
c) Economic conditions which creates uncertainties
d) Legal provisions

These basic parameters affect in turn certain factors like formal organizational conditions including democratic potentials and principles of elections as also the power and organization of management and the state in IR. These factors together provide a framework which may result in a variety of outcomes like dimensions of democracy or oligarchy, participation and competition in election, opposition, factions and parties, division of power and associated checks, internal bargaining between leaders and members, decentralization of decision making etc.
In an environmental factors, political culture and system refers to the degree of pluralism and corporatism, economic condition with social unrest give rise to uncertainties favoring oligarchy and specific legal provisions like those the use of ballot papers in union elections etc. have decisive impact. In formal organizational conditions are included democratic potential within the representative system. Here the unionized process of power and legitimacy that is the role of rule books principles of elections and the degree of solidarity are relevant. The power and organizations of employer, management and the state also influence the patterns of governance in unions for example powerful managements promote decentralization within the union whereas influential State encourages emergence of peak organization of labour, high degree of centralization and oligarchy.

TRADE UNION OBJECTIVES

The approaches to trade unionism give different view points about their role functions and objectives. This can be classified simply into three major categories as explained by Poole (Theories of Trade Unionism as sociology of IR) - Routledge and Kegan Paul, London, 1981)

1. Trade Unions as moral institutions
2. Trade Unions as economic organizations
3. Trade Unions as political institutions

1. As moral institutions,
   Trade union as institution entrusted with the task of upliftment of the downtrodden and seek out justice for the unfortunate. Emphasis the moral and ethical role of the unions. It is this role of the union as the sword of justice that has always generated greatest public support and highest levels of commitment by its members. This view has been responsible for the strength and vitality of the trade union movement during its early period. This view emphasise the dignity of labour and induces the working class to fight against the evil.

2. As Economic organization

As industrialism and economic growth gathered momentum the purely humanistic role of trade unions lost some of its appeal and in its place the pragmatic view of the trade union as an economic organization found more and more supporters. The notion of bargaining advanced by the Webbs (S. Webb
B. Webb, 1968-History of Trade Unionism) viewed the trade unions primarily as economic organizations working continuously to improve terms and conditions of labour. This view of the role and objective of the trade union accepted the primary function of a union to be improvement of economic conditions of workers through economic sanctions like strikes and other forms of struggle.

3. As political institution –

for some scholars like Flanders (Flanders Allan - Management and Unions - The theory and reform of IR, London). Trade union is an institution for reforms and rule making and its action goes beyond the immediate result of some material gains for the workers and helps in establishment of substantive right. The purpose of collective bargaining is not merely to improve the terms and conditions of employment but also to regulate the exercise of managerial powers in employing, organizing and disciplining the labour force. Unions strive to reduce their dependence on arbitrary will and whims of management and protect the industrial rights of their members. Thus, the trade union act as a balance in distribution of powers. In fact, Marx and followers revolutionalized the fundamental character of trade union by assigning them function of challenging the whole structure of class domination and acting as training centers for socialism, to bring about total revolution for their complete emancipation. Another justification for the political role of a trade union is that the State plays a very important role in IR hence at the least the trade union must politically organize itself to protect and legitimize its very existence.

However, all these types of functions of a trade union are not mutually exclusive. Rather all the objectives exist in all the unions. The difference may be of degrees only. The role or objective of trade union as perceived by its activities in economic, political or other areas is greatly influenced by the orientation of its membership. The orientation of trade unions membership towards employment in general is reflected in their orientation towards the trade union itself. This has been explained in the earlier table showing strategic choice of labour and their representatives. These different orientations influence to workers for creating or joining a union may be explained with the help of motivational analysis given by different scholars at different points of time. Perlman (1949 - 237) argues that for the workers a job is a scarce commodity
which they must protect. This realization of scarcity leads to a desire to control it which leads to joining of the union.

Marks and Engels (1948) attribute the growth the trade unionism to reactionary measures by the workers towards the onslaught of capitalist who exploit labour under pressures of competition and survival. With increasing competition the industrialist strive to maintain their profits by cutting down wages and therefore the workers have to form a collective protest group in order to survive.

According to Sydney and Beatrice Webb (1926) an individual worker resorts to collective action to be able to confront his employer on crucial issues of security of employment as well as conditions of employment and also to reduce the evil consequences of competition for jobs.

Tannenbaum (1951) perceives the worker as driven by a sense of alienation from both the job and society and attempts to gain status in the society. Trade union could provide an expression as well as an extension of the basic sociability created by men's psychological needs of leading a community life with the industrial way of life deprives him from enjoying.

Kerr and Seigel (1955) holds the entire industrialization process responsible for the growth of the union. This process to sustain itself require proper structuring which can be brought about by certain rules of discipline and the workers participate in the rule making process thru’ their union.

All these explanations pertaining to birth and growth of trade unionism emphasise one or more influences that may be more pronounced at different periods of history in stimulating the labour movements. However, none of them can be considered to be decisive for all the times to come. A multiplicity of key factors mentioned by these different theories are cumulatively responsible for the growth and development of trade unionism.

LABOUR LAW-MEANING AND OBJECTIVES
Any law normally can make only a modest contribution to the standard of living of the population. On some matters it is crucial like safety at work but on matters of social
welfare the contribution that legislation can make is only partial. Basically social welfare depends on (1) Productivity of Labour determined to a large extent by technical developments (2) Labour market forces (3) Effective and organized trade unionization. None of this can be influenced to an extensive degree by law. Law is only a technique for the regulation of social power.

Any society is not an agglomeration of individuals who are coordinated as equals but is characterized by unequal distribution of power. In all societies some of its members are subordinate to others. Some have command and others have to obey, some are decision makers and others are followers. The labour relations law or the labour laws as an academic discipline is expected to offer an explanatory frame work of the legal regime within which the employment relationship operates (Editors Comments - Labour and the Law by Kahn - Freund, Third edition). The central purpose of labour legislation is seen as that of maintaining an equilibrium between employees and employers by ensuring the effective operation of a voluntary system of collective bargaining. For this law does and sometimes must conceal the realities of subordination behind the conceptual screen of "contracts". For achieving this equilibrium and effective collective bargaining, it has to regulate, support and restrain the power of Management and the power of organized labour.

The terms management and labour are abstractions denoting activities rather than persons. They are used to denote activities like planning and regulating production and distribution and coordinating capital on one hand and producing and distribution on the other hand. As persons now, they still denote abstractions as who is management is never capable of precise identification whether it is private employer, company, government or other association. To manage has always meant to command. It is not possible to neatly separate these two categories of persons as there is a growing overlapping between management and labour.

It is distribution of managerial powers and identifying its location which is an extremely difficult task. To find out who has the real power on the part of employer and employee or labour is very difficult but on labour side what is clear is an individual employee has no bargaining power at all. Hence, on labour side power is collective power. On employer's side, individual employer represents an accumulation of material and human resources and so socially speaking the enterprise is itself a collective power.

Labour law is an attempt to infuse law into a relation of command and sub-ordination. In labour law an attempt is made to restrain command power of management and the
power of unions but how far it can succeed depends on backing of the social sanctions. The social sanctions come in the form of countervailing power of trade unions and of the organized workers asserted through consultation and negotiations with the employer and through withholding their labour. Effectiveness of law depends on the unions far more than the unions depend on the effectiveness of the law. So labour relations reflect a situation wherein individual worker is subordinated to the power of management but power of management is coordinated with that of organized industry. What appears to be a problem of adjustment between the collective agreements and contract of employment of individual workmen is in reality a problem of adjustment of coordinated power of labour and management i.e. collective bargaining and managerial rule and decision making power. The relation between a collective agreement reached through collective bargaining and contract of employment made with individual worker is the main focus of labour law.

Democracy - both political and industrial only means the right to select those who represent those who obey the rules made by the selected persons. It never means active participation in the framing of rules which are going to govern them. Just as the citizen must vote, otherwise he himself deprives him of an opportunity which is given to him to assert his freedom, workers not associating in union are depriving themselves of one of the fundamental freedoms of choosing those who will represent them in making of rules governing them through collective bargaining. An ordinary individual worker can never be a party to the rule making process, at the most he can be party to the process of selection of his representatives who will participate in the rule making process.

One important condition of labour management relations is the divergence of their interest irrespective of the type of society or ideology prevailing in the society. As justice H.B.Higgins has said that "the war between profit maker and the wage earner is always with us". The large part of labour law is about this conflict of interest between two parties - profit maker and wage earner. It is for this reason important to understand the social reality behind the legal facade of labour relations as much as the efficacy of law is dependant not on the state and its organs but the social sanctions and relationships of social domination. It is the "living law" that has greater impact than the technical "positive law". If the State while creating the positive law overlooks the fundamental fact of conflicting roles of labour and management no amount of positive law can alter the social reality of the domination of the employer class and subordination of the working class.
SOCIOLOGY OF LABOUR LAW

As discussed earlier, every law including labour law must seek its ultimate sanction within the society itself. It is important therefore to understand the relations between the legal norms and social reality which is the subject matter of the sociology of law. Sociology of law is concerned with all or any of the following problems:

1. Exploring the legal developments and law creating activity within the society outside the purview of State and its organs.

2. Relation between the formal legal norms and real rules operating in the society.

3. Changes in legal concepts as a result of contact with reality and social change.

4. Relation between economic and social forces and the law.

Any legal problem has two distinct reference points:

1. Legal or technical one
2. Extra legal one i.e. purpose of law, fairness, justness, expediency and rightness of law etc.

However, the first one is hopelessly inadequate to serve one very important requirement of any academic discipline including labour law i.e. development of future legal policy. It is only the second sociological approach which can provide true foundations for the tasks of legal policy making. Secondly, in any society over a period of time even though the sum total of "positive law" or statutes remains the same legal norms which are created by technical legal as well as extra legal factors are constantly in a process of change because of social forces influencing political, economic and judicial activities. It is only through an integrated sociology of law approach that one can truly understand the historical developments of legal norms, technical interpretation of legal institutions and policy alternatives open to development of labour law in future.

A sociology of labour law requires a legal and sociological understanding of legal and extra legal norms governing both individual and collective employment relations. It differs significantly from a traditional 'positive' approach in terms of both theory and
method. A sociological theory of law presents legal reality as part of social reality, whereas positivistic or jurisprudential theory is a presentation of a differentiated or distinguishable reality per se. A sociology of law approach is also distinguishable from jurisprudential analysis by its methods and sources of collection of data and evidence. A sociologist of labour law is more concerned with the law as it is in reality - that is how it influences the actual behaviour and thinking of employers and employees in the day to day conduct of industrial relations. The social significance of labour legislation can be adequately assessed only by interviewing the actors in IR to find out their perceptions and attitudes towards the law in industrial relations and by observing their actual behaviour. It is only through an understanding of the social function of law and social purpose of law that development of legal policy is possible. Legal policy development depends mainly on

a) The relation between law and social domination (the function of law in social relation of domination and subordination)

b) The relation between law and the political structure (the law, political power and the role of state)

c) The relation between law and the economy (the role of law in processor of economic control)

**INDUSTRIAL RELATIONS – TRADE UNIONS & LABOUR LAW**

Having examined the meaning of industrial relations as an academic discipline and trade unions as a fundamental institution of the same system, it is necessary to link these two with a very important environmental variable - the legal system. It is observed in the earlier discussion that as per strategic choice analysis given by Michael Poole, Legal policies are one of the fundamental environmental conditions that shape industrial relations of any country together with socio-cultural values, political ideologies and economic policies. However, so far as their impact is concerned legal policies have a direct bearing on IR unlike economic, social or political climate is concerned. Legislation pertaining to industrial relations directly contribute to the evolution and growth of IR institutions, IR climate and the framework of IR rules which is an outcome of IR system in Dunlop's Analysis. The bulk of Industrial Relations law,
referred to as Labour Laws, relate to any one or more of the following aspects of Industrial relations:

1) Dispute prevention and settlement machinery
2) Rights and obligations of parties to IR
3) Social Security issues like retiremental benefits, compensation etc.
4) Conditions of employment

In fact, legislation touches each and every aspect of wage earners working life and therefore has a lasting and all pervading impact on IR climate of any country.

David Dilts and Clarence Deitsch (Labour Relations, MacMillan Publishing Company Inc USA, 1982-83 page 9-10) analyze the role of legal environments in Labour Relations as that of competitions under classical system of free-markets. The classical economists recommended pursuit of competition for achieving socially efficient resource usage. However, the element of competition disintegrate in labour market and hence to direct self-interests of parties towards public interests, legal policy can intervene to fill the gap created by disintegration of competition. Where legal system has failed to take up the role of competition - that of directing self-interests towards public interests - friction and disturbances have resulted disturbing industrial peace and harmony. Collective bargaining is seen as an extension of a system of markets, a form of voluntary market exchange wherein the pursuit of self-interests ensures efficient use of scarce resources. Where however, the system cannot be made effectively operative, legal policy has to step in to fill in the gap between pursuit of self-interest and public interests.

However, trade unions as an institution also have law creating capacity. They are subject to legal regulations in matters of their operations and their rights vis-a-vis their counter-parts - the employers. The trade unions are also sanctions behind these legal regulations pertaining to collective bargaining as law enforcement depends on their capacity and willingness to enforce. Through collective bargaining unions also participate in rule making process, which constitutes internally created legal environment as opposed to externally imposed legislation. It is the nature and strength of trade union movement in any country that determines the efficiency of external legal environment and soundness of internal legal system in industrial relations.
Thus, industrial relations constitute a distinct sub-system within a larger social system. The legal policies as pronounced by legislation on various aspects of IR provide one of the most important environmental conditions that shape the IR of any country. Trade unions constitute the sanction behind labour legislation for its enforcement in its true spirit, as well as one of the fundamental institutions in the industrial relations system which is governed by the legislative rules as well as acts as catalyst for changes in these rules.