CHAPTER II

IMPORTANT LEGISLATION GOVERNING INDUSTRIAL RELATIONS IN INDIA
— A SYNOPTICAL REVIEW

OUTLINE

* INTRODUCTORY.

* (A) Trade Unions Act, 1926.

* (B) The Industrial Employment (Standing Orders) Act, 1946.

* (C) The Industrial Disputes Act, 1947.

* (D) The Bombay Industrial Relations Act, 1946.

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INTRODUCTORY

India does not yet have a comprehensive Industrial Relations Act for providing an adequate legal framework for labour-management relations. Such an Act has been in the offing ever since the National Commission on Labour reported in 1969. To-day LMR, as distinguished from working conditions, minimum wages, payment of wages, payment of bonus, etc., are regulated by a number of laws. The Trade Unions Act of 1926, The Industrial Employment (Standing Orders) Act, 1946, and the Industrial Disputes Act, 1947, have been the three central pieces of legislation so operative in the country. In addition, in 1946, the then Bombay State had a more advanced Act, viz., The Bombay Industrial Relations Act, in force, which provided for the recognition of a representative union in a local area. It was extended to Gujarat and has been adopted by Rajasthan and Madhya Pradesh. The latest one in the field is the Maharashtra Recognition of Unions and prevention of Unfair Labour Practices Act, 1971, which came into force in September, 1975.
In this chapter an attempt has been made to recapitulate synoptically the chief features of the first four Acts, which provide currently the legal framework for industrial relations. (Though industrial unrest, disputes and relations do have a basis in the factory/working conditions, welfare activities, etc., they are not detailed out in this chapter as these four constitute the main law that primarily govern IR.)

(A) THE TRADE UNIONS ACT, 1926

This Act was modelled on the then British Trade Union Act. As defined in this Act [3.2(h)], a trade union means a combination formed not merely for the purpose of regulating relations between workmen and employers but also between workmen and workmen, or between employers and employers, for imposing restrictive conditions on the conduct of a trade or business. A federation of two or more trade unions is also a trade union. In India, employers also can form a trade union. The Employers' Federation of India, Bombay, has been registered as a trade union. There are now nearly 200 effective employers' trade unions.

Under this law no prior permission or sanction is required for forming a TU by any group of persons. Yes, for the registration of the union, there must be at least 7 members who should subscribe their names to the rules of the TU, comply with the provisions of the Act with respect to its registration, and apply for it to the authority known as the Registrar of the Trade Unions. The Act provides [3.4(2)] that where such an
application has been made, even if up to half of the number of persons who made the application had later ceased to be members of the TU, the registration will be effected.

The Act visualises the admission of ordinary members who have to be persons actually engaged or employed in an industry with which the TU is connected. However, S.22 of the Act provides that up to half of the total number of office-bearers of a registered union can be outsiders not actually engaged or employed in the industry and that such persons will be regarded as temporary or honorary members [S.6(e)].

A member must pay a subscription of not less than 25 paise per month. The Registrar on being satisfied that the TU has complied with the requirements of the Act for registration, will issue a Certificate of Registration. The Courts have held that if all the terms of the Act are complied with, it is obligatory upon the Registrar to register a union and he has no discretion in the matter.¹

The registration can be cancelled if the TU itself so desires or if the Registrar finds that the certificate has been obtained by fraud or mistake or that the TU has ceased to exist, or has willfully contravened any provision of the Act, etc. However, any refusal to register a TU or any withdrawal or cancellation of a Certificate of Registration is appealable.

¹ Kesoram Rayon Workmen's Union Vs. Registrar of Trade Unions, 33 PJR 23 (HC).
Certain rights and liabilities are conferred on a TU, when registered. S.15 provides how the general funds of the union can be spent, while S.16 permits for the constitution of a separate fund for political purposes. This fund can be used for meeting the election expenses of a candidate. However, no member can be compelled to contribute to such fund.

The three most important rights conferred by registration are:

(a) No office-bearer or member of the registered TU can be made liable to punishment for criminal conspiracy in respect of any understanding or agreement made among the members for furthering its legitimate objectives, as long as the understanding is not to commit an offence.

(b) The legitimate activities of the TU may involve persuading some workers to stay away from work, i.e., break of contract of employment; or, they may, when a strike takes place, interfere with the trade, business or employment of some other persons or with some of the rights of the employer to do his business as he likes. Immunity from civil suits is granted in such cases.

(c) No Civil Court will entertain any legal proceeding for enforcing or recovering damages for the breach of any agreement concerning the conditions on which any members of the union shall or shall not sell their goods, transact business (the reference is to the employers' union), work, employ or be employed.
S. 28 provides that a union must send an annual report in the prescribed form and its audited accounts to the Registrar. In practice, however, hundreds of unions default in this regard. Again, though there is a provision of penalty for such defaults, it was not generally more operative except recently during the years of Emergency. Atleast in West Bengal, a number of defaulting unions were penalised.

(B) THE INDUSTRIAL EMPLOYMENT (STANDING ORDERS) ACT, 1946

Object: The object of the Act is "to require employers in industrial establishments to define with sufficient precision the conditions of employment under them and to make the said conditions know to workmen employed by them". It has been enacted with a view to regulating the conditions of recruitment, discharge, disciplinary action, holidays, etc., of the workmen employed in industrial undertaking. A workman is defined as any person (including an apprentice) "employed in any industrial establishment to do any skilled or unskilled, manual, supervisory, technical or clerical work for hire or reward — but does not include any person, who is mainly employed in a managerially or administrative capacity or a supervisor drawing more than Rs.500/- per month, or one whose functions are mainly of a managerial nature". [S.2(i)]

Scope: The Act is applicable to an industrial establishment wherein 100 or more workmen are employed or were employed on any day of the preceding twelve months. It also empowers the appropriate Government to extend its provisions to establishments
employing less than 100 persons after giving two months' notice. [S.1(3)].

**Administration:** The administration of the Act is the responsibility of the Central Government in respect of industrial establishments under the control of the Central Government or a Railway Administration or in a major port, mine or oil field. The State Governments are responsible in respect of all the remaining establishments [S.2(b)].

**Procedure for Certification and Communication:** The Act imposes an obligation on the employer to submit the draft standing orders, within six months from the date of application of the Act to his establishment, to the Certifying Officer. A group of employers in similar industrial establishment can submit a joint draft of standing orders.

The draft standing orders have to provide for all matters set out in the Schedule to the Act and should conform, as far as practicable, to the Model Standing Orders appended to the Industrial Employment (Standing Orders) Central Rules, 1946 (S.3). On receipt of the draft standing orders, the Certifying Officer is required to give full opportunity to the parties to raise objections, etc. (S.5). He can adjudicate upon the fairness or reasonableness of the provisions made in the draft standing orders (S.4). Any party aggrieved by the order of the Certifying Officer is entitled to prefer an appeal to the specified Appellate Authority (S.6). The standing orders finally certified under this Act are not liable to modification,
except on agreement between the employers and the workmen, until the expiry of six months from the date on which the standing orders or the last modification thereof came into operation (S.10).

The certified standing orders shall be prominently posted by the employer in English and in the language understood by the majority of the workmen on special notice boards to be maintained for the purpose at or near the entrance through which the majority of the workmen enter the establishment, and in all the departments where they work (S.9).

Notwithstanding the above procedure, as a result of enforcement of the Industrial Employment (Standing Orders) Amendment Act, 1963, with effect from the 23rd December, 1963, the model standing orders prescribed by the appropriate Government now become statutorily applicable to all industrial establishments covered by the I.E. (S.O.) Act, 1946, until their own standing orders are actually certified by the Certifying Officer concerned (S.12-A).

Extension of the Act in the States: The Act empowers the appropriate Government to extend the Act to any class or classes of industrial establishments and also to exempt (S.14), either conditionally or unconditionally, any class or classes of establishments. The Government of Gujarat has extended the Act to all establishments employing hundred workers or more.
Matters to be provided in the Standing Orders: (The Schedule to the Act):

(i) The classification of workmen, e.g., whether permanent, temporary, apprentices, probationers, or budlis.

(ii) Manner of intimating to the workmen, periods and hours of work, holidays, pay days and wage rates.

(iii) Shift working.

(iv) Attendance and late coming.

(v) Conditions of procedure in applying for, and the authority which may grant, leave and holidays.

(vi) Requirements to enter the premises by certain gates and liability to search.

(vii) Closing and reopening of sections of the industrial establishments, temporary stoppages of work, and the rights and liabilities of the employer and workmen arising therefrom.

(viii) Termination of employment, and the notice thereof to be given, by the employer and workmen.

Note: Termination of employment includes retirement from service by superannuation on attaining the prescribed age, or on completing the prescribed period of service.

(ix) Suspension or dismissal for misconduct and acts or omissions which constitute misconduct.

(x) Means of redress for workmen against unfair treatment or wrongful exactions by the employer or his agents or servants.

(xi) Any other matter which may be prescribed.

Interpretation of Standing Orders: As regards the application or interpretation of standing orders, the Act provides that any
employer or employee may refer the question to any of the Labour Courts constituted under the Industrial Disputes Act, 1947, to whom such powers have been given by the appropriate Government. Such Courts are required to give an opportunity for hearing the parties concerned and give their decisions which will be final and binding on the parties.

**Penalties:** If an employer fails to submit draft Standing Orders under S.3 or modifies his Standing Orders, otherwise than in accordance with S.10, he can be fined up to Rs.5000; and, in the case of a continuing offence, punished with a further fine of up to Rs.200/- for every day during which the default continues. If the employer acts in contravention of the Standing Orders he can be fined up to Rs.100/- and, for continuing the offence, up to Rs.25/- per day. However, the previous sanction of the Central or State Government, as the case may be, is required for prosecution (S.13).

**(C) INDUSTRIAL DISPUTES ACT, 1947**

**(i) The Gist:** The Industrial Disputes Act, 1947, embodies all the important provisions of Rule 81A of the Defence of India Rules (enforced during the Second World War). It (a) provides for the establishment of a permanent machinery for the settlement of disputes in the shape of works Committee, Conciliation Officers and Industrial Tribunals, and (b) makes an award of a Tribunal or any settlement brought by the Conciliator binding on the parties and legally enforceable. It is applicable to all
industries\textsuperscript{2} and workmen employed therein and seeks the prevention and settlement of industrial disputes in such undertaking through conciliation, arbitration and adjudication. Apart from providing a machinery for the settlement of industrial disputes, it also seeks to prohibit strikes and lock-outs during the pendency of conciliation and adjudication proceedings. It creates authorities for conciliation and adjudication purposes and lays down their functions as well as methods by which they will be constituted. It provides the procedure of referring a dispute to various authorities and the manner in which they will proceed to settle disputes. Further, the Act prohibits certain types of strikes and lock-outs and specifies

2. "Industry" has been defined in the Act as any business, trade undertaking, manufacture or calling of employers and includes "any calling employment, handicrafts or industrial occupation or avocation of workmen." \textsuperscript{52}(I) IDAct.

In a judgement of far-reaching importance and implications the Supreme Court gave, on 21 February, 1978, a wide amplitude to the meaning of the word "Industry" so as to bring within its scope clubs, educational and research institutions and charitable projects, and laid down four 'tests' to decide the applicabilities of the Industrial Disputes Act to them. Bangalore Water Supply W. A. Rajappa, A.I.R. 1978 (SC), p.578. These are:

a) Where a systematic activity is organised by cooperation between the employers and the employees for production and/or distribution of goods and services collected to satisfy human wants and wishes (not spiritual or religious but inclusive of material change or services geared to celestial bliss, namely the making on a large scale of 'prasad' or food), prima facie there is an 'industry' in that enterprise.

b) Absence of profit motives or gainful objective is irrelevant, be the venture in the public, joint or private or any other sector.

c) The true focus is functional, and the decisive test is the nature of the activity with special emphasis on the employer-employee-\textit{relations}.

d) If the organisation is a trade or business, it does not cease to be one because of philanthropy animating the undertaking.
the procedure and duration of the compensation on 'lay-off' and 'retrenchment'. The latest amendment (Chapter VB of the Act) places restrain on the employer's power to 'lay-off' or retrench a worker or to impose "closure" — a reference has first to be made to an authority designated for the purpose.

(ii) Authorities: The Act creates certain authorities or agencies for prevention or settlement of industrial disputes:

1. Works Committees (S.3):

Scope: The Works Committee is to be set up at the plant level. An industrial undertaking employing 100 or more workmen is required to constitute a Works Committee in such a manner that the representatives of the workmen are not less than those of the employers, provided that its total strength does not exceed 20.

Functions: The duties of the Works Committee are to take steps to promote and secure good employer-employee relationship and decrease difference of opinion between the two parties towards bringing about conciliation between them. It is an advisory body. Its functions are vague and can be said to include all aspects of employer-employee relationships.

Constitution: As laid down in the Industrial Disputes (Central) Rules, 1957 (Part VII), it is the employer who should proceed to constitute the Committee, and should consult at all stages the recognised union, if one exists in the undertaking. The employer should fix the total number of members by giving allowance to various categories of groups and classes of
workmen engaged in the employment. He will then allot seats to his nominees and workers' representatives in equal number. Persons nominated as the employer's representatives should be those who are connected with the undertaking and have day to day contact with workmen. The workers' representatives shall be elected departmentally by workers. The procedure as laid down requires the employer to enquire from the registered trade union/s, if any, the total membership and its distribution in different departments. If the union/s fail to respond within a month, the employer has a discretion to allot seats to the various departments and proceed with the election. However, if the union/s respond and if it is found that the total number of union members in the undertaking does not exceed half of its total force, the employer has to proceed differently. He will then divide the workers' seats into two categories: (i) those reserved for union members, and (ii) those for non-members; the union members will vote for member candidates for the union's quota, and the non-members shall vote for the open seats.

The candidates for election should be persons of a minimum age of 19 years and have at least one year's service in the undertaking concerned. A voter should be at least 18 years old and have at least six months' service in the undertaking. The voting has all the features of the Parliamentary election process and is by secret ballot.
Officers: The Works Committee shall have a President, a Vice-President, a Secretary and a Joint Secretary. The President and the Vice-President will always be the employer's nominee and the workers' representative respectively. The other two offices will be held by the parties by yearly rotation. The tenure of office of the Works Committee shall be two years.

The scope of the Works Committee as defined in S.3(2) of the I.D. Act, 1947, is vague and its functions are limited; so also its impact. A survey of similar committees in Western countries reveals that their functions are more exhaustive and specific. Besides health, safety, welfare, human relations, the committee advises on a number of technical matters and keeps itself posted with the undertaking's position, trade, sale and accounting sheets. This gives a greater recognition and satisfaction to members to enable them to formulate their opinions more objectively.

Further, the relationship between a Works Committee and a Trade Union in an undertaking has not been defined. More often than not a TU considers the Works Committee as its rival. It is necessary that the place of the Works Committee in the undertaking's framework is carefully defined. Because of voting by secret ballot by all workers — unionised and non-unionised, at times, the recognised union is out-voted, creating serious difficulties.
Another weakness in the functioning of the Works Committee is that the distribution of seats among various categories and the allocation of personnel to different electoral groups are capable of causing friction.

2. Conciliation Officer (S.4): This is an agency or authority created for conciliation proceedings. The appropriate Government has been authorised to appoint one or more Conciliation Officers for mediating in and promoting the settlement of industrial disputes. A Conciliation Officer can be appointed either for a specified industry or for a specified area. Criticism has been levelled against some Conciliation Officers on the ground that they do not possess the experience necessary for a proper appreciation and understanding of the problems of industry while, belonging as they do, to the labour department, they are apt to make a pro-labour approach in the disputes.

3. Board of Conciliation (S.5): This authority created by the Act is simply an extension of the Conciliation Officer's work. Unlike a Conciliation Officer, the Board is not a permanent body and can be set up as and when the occasion arises. It comprises (i) of two or four members representing parties to the disputes in equal number, and (ii) a Chairman who has to be an independent person. The Board has the status of a Civil Court and issues summons and administers oaths. Such Boards are seldom set up in India.
4. Court of Inquiry (S.6): The idea of a Court of Inquiry was borrowed from the British Industrial Courts Act of 1919. Under the British Act, the Minister-in-charge can constitute a Court of Inquiry to inquire into and report on the causes and circumstances of any trade dispute/s together with its own recommendations.

Setting up of a Court of Inquiry is at the discretion of the appropriate Government. The Government can refer any single or more matters connected with or relevant to a dispute or can refer the whole of it to the Court. The Court can be set up irrespective of the consent of the parties to the dispute. Usually the Court of Inquiry comprises one person. In case it has more than one member, one of them will be nominated as Chairman.

5. Labour Court (S.7): The Labour Court is one of the adjudication authorities set up under the Act. It was introduced by amending Act in 1956. The setting up of a Labour Court is at the discretion of the Government. It is a one-man court presided over by a person who has held either a judicial position in India for not less than seven years or who has been a presiding officer of a Labour Court constituted under any State Act for not less than five years. The function of a Labour Court is to adjudicate on matters referred to it by the appropriate Government. Matters that could be referred to it are listed in Schedule II appended to the Act which includes: the propriety or legality of an order passed.
by an employer under the standing order; the application or interpretation of standing orders; discharge or dismissal of workmen including reinstatement or grant of relief to workmen wrongly dismissed, withdrawal of any customary concession or privilege, legality or otherwise of a strike or lock-out; all matters other than those provided in the Third Schedule appended to the Act.

6. Industrial Tribunals (S.7A) & National Tribunals (S.7B):

An Industrial Tribunal may be set up by the appropriate Government on a temporary or permanent basis for a specified dispute or for an industry as a whole. The tribunal comprises one person only. The qualification for appointment as Industrial Tribunal is that the person should have been or is a judge of High Court or has held the post of a Chairman of the Labour Appellate Tribunal for not less than two years.

Where the industrial dispute involves questions of national importance of such a nature that industrial establishments situated in more than one State are likely to be interested or affected by such dispute, the Central Government may set up a National Tribunal. It will also be a one-man Tribunal; the post is to be held by a person with qualifications similar to those specified in the case of a Tribunal. The Presiding Officers of Labour Courts, Tribunals or National Tribunals should be independent persons below the age of 65 with no interest in the industry whose disputes they were to hear.
Matters relating to wages, allowances, bonus, gratuity, provident fund, rules of discipline, rationalisation, retrenchment of workmen and closure of establishment come within the functions of the tribunals and the tribunals are to adjudicate matters referred to them by the Government. Assessors can be appointed by the Government to advise a tribunal in a proceeding before it. The idea is to make available to the tribunal expert knowledge on technical matters.

(iii) Duration and Enforceability of an Award: All awards remain in operation for a period of one year, in the first instance. But, the appropriate Government has power to extend the period of operation by any period not exceeding one year at a time, subject to the condition that the total period of operation of an award is not to exceed three years. The award continues to be in operation even after the expiry of the prescribed period unless when two months' notice of termination is given by either of the opposing parties. The appropriate Government can also refer for adjudication the issue for reducing the period of operation, if there is a material change in the circumstances. The Government can take this course either of its own accord or on the application of any party bound by the award. An award including an arbitration award becomes enforceable on the expiry of thirty days from the date of its publication. The appropriate Government or the Central Government, as the case may be, has also the power to make an order rejecting or modifying the award within 90 days from the date of its publication.
In such case the Government is required to lay the award before the legislature together with a copy of the order at the very first opportunity. If the Government does not reject or modify the award it becomes operative on the expiry of thirty days of its publication.

(iv) Position during Pendency of Proceedings: The Act as amended in 1956 provides that when an employer finds it necessary to proceed against any workmen in regard to any matter connected with the dispute, he may do so in accordance with the standing order applicable to the workman. If such action involves dismissal or discharge, the employer must pay the workman wages for one month and simultaneously apply to the proper authority for approval of such action. A limited number of representatives of the workers have, however, given protection in all matters whether connected with the dispute or otherwise.

(v) Penalties: In order to make the penalty provision different and ensure settlement of an award, the amended award makes no distinction between the first and the subsequent contraventions. Imprisonment extending to six months or fine or both may also be awarded for non-compliance; besides, by another enabling provision the courts are authorised to pay a part of the fine realised to the aggrieved party as compensation. The Act also prescribes penalty for other offences such as illegal strike, lock-out, disclosure of confidential information, etc.
(vi) Law on Strikes and Lock-outs: In a broad sense a strike is a collective stoppage of work by a group of employees of an undertaking in order to bring pressure to bear on those who depend on the sale or use of the product of this work. S. 2(g) of the Industrial Disputes Act of 1947 defines "strike" as "cessation of work by a body of persons employed in an industry acting in combination, or a concerted refusal or refusal under common understanding by any number of persons who are or have been so employed to continue work or to accept employment."

The definition of 'strike' thus postulates three main ingredients, viz., (1) ability to work; (2) cessation of work or refusal to do work; and (3) a combination of concerted action. The words 'acting in combination' means that the body of persons employed must generally be active in combination with minds directed to a particular end, namely, the cessation of work. It is not enough to show that the body of persons was acting conjointly with a certain common object, the fulfilment of which would have been a direct effect of bringing about cessation of work. It must be shown that cessation of work was the common object of the body of persons who acted as a result of common understanding arrived at beforehand to act in that manner. The words 'refusal to work' imply that there is a defiance of the employer's authority. It is not strike if a man refuses to take up work under conditions which he feels will injure his health or be extremely displeasing. Similarly, mere absence from work does not amount to taking part in a strike.
Various judges and other authorities have delivered judgements as to whether particular forms of interruptions of work amount to a strike or not. Where it is proved that the workers have slowed down but have not stopped work, it will amount to a strike. It has also been held that a stay-in strike has in it an element of trespass. A worker is entitled to enter a factory on condition that he would work. He has no right to enter the factory (a) if he has no intention to work, and (b) if he does so without the consent of the employer; it is a trespass and he is guilty of it. Similarly, "sit down" strike has not only an element of trespass but also criminal intimidation and threat. When the intention to work is absent, the relationship between the employer and employee remains in a state of suspended animation. It has also been held that workers will not be entitled to any remuneration for the period they were on strike that was illegal. (They will be entitled to receive normal wages during the period of the legal strike.) Thus, sit down strike, hunger strike, token strike, etc., are various forms of strike and will be considered illegal if resorted to for an illegal cause.

(vii) Prohibition of Strike and Lock-outs:

* Specific Prohibition: Under S.10(3) the appropriate Government has been authorised to prohibit, by order, the continuance of any strike or lock-out in connection with a dispute, that has been referred to adjudication.
* General Prohibition: S.23 of the Act lays down instructions in regard to a general prohibition of strikes and lock-outs. It requires that no workmen employed in any industrial undertaking shall go on strike in breach of contract and no employer of any such workmen shall declare a lock-out: (i) during the pendency of conciliation proceedings before a Conciliation Officer or a Board of Conciliation and ten days after the conclusion of such proceedings, (ii) during the pendency of the proceedings before the Labour Court, Tribunal or National Tribunal, and two months after the conclusion of such proceedings, and (iii) during any period in which a settlement or an award is in operation in respect of any matters covered by the settlement or an award.

(viii) Illegal Strikes and Lock-outs: S.24 lays down the types of strikes and lock-outs that would be illegal. Any strike or lock-out will be illegal if it is continued in contravention of Section 10(3), for example, where, while referring the dispute to adjudication, the appropriate Government ordered discontinuance of the strike or lock-out that existed on the date of such reference. Any strike or lock-out will also be illegal if it has been declared in a public utility undertaking without following the procedural requirement as specified in S.22 of the Act. A notice has to be given to the employer within six weeks before striking; within fourteen days of giving such notice the strike cannot take place, nor can it take place before the expiry of the date of strike mentioned in the notice. Similar constraints
are also imposed on the employers for declaring a lock-out in a public utility undertaking. However, a strike or a lock-out that existed in respect of a dispute before such a dispute was referred to a Board or Tribunal and which has not been prohibited under S.10(3), as well as a strike that is consequent upon a lock-out: and vice-versa, will not be illegal.

S.2(1) of the Act defines a lock-out: as "closing of a place of employment, or the suspension of the work, or the refusal by an employer to continue to employ any number of persons employed by him." The distinction between a lock-out and strike should be understood clearly. Like a strike, a lock-out also constitutes the suspension of the employee's service. But the distinction is said to arise from the fact that the employers, and not the employees, are responsible for the act of suspension. In both the cases a labour controversy exists which is deemed intolerable by one of the parties. Lock-out indicates that the employer, rather than his employees, has brought the matter to an issue. A lock-out does not mean discontinuance of a business. It only means closing down of a place of business. It is mere suspension of work due to the refusal by the employer to allow his workmen to attend to their work while they are in service.

(ix) Lay-off: S.2 (kkk) of the Act defines lay-off. It means "the failure, refusal or inability of an employer on account of shortage of coal and power or raw material or the accumulation of stocks or the break down of machinery or for
any other reason to give employment to a workmen whose name is borne on the muster rolls of the industrial establishment who has not been retrenched." S.25(A to E) of the Act deals with the detailed implementation of lay-off.

The lay-off provisions of the Act are applicable to those factories, mines and plantation [as defined by and covered under S.2(m) of Factories Act, 1948; S.2(j) of Mines Act of 1952; and S.2(f) of Plantation Labour Act of 1951, respectively] wherein 50 or more workmen on an average per working day have been employed in the preceding calendar month and which are not of seasonal character.

In industrial undertakings where lay-off provisions apply, only those workmen will be entitled to lay-off compensation who are borne on the muster rolls of the establishment and who are not 'budli' or casual workers and who have completed one year of continuous service with the employer concerned. (A 'budli' workman means a workman who is employed in an industrial establishment in the place of another workmen whose name is borne on the muster rolls of the establishment but shall cease to be regarded as such for the purpose of this Section if he has completed one year's continuous service in the establishment.) It means that, during the calendar period of 12 months, a worker must have actually worked in the establishment for not less than 240 days. However the following contingencies, if these occur, will not be considered break in the continuity of service: Number of days by which a workman
has been laid-off, number of days of leave with full wages earned during the preceding year, maternity leave not exceeding 12 weeks in case of woman workers, and any leave permitted under Standing Orders or under any law or award, which will include sick or certified leave, authorised absence, etc. Any single interruption in the employment not exceeding ten days of un-authorised absence will also not result in a break or discontinuity of employment.

Whenever a workman, covered by the provisions mentioned above, is laid-off, he shall be entitled to lay-off compensation. Such compensation is payable for 45 days during any period of 12 months at the rate of \( \frac{1}{2} \) of basic wages plus full dearness allowance. Lay-off compensation is not payable to a workman who is laid-off for weekly holidays that may fall within a period of lay-off; if he refuses to accept any alternative employment in the same establishment, in which he has been laid-off, or in any other establishment belonging to the same employer within a radius of 5 miles and which does not call for any special skill and offers the same wages, if he does not present himself for work at the establishment at the appointed time during normal working hours at least once a day, and if such laying-off is due to a strike or slowing down of production on the part of the workmen working in another part of the establishment. However, if during any period of twelve months, the workman is laid-off for more than 45 days and the lay-off after the expiry of 45 days comprises a continuous period of one week or more, the workman,
unless there is any agreement to the contrary between him and the employer, may be paid for all the days comprised in every such subsequent period of one week or more at the rate as specified above. Where a workman has been paid lay-off compensation for more than 45 days and is retrenched, the employer may deduct the amounts so paid out of retrenchment compensation payable to him.

(x) Retrenchment: S.2(oo) defines retrenchment as meaning "the termination by the employer of the service of the workman for any reason whatsoever otherwise than as punishment inflicted by way of disciplinary action". Voluntary retrenchment, superannuation, termination of employment on grounds of ill health, etc., do not amount to retrenchment. The Supreme Court has held that even termination of service by eflux of time (e.g., employment for a period of contract) will constitute retrenchment. (Vide: The Hindustan Steel Limited Vs. State of Orissa and others: Civil Appeal No.1580 of 1970).

No workman who has put in one year's continuous service with an employer will be retrenched by the latter without giving him one month's notice in writing and indicating reasons for retrenchment or without having paid him one month's pay in lieu of notice. A retrenched workman will also be paid at the rate of 15 days' average pay for every completed years of service.

It has been laid down that no workman shall claim retrenchment compensation merely because of the fact that there has been a change of employers, provided the service of
the workman has not been interrupted by reason of the transfer and the terms of employment have not become unfavourable to him. The new employer will be legally liable to pay to a workman in the event of his retrenchment on the basis of the fact that his service has been continuous and has not been interrupted by a change of employer. Further, it has also been laid down that in case of vacancies occurring in the establishment, retrenched people will get preference over others. In retrenching a workman the principle "first come, last go" will be followed.

(xi) The Industrial Disputes (Amendment) Act, 1976: After the declaration of the Emergency, the number of strikes and lock-outs had declined sizeably. As, however, the recession still continued, to prevent hardships to workers and to maintain a higher tempo of production, the ID Act was amended in March, 1976, imposing some restrictions on the employer's right to lay-off, retrenchment and closure. Accordingly, if the employer employed 300 or more workmen, was now to seek prior approval of the authority designated by the appropriate Government by giving at least three months' notice before the intended closure. The reasons for lay-off, retrenchment and closure are also to be reported to the designated authority and its consent sought. There is also provision for restarting an undertaking closed down otherwise than for unavoidable circumstances beyond the control of the employer. Under this amendment, no workman who has been in continuous service for one year can be retrenched without giving him three months' notice in writing indicating the reasons for retrenchment.
This amendment proved fairly effective for a while, though the employers did not generally like it.

(D) BOMBAY INDUSTRIAL RELATIONS ACT, 1946

Scope and Object: The Act was passed in 1946 by the legislature of the former Province of Bombay. The State of Gujarat has continued its application. It is applicable to the following industries in Gujarat: Cotton Textile, Silk Textile, Staple Fibre Industry, Hosiery Industry, Electricity Generation & Distribution Units (except G.E.B.), Sugar Industry, and Co-operative Banks.

The principal object of the Act is to encourage collective bargaining as also to prevent illegal strikes and lockouts and to make provisions for lay-off and retrenchment compensation.

Trade Unions Under the Act: Under S. 3(39), any union of employees which is not registered under the Indian Trade Unions Act, 1926, has no standing under the Act.

(a) Registered Unions: Representatives, Qualified and Primary Unions: At any time there will be only one Registered Union in respect of any industry in any local area, on the principle that a larger union will supersede the smaller union. Any union with a membership of not less than 25% of the employees in any industry in any local area during the three months immediately preceding the date of its application will be entitled to be registered as a Representative Union for such industry, for such local area. In the absence of a Representative Union, any union with not less than 5% membership during
the three months immediately preceding the date of its application will be registered as a Qualified Union for the Industry for the local area. In the absence of both the Representative Union and Qualified Union, a Primary Union with membership of not less than 15% of the employees in the undertaking will be entitled to be registered provided it fulfils the conditions laid down in S. 23. A duty is imposed on such registered unions to submit periodical returns of its membership.

Cancellation and Re-registration: The Registrar is bound to cancel the registration of a union if the Industrial Court orders to do so or if its registration under the Indian Trade Unions Act, 1926 is cancelled. For other grounds of cancellation, including assisting the commencement or continuance of a strike which is held to be illegal, the Registrar shall cancel the registration, after holding such inquiry, if any, as he deems fit. Any union whose registration has been cancelled on the ground of fall in membership below the requisite minimum or of the occurrence of a mistake will be entitled to be registered under S. 17. But, if the registration is cancelled on other grounds, the union will not be entitled to apply for re-registration save with the permission of the State Government. An appeal shall lie against these orders of the Registrar under S. 20.

(b) Approved Unions: Except in the case of a Primary Union it is not necessary that a Registered Union shall be an Approved Union. The Approved Union must fulfil certain statutory obligations specified in S. 23, including the
obligation that it will not resort to strike, etc., unless the remedies under the Act are exhausted. It has conferred certain rights under S.25 and 26, including the right of inspecting any place where its members are employed, collecting union dues on the employer's premises and of legal aid in important proceedings.

Removal from Approved list: The Registrar is bound to remove the union from the approved list if its registration under the Indian Trade Union Act, 1926, is cancelled; in the case of enlistment under mistake, misrepresentation or fraud, and of failure to comply with the requisite conditions specified in S.23, he shall remove it after holding such inquiry, if any, as he deems fit.

Representation and Appearance on behalf of:
(a) Employers: The association of employers — or, in its absence, the representative determined in the prescribed manner — will be entitled to represent the employers and give or receive notices or intimation or appear on their behalf.

(b) Employees: The representative of employees entitled to act under S.30 shall represent the employees, except as provided under S. 32, 33 and 33A. The Labour Officer (LO) shall also be entitled to appear in any proceeding, except where the employees are represented by the Representative Union.

Representative of employees: The Representative Union is the representative of all the employees in the industry in the
particular local area, even if none of the employees affected by the change belong to it. In its absence, the Qualified or the Primary Union will be entitled to act as the representative of employees if a majority of the employees affected by the change belongs to it, or when it is authorised by the employees concerned to represent them even though such employees are not its members. When there is no Registered Union entitled to act as the representative of employees, the LO, if authorised by the employees or the elected representatives under S.28 — in order of preference, will be entitled to act as the representative of employees. Such annually elected representatives — or, if the number of employees in any occupation does not exceed ten, the employees themselves — may so act or they may authorise any Qualified or Primary Union to act instead of them. Lastly, when there are no elected representatives, the LO shall act as the representative of employees. Such representative of employees shall represent all the employees in the local area for the purposes of this Act.

Negotiation and Agreement: After discussion and negotiations between the employer and the representative of employees, the parties may arrive at an agreement under S.44 within seven days of the service of notice of change, special notice or intimation, or within the period mutually fixed by the parties for arriving at an agreement. Such agreement will then be signed and forwarded to the Registrar for registration and publication.
Conciliation and Settlement: Where no agreement is arrived at as mentioned above, the dispute shall be referred to conciliation by the party desiring the change within 15 days of the service of notice of change, special notice or intimation, or within one week of the period fixed for arriving at an agreement except in cases where arbitration is available or a notification is issued under S.114(2) making the agreement, settlement, submission or award in some other dispute binding in the case. If a settlement is arrived at, it will be signed and a copy will be forwarded to the Registrar for registration and publication. If the Conciliation fails to bring about a settlement, a report will be sent to the Government which may refer the dispute to a Board of Conciliation or publish the report. Such conciliation proceedings are deemed to have been completed (a) when the settlement is signed, or (b) submission is entered into, or (c) the report of failure of conciliation is published, or (d) when the time-limit fixed for completion of such proceedings under S.62 has expired. After ten days from the completion of the conciliation proceedings — but within two months thereof — the desired change can be effected or enforced by direct action, except when the dispute is referred to arbitration.

Arbitration and Award: Under S.66, the parties to a conciliation proceedings, viz., the employer and a Registered Union which is the representative of employees or under S.58(6), entered into a written agreement to submit any present or future industrial dispute to the Arbitration of any person,
or of a Labour Court, or the Industrial Court. If no appoint-
ment of an arbitrator is possible, the dispute shall be refer-
red by the Labour Court or the Industrial Court. The State
Government may also, under S. 72, refer any industrial dispute
between employees and employees to arbitration of a Labour
Court or the Industrial Court. In case of other industrial
disputes where consequences are likely to ensue, or the dispute
is not likely to be settled by other means, or it is in the
public interest to do so, they may be referred to Compulsory
Arbitration of the Industrial Court alone. An employer or a
Registered Union, which is representative of the employees,
or an Approved Union may refer the dispute to the arbitration
of the Industrial Court subject to the restriction laid down
in S.73A. After such arbitration, no conciliation proceedings
can be commenced or continued under S.64. Such proceedings
will be deemed to have been completed when the award is
published.

Changes to be proposed in a Joint Committee: The Act has
provided another substitute for a notice of change for carrying
out discussion and negotiations by introducing the device of
Joint Committees. Wherever a Representative Union exists or
where more than 15% of the employees in any undertaking are
members of a Registered Union, a Joint Committee will be set
up, if the employer and the registered union so agree. Any
change other than a change in any Standing Order can be
proposed in such a Joint Committee. If a decision is arrived
at, the agreement will be signed, registered and published
under S.52(1). If no such agreement is arrived at, within a
week of the decision by the Joint Committee, conciliation proceedings will be commenced under S.52(2) by sending a special intimation. The Labour Court also may be moved by a special application under S.52(3) in the matters related to Standing Orders.

**Labour Courts:** The Act provides for the constitution of Labour Courts having jurisdiction in one or more local areas. A Labour Court will have powers to decide: (i) disputes regarding legality or the propriety of orders passed under the Standing Orders, (ii) disputes regarding the application or interpretation of the Standing Orders, (iii) industrial disputes referred to arbitration and (iv) whether a strike, lock-out or any change is illegal under the Act. It can require the employer to withdraw an illegal change or carry out any change, provided it is a matter in issue before it. It has powers to try offences under the Act, committed within its jurisdiction. It can order reinstatement, payment of wages and compensation in certain cases of dismissal, discharge, removal, retrenchment, termination of service or suspension of an employee.

An appeal can be preferred from Labour Court to Industrial Court within 30 days but it cannot be made in Civil or Criminal Courts. Appeals also can't be made against awards of Labour Court (as an arbitrator) and the adjudication of the Industrial Court about the legality of strikes and lockouts.
Wage Board: Wage Boards are bodies, constituted by the State Government, consisting of equal number of persons representing employers and employees, and such number of independent persons as the State Government nominates. The Wage Boards are neither purely judicial bodies, nor merely administrative agencies. The Chairman is an independent person, not connected with industry or the industrial disputes, appointed by the State Government.

The State Government may refer to a Wage Board, for decisions, disputes regarding the following items:

(a) Reduction intended to be permanent or semi-permanent in the number of persons employed or to be employed in any occupation or process or department or department or in a shift, not due to force majeure.

(b) Permanent or semi-permanent increase in the number of persons employed or to be employed in any occupation or department or departments.

(c) Rationalisation or other efficiency system of work.

(d) Wages including the period and mode of payment.

(e) Hours of work and rest intervals.

An employee or a Registered Union, which is a representative of employees and also an Approved Union, may refer industrial disputes of the above mentioned nature, except a dispute in respect of bonus, to the Wage Board, for decisions. Such reference is subject to restrictions laid down in S.86CC.

When a dispute is pending before a Wage Board, it cannot be commenced or continued before any other authority under the Act.
There lies an appeal to the Industrial Court against the decision of the Wage Board.

The order or the decision of the Wage Board can be reviewed by itself for any sufficient reason, on the application for review by employers employing at least 15% of the concerned employees, or by employees representing at least 15% of the concerned employees, or by the State Government on its own. However, such an application can be made only after the lapse of one year from the date of the decision or last review.

The Wage Board is subject to the superintendence of the Industrial Court.

Powers of Industrial Courts: These are enumerated below in brief:

(1) To decide appeals against the orders passed by the Registrar in regard to (a) registration, or its refusal, cancellation or re-registration of a union; (b) inclusion of a union in the approved list or its removal from such list under S.24A, and (c) refusal to register an agreement entered into after a notice of change under S.44.

(2) To decide appeals against the decisions of the Commissioner of Labour regarding setting a Standing Order or alteration thereof to review its own decision regarding a Standing Order.
(3) To decide disputes regarding any change desired by any employer or Representative Union in respect of any industrial matter.*

(4) To decide disputes referred to it during conciliation proceedings.

(5) To decide disputes referred to it in accordance with submission registered under S. 66.

(6) To decide all matters in the nature of questions of law referred to it by a conciliator or a Board or an arbitrator.

(7) To decide disputes referred to it under the following Sections:

(a) S.71, by the State Government — where no provision for appointment of an arbitrator is made in any submission.

(b) S.72, in disputes between employees and employers.

(c) S.73, when the State Government refers an industrial dispute for arbitration.

(d) S.73A, where a dispute is referred for arbitration by it, by an employer or by a representative of employees which is also an Approved Union.

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* 1. Adequacy and quality of materials and equipments applied to the workers.
2. Assignment of work and transfer of workers within the establishment.
3. Health, safety and welfare of employees.
4. Matters relating to TU membership, organisation and levies.
6. Employment including: (i) reinstatement and recruitment; (ii) unemployment of persons previously employed in the industry concerned (Schedule III).
(8) To decide any point of law referred to a Wage Board for its decision or a point of law referred to by a Civil or Criminal Court, or by the State Government.

(9) To decide questions relating to the interpretation of this Act or the Rules made thereunder, or of the Standing Orders referred to it.

(10) To decide references made by the State Government for a declaration, whether any proposed strike, lock-out, closure or stoppage is illegal.

(11) To modify an Award under §116A, where an application is made by parties bound by the Award under the circumstances laid down in the Section.

(12) To decide such other matters as may be referred to it under this Act or the Rules made thereunder, or under any law for the time being in force.

(13) To decide appeals against the decision of a Labour Court.

(14) To decide appeals made from an order or decision of the Wage Board.

**Illegal Strikes and Lock-outs:** Before any cessation of work or a closure of the undertaking can be declared illegal, it must be proved that such action amounts to a strike or lock-out under §3(36) or (24). The essential condition is that such cessation of work or closure must be in consequence of an industrial dispute. Another essential ingredient in case of a strike is concerted action or simultaneous stoppage of
work under a common undertaking. Similarly, in the case of a lock-out, the closure must be intended to compel the acceptance of the term or condition affecting employment by those very employees or other employees of the employer or any other employer.

Any strike or lock-out commenced or continued in the following circumstances is illegal: (i) Where it relates to an industrial matter in Schedule III, or I (which is regulated by a Standing Order). (ii) Where it is resorted to without giving a notice of change. (iii) Where it is resorted to before the commencement or completion of conciliation proceedings or before the lapse of two months of their completion. (iv) Where arbitration is available, it is resorted to before the completion of the arbitration proceedings. (v) Where it is resorted to in contravention of the terms of a settlement, award or registered agreement. Also, the workers cannot resort to a strike only for the reason that an illegal change is made or that the Standing Orders are not carried out. Direct action is prohibited in the cases of disputes involving routine issues relating to matters in Schedule I or III, or in contravention of a binding settlement, award or registered agreement, or where arbitration is available. In other cases, the right of direct action is only postponed till the completion of conciliation proceedings — ten days after which and within two months it can be exercised. For decision whether a strike or lock-out is illegal, an application is to be made.
to a Labour Court within three months of its commencement. No appeal lies against this decision. The State Government may make reference to the Industrial Court, to declare whether any proposed strike or lock-out is illegal or not.

**Penalties:** S.102 and 103 provide for penalties for commencement or continuance of an illegal lock-out and illegal strike, and S.104 provides for punishment for instigating, siding or assisting such illegal action. Illegal acts committed, whether before or after the declaration of illegality, are made penal. The decision of illegality is necessary only for starting the prosecution, and not for rendering the action illegal. Under S.102 and 103, the illegal action must have actually commenced, while under S.104 instigation, etc., thereof is punishable even if the action is merely intended and is not resorted to and the Industrial Court declares it to be illegal under S.99. Continuance is punishable only after the date of conviction for commencement of the illegal action, if 48 hours have elapsed after the decision regarding illegality. It is not that all illegal strikes or lock-outs are punishable. The employees are not liable for penalty: (i) when they have given 14 days' notice before going on strike and have not gone on strike before the expiry of such notice period or have gone on strike before the expiry of six weeks from the completion of notice period and (ii) if the strike is declared illegal by the Labour Court or Industrial Court they resume the work before the expiry of 48 hours of such declaration.[S.97(3)]
Also, under the proviso to S.104, instigation etc., is not punishable if a reasonable doubt exists at the time of the commencement of the offence about the legality of the action. Under this Act, if the management judges for themselves the illegality of the action and takes disciplinary action by way of suspension or dismissal in case of a strike, which has not been held to be illegal, there will be victimization. In such a case, under S.101(2), it will be also victimization to prevent employees from returning to work unless they have refused arbitration, when offered, or if they have failed to resume work within a month of the declaration by the Government that the strike has ended.

Representation of the Employees: This head can be divided into 3 parts: (a) The right of the Representative Union to represent the employees in an industry in a particular area of which the union is representative. (b) Permission to an employee to represent himself and appear in proceedings as well as his right to do so. (c) The right of an employee to be represented by any other person or a legal practitioner.

(a) Right of Representative Union: A representative union enjoys a pre-eminent position under this Act. Where there is such a union, no other union can come into the picture in any proceedings under this Act. No employee shall be allowed to appear or act in any proceeding under this Act except through the representative of employees. But, this general principle is subject to the expectations laid down in S.32, 33 and 33A.
The representatives of the employees are of the following categories:

(i) A Representative Union for such industry.
(ii) A Qualified or Primary Union of which the majority of employees directly affected by the change concerned are members.
(iii) Any Qualified or Primary Union in respect of such industry authorised in the prescribed manner in that behalf by the employees concerned.
(iv) The Labour Officer, if authorised by the employees concerned.
(v) The persons elected by the employees in accordance with the provisions of S.26, or where the proviso to sub-section (1) thereof applies, the employees themselves.
(vi) The Labour Officer (in his official capacity).

The words "is entitled to appear and act" in S.30 enable the representative of employees to bind the employees by any award which may be passed. It does not need to obtain any authorisation from employees for so appearing. The words clearly indicate that the representative of the employees is entitled both to appear and to act without specific authorisation in that behalf by the employees.

Though the representatives of the employees and particularly a Representative Union have the exclusive right to represent and appear on behalf of the employees, there are some exceptions to or modifications of this Rule that are not detailed out here.
(b) Employees permitted to appear: When any proceedings is pending before the several authorities under the Act (except conciliation proceedings), such authority may permit an employee to appear provided such authority considers it expedient for the ends of justice, provided (i) that, where the Representative Union has appeared in such proceedings, no such permission shall be granted to an employee, and (ii) that, in any proceedings before a Labour Court or the Industrial Court in which the legality or propriety of an order of dismissal, discharge removal, retrenchment, termination of service or suspension of an employee is under consideration, such employee may be permitted to appear before the concerned Court notwithstanding the fact that a Representative Union has appeared.

(c) Right to appear through any other person: An employee entitled or permitted to appear or a Representative Union so entitled may appear through any other person in the proceedings: (a) before the Industrial Court, (b) before a Wage Board, (c) before a Labour Court, for deciding whether a strike, lockout, closure or stoppage or change or an order passed by an employer under the Standing Orders is illegal; and, (d) in such other proceedings as the Industrial Court may, on application made in that behalf, direct.

Dispute between Employees and Employees: When there is a dispute between employees and employees and there is a
reference under S.72, all persons parties to the dispute, shall be entitled to appear and act in the proceedings before such Court. If the number of employees on either side exceeds five, then such employees may elect two representatives to appear and act for them. But in this case too, a Representative Union may appear and be heard if it so desires, through an application to the Court.