INTERNATIONAL LABOUR OFFICE
BRANCH OFFICE, NEW DELHI

Industrial and Labour Developments in May-August 1968

N.B. Each Section of this report may be taken out separately.

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11. Political Situation and Administrative Action

INDIA: May-August 1968

28th Session of the Standing Labour Committee held at NewDelhi on 18th July 1968

One of the subjects discussed by the Indian Labour Conference on April 1968 was 'Automation - Problems in L.I.C. and other establishments and general principles to be followed'. After a brief exchange of views, it was decided that a Special Session of the Indian Labour Conference should be convened in July this year to discuss the matter. Instead of calling the Indian Labour Conference, a Session (28th) of the Standing Labour Committee was held at NewDelhi on 18th July 1968.

Besides a paper prepared by the Ministry of Labour and Employment on Automation in India, the Employers' Federation of India, the I.N.T.U.C. and the A.I.T.U.C. also presented their papers on the subject to the Seminar.

Mr. Jaisukhlal Hathi, initiating the discussion, pointed out that in many developed countries automation had augmented production and productivity, raised the national dividend and increased the material wellbeing and prosperity of people. The main consideration for India should be whether Automation could not be made to subserve the same ends and whether its potential for harmful effects on Society could not be obviated by adequate and timely measures. Mr. Hathi pointed out that it had been agreed at previous Conferences on the subject that resource to automation should be selective and that the model agreement on rationalization evolved by the Indian Labour Conference in 1967 should govern its introduction and operation. He also recalled that the model agreement laid down, that there should be no retrenchment or loss of earnings of existing employees and that there should be an equitable sharing of the benefits of rationalization as between the Community, the employer and the worker. It also called for prior consultation with the trade unions before any changes were introduced.

On behalf of the Workers' representatives, it was stated that since the country had an enormous volume of unemployment and was short of technological and c apital recourses, the general orientation of policy should be against automation. Exceptions could, however, be permitted in special circumstances, when there was a compulsion for introducing automation. What constituted such a compulsion and the conditions under which such exceptions might be permissible had to be spelt out in detail. A small working group of the Standing Labour Committee might be constituted for laying down the necessary guidelines. Experts might be associated with this Working group and the guidelines formulated by the working group should be placed before the Standing Labour Committee of the Indian Labour Conference for final approval. Pending formulation of such guidelines there should be a freeze on automation. Where it had already been introduced employers should be asked to desist from the use of automatic machinery.

The Employers' representatives were of the view that the very largeness and the complicated nature of the operations of some Concerns made computerisation a necessity in the interest of efficient functioning. It was emphasised that automation eventually created more employment within the economy. The real question for consideration, therefore, should be introduced or not but what measures could be taken to deal with the problems of labour displacement that might arise. It was not desirable that in a technological age India should stay away from the main stream of progress and where industries had to compete with international market, introduction of automation might be almost imperative. It was the employers' view that fears of large scale displacement of labour were unwarranted as automatic processes had been introduced only in a few establishments and the existing resources available to industry would not enable it to introduce automation on a large scale. In any case, when no retrenchment was involved and when the employers and the Union at the plant level were agreed there should be no objection to the installation of computers.

The Labour Minister of Maharashtra suggested that a tripartite Sub-Committee of the S.L.C. should be constituted at the Centre for laying down policy guidelines in respect of introduction of Automation. This Committee should be assisted by experts and should undertake periodical review of the general effects of automation and study how the policy guidelines are working in practice.

The Chairman, Mr. Hathi stated that the view expressed had been noted and would be taken into account by Government in arriving at a decision on the subject.

(Press release received from the Ministry of Labour and Employment)

CHAPTER 2. INTERNATIONAL AND NATIONAL ORGANISATIONS

INDIA: MAY - AUGUST 1968

28. Employers' Organisations

I.L.O. Director General inaugurates Seminar on Job Security and Recognition of Trade Unions, New Delhi, 27-28 August 1968.

A seminar on "Job Security and Recognition of Trade Unions organised by the Council of Indian Employers was held on 27-28 August 1968 at New Delhi. The seminar was inaugurated by Mr. David A. Morse and attended by various employers' representatives from all over India. The Director of this office, Mr. P.M. Menon attended by special invitation.

Inaugural address:

Mr. Morse in his address said that last 50 years had been years of constant effort on the part of the ILO to promote the dignity and welfare of men through international cooperation of government, employer and worker representatives from independent and sovereign countries. These efforts have been limited by political, economic and social conditions within each nation and by the existence of certain national facts of life which were not easy to change and which sometimes went counter to the basic objections of the I.L.O. He said the experience gained by the I.L.O. so far was clearly indicative of the fact that it would only be through operation of goodwill in all countries that one could achieve even slowly and painfully the aim of providing dignity, welfare and the security of man. It was also realised that economic growth and social progress go hand in hand and that one of the conditions for the growth was the existence of sound industrial relations.

Without this the pace of growth will be disturbed and retarded, and neither the worker nor the employer could find fulfilment of his aspirations.

Regarding the essential ingredients of Constructive Labour Relations policy, Mr. Morse said that there were certain simple truths which were easy to state but what was much more difficult was a practical means for achieving a new pattern for industrial relations that will stand the strains imposed by the technical changes taking place in both developing and industrialised economies. The I. L.O's role in this search was to provide a forum and a medium, through which ideas may take shape and be formulated into guidelines for practical action. There were an infinite variety of ways of achieving stable and constructive industrial relations.

Mr. Morse then dealt upon the subject of trade union recognition. He said that the trade union recognition was the corollary to freedom of association and that was the means whereby this right was translated into practical effectiveness for the social advancement of the workers. Union recognition did not necessarily mean placing all unions on equal footing, as soon as they were formed and registered and whatever the differences between them might be. He was of the opinion that in cases where the existence of the large number and variety of unions gave rise to difficulties with regard to collective bargaining, it was quite justiffable, on grounds of equity, to grant all recognition to the most representative unions. A vital prerequisite, however was that the criteria of representativeness or objectives were established in advance, along with agreed recognition procedures. Freedom to form and join unions without fear of discremination because of trade union membership or activity, and the establishment of objective criteria for trade union recognition, he added, formed the springboard for dynamic trade union action for the improvement of working conditions and the standard of living of workers, through collective bargaining.

Referring to the issue of Job Security, Mr. Morse said that no worker should be dismissed without a valid reason and that the procedure for appeal against unjustifed dismissal should be made available to him. Today it was increasingly being realized that merely giving protection to workers in the event of loss of job was insufficient as a means of dealing with rapid industrial change under the pressure of increasing productivity and technological change. Countries which sought to achieve rapid industrial progress were also developing their attention to the adjustment of workers to new situations in keeping with the best principles of social welfare. This involved new thinking concerning retraining, broadening of education, income maintenance during periods of reconversion and an imaginative approach to the question of adaptation to change.

(Background papers prepared by the Council of Indian Employers on the two topics of the Seminar are included as annexures to this Report).

CHAPTER 3. ECONOMIC QUESTIONS.

India - May-August 1968

34. Economic Planning Control and Development

34. Allocations made by Planning Commission for 1968-69

The Planning Commission has provided for a total outlay of Rs 5390 million for public sector industries in 1968-69 of which 94 percent is ear-marked for continuing projects. The Commission has decided that no new major industrial project should be taken up in the public sector during the current financial year. Some token provision have been made for the Foundry Forge Project in Wardha. Among the other projects allowed during the year are the expansion of the Trombay Fertilizer, the Sindri Rationalization Scheme, the Co-operative Fertilizer Unit at Kandla, the Gujrat Aromatics Projects and the Textile Corporation.

The Commission has allocated larger outlay for Central Sector but has reduced the provision for State Government Industries by about 50 million rupees. Out of the total provision of 5,400 million, the outlay for the Centre is Rupees 5,060 million and that for the States Rupees 320 million. About 30 percent of the total outlay of Rupees 5,400 million for public sector industries has been ear-marked for steel projects. A sizable portion of this will be absorbed by the Bokaro Steel Project.

Among others, a sum of Rupees 710 million is allocated to heavy engineering and machine building industries, Rupees 873.0 million for oil exploration and refinning, Rupees 690 million to fertilizers, Rupees 240 million to coal and lignite and Rupees 166.0 million to non-ferrous metals. A provision of Rupees 350 million has been made for supporting the activities of financing institutions.

The Commission feels that 1968-69 will witness a turning point in industrial growth. They forecast significant additions to capacity and production in several industries this year as a result of the completion of schemes taken up earlier and better prospects for availibility of raw materials and demand growth.

(The Hindustan Times, 9 July 1968)

36. Wages

Madras: Revised Minimum Wages Fixed for Employment in Cinckona Plantations.

In exercise of the powers conferred under the Minimum Wages Act 1948, the Government of Madras has fixed the minimum rates of wages for employment in Cinckona Plantations.

The Schedule

Class of Employees in Cinckona Plantations (1)	All inclusive of minimum daily wages (2)
Grade I	Rs. 2.00
Grade II	Rs. 1.50
Adolescent	Rs. 1.25
Children	Rs. 0.95

Wherever wage periods are fixed as weekly, fortnightly or monthly, the rates of minimum wages for such wage periods shall be calculated by multiplying the daily rates of minimum rates of wages fixed above by the number of working days in the week, fortnight or month, as the case may be.

Wherever employees are paid wages higher than the rates fixed above, they shall continue to get the benefit of higher rates of wages.

(G.O. No. 1686, Industries, Labour and Housing (Labour) 27th April 1968, Fort St. George Gazette Part II Section I, 19 June 1968: P P 1080.)

Madras: Revised Minimum Wages Fixed for Employment in Salt Pans

In exercise of the powers conferred under the Minimum Wages Act 1948, the Government of Madras, has fixed the following minimum rates of wages for employment in Salt Pans in Madras State from 1 June 1968.

Employment in Salt Pans

Class of Employees (1)	All inclusive minimum rates of wages (2) Rs
1) Workers engaged with operations, such as drying, cleaning, snaping, removal and transport of salt	
Grade I	2.50 per day
Grade II	2.25 per day
2) Maramathu	2.25 per day
3) Pumping Man	2.75 per day or 70 per mensum
4) Maistries	78 per mensum
5) Watchman	52 per mensum
6) Salt crushing	90 per mensum
7) Machine drivers	
7) Clerks	78 per mensum
8) Production of salt	0.25 passing per standard bag of 80 kilograms subject to a guaranted minimum wage of Rs. 2.50 per day
9) Weighing, bagging, and stitching and loading of salt Bags	5.25 per 100 bags of 75 to 80 kilograms each
10) Weighing, bagging, stitching and loading of salt	13.30 per 100 bags of 75 to 80 kilograms each
11) General Coolies	
Grade I	2.50 per day
Grade II	2.25 per day.

Note.

1) Children wherever employed shall be paid half the rates fixed above.

2) Wherever wage periods fixed vary, the wage shall be calculated for the wage period so fixed and paid, that is, where the wage period is fixed as a week, fortnight or month, the daily rates fixed above shall be multiplied by seven, fifteen or the number of days in the month respectively.

3) Wherever the wages are to be fixed by the day in respect of categories for which monthly rates have been fixed, the minimum rates of wages per day shall be calculated by dividing the monthly rates by the number of days in the month.

4) Where any category of workers are actually in receipt of higher rates of wages than the statutory minimum rates of wages fixed, they shall continue to get the benefit of the higher rates of wages.

(G.O.Ms No. 1966, Industries Labour and Housing (Labour) 17 May 1968: First St George Gazette Part II Section I, 22 May 1968 P.P: 883).

Central Government accepts Recommendations of Central Wage Board for Electricity Undertakings.

The Union Government have accepted the unanimous recommendations made by the Central Wage Board for Electricity Undertakings for the grant of interim relief to workers in electricity undertakings. The recommendations have been accepted subject to the following modifications:

1) The interim relief will be payable from 1 July 1967 instead of 1 January 1967 as recommended by the Board.

2) The recommendations will not apply to electricity undertakings run as Government departments.

3) Where relief has been given by way of increase in dearness allowance, after the contibution of the Wage Board, such relief could be adjusted against the relief recommended by the Board.

Following formulae was adopted by the Board for the grant of relief:

a) that the employees in receipt of total emoluments upto Rs. 110 per month should be given 20 per cent as interim relief subject to a maximum of Rs. 123.50.

b) that employees in receipt of total emoluments between Rs. 111 and Rs. 150 per months should be given Rs. 12.50 per month subject to a minimum of Rs. 124 and maximum of Rs. 158.50.

c) that employees in receipt of total emoluments between Rs. 150 and Rs. 200 per month should be given Rs. 7.50 per month subject to a minimum of Rs. 159 and maximum of Rs. 200.

d) that employees in receipt of total emoluments between Rs. 201 and 299 per month should be given Rs. 5 per month subject to a minimum of Rs. 207.

(The National Herald, 23 June 1968)

CHAPTER 4. PROBLEMS PECULIAR TO CERTAIN BRANCHES OF NATIONAL ECONOMY

INDIA - MAY-AUGUST 1968

41. Agriculture

Kerala Land Reforms Bill: More benefits for Tenants

The Kerala Land Reforms (Amendment) Bill, which has been gazetted by the State Government provides morebenefits for tenants and 'Kudikidappukars' (hutment dwellers) and compulsory vesting of Landlords' rights in the Government and assignment of these rights to the cultivating tenants.

Provision is made for constituting a new fund of not less than Rs. 10 million called the "Hutment Dwellers Benefit Fund". The minimum of the amount of the Agriculturist Rehabilitation Fund has been fixed as Rs. 20 million. There is also provision in the Billfor reducing the ceiling limit in the case of an adult unmarried person, if he is the sole member in a family from 12 acres to six acres or seven and a half acres whichever is greater.

The category of cultivators, who are deemed to be tenants, has been enlarged (other than, plantations of rubber, coffee, tea or cardamom) who on July 29, 1967 had completed thirty years of possession and effected substantial improvement therein and certain persons occupying lands, believing to be tenants. As for the resumption of lands for personal cultivation none of the existing rights is taken away or any fresh rights conferred except that all resumption applications from army personnel and minors have to be filed within six months from the commencement of the Act. The right of a hutment dweller to get ownership and possession of site for habitation is sought to be raised from three cents to five cents.

Among the changes proposed in respect of fair rent are that the fair rent for land adopted for paddy cultivation will be 50 per cent of the contract rent or 75 per cent of the fair rent settled under any law enforced prior to 1961, on fair rent in the present Act, which ever is less, according to the choice of the tenant. In the case of other lands, fair rent will be contract rent of 75 per cent of the fair rent settled under any law prior to 1961 or fair rent as in the present Act, whichever is less.

Tenants will be given the option to pay rent arrears, depending on the extent of land in their possession, and get the arrears accrued upto 1967, wiped out. If the tenant has more than 15 acres and the landlord is a small holder, there will be no wiping off. In certain cases tenants dispossessed after 1964 can get possession back.

The right of Civil Courts to decide the tenant-landlord relationship is to be taken away and entrusted to land tribunals.

(The Hindu, 18 August 1968)

41. Agriculture

Twenty Three Percent of Cultivators have no Land

According to a report, twenty three per cent of the Indian cultivators have no land of their own. The incidence of tenancy is the highest in Punjab, where 39% of the cultivating families hold land on lease. Next comes Bihar with 37% tenancy followed by Kerala 31% and Mysore 25%.

About 82 per cent of the tenants still do not enjoy permanency of tenure. This situation prevails particularly in Andhra Pradesh, Assam, Madras, Bihar, Orissa, Punjab and West Bengal. The report also brings out the enormous problem of "disguised tenancies" as reflected through the ratio between leases reportedly given and leases taken. This problem is widespread through out the country and is a major impediment in the effective implementation of land reforms.

Zamindaris, jagirs, and inams which covered nearly half the country before independence, have been almost abolished now with hardly 2.75 per cent of the farming families retaining their rights.

(The Hindustan Times, 1 June 1968)

42. Co-operation

Rise in the Number of Non-Credit Co-operative Societies

According to the Reserve Bank of India Statistics for 1965-66, published recently, the number of all types of non-credit cooperative societies rose from 1,26,219 to 1,32,173 during 1965-66.

Weavers' Societies	13,076
Other Industrial Societies	95,089
Consumers' Societies	13,349
Housing Societies	11,778
Milk Supply Societies	8,197
Sugar Can Supply Societies	8,144
Farming Societies	7,295
Marketing Societies	3,375
Fisheries Societies	3,338

The total membership of all types of non-credit societies increased from 148,47,965 to 162,93,845, during 1965-66. The total working capital rose by Rs. 847.1 million to Rs. 6476.9 million during the year. In 1965-66 the total sales amounted to 13,037.4 million rupees as compared to 10,188.2 million rupees in the preceding year.

The Cooperative Marketing Structure consisted of the National Agricultural Cooperative Marketing Federation, with headquarters at New Delhi, 21 State Marketing Societies, 155, Regional or Central Marketing Societies and 3,198 primary marketing Societies. Of the primary societies 2,729 were general purpose societies while the remaining 469 were dealing in specific commodities like cotton, arecanut, coconut, tobacco, fruits and vegetables.

Primary marketing societies assisted in the linking of credit with marketing and 525 such societies recovered loans aggregating to 122.0 million rupees on behalf of 16,823 primary agricultural credit societies. The number of cooperative spinning mills increased by eight bringing the total to 65. They had 8,40 lakh spindles at the end of june 1966 and sold yarn worth 7540 million rupees during the year.

The number of wholesale consumer stores increased from 222 to 272 during the year and the number of primary stores increased from 12,352 to 13,077.

CHAPTER 6. GENERAL RIGHTS OF WORKERS

INDIA - MAY-AUGUST 1968

64. Wage Protection and Labour Clauses in Employment Contracts with Public Authorities.

Working of the Payment of Wages Act, 1936 in Mines during 1966.

Introduction.- The two main objects of the Payment of Wages Act are i) to ensure payment of wages within the prescribed time limit and ii) to prohibit unauthorised deductions from wages. The Act applies to all persons employed in the mines drawing wages below Rs. 400 a month. The Payment of Wages (Mines) Rules, 1956, framed by the Central Government also apply to all persons employed in mines either by the owner or by the contractor. The following is a brief review of the Act in mines during 1966.

Inspections and Irregularities.- The number of inspections made during the year was 5062 as against 4472 during the previous year. 18,782 irregularities were detected during the year as against 18,377 during the previous year. The largest number of irregularities detected related to non-maintence of registers, comprising 34.3 per cent of the total in 1965 and 26.9 per cent in 1966. Next in order came the irregularities relating to non-display of notices of dates of payment, wage rates and lists of Acts and omissions for imposition of fines which accounted for 29.0 and 24.1 per cent of the total number of irregularities detected during the years 1965 and 1966 respectively. The lowest number of irregularities detected related to imposition of fines in both the years. The number of irregularities pending at the end of the previous year was 5429. Thus of the 24,211 irregularities only 19,291 (79.7 per cent) of the total irregularities could be rectified during the year under review.

Rectification of Irregularities.- Of the 19,291 rectified irregularities as many as 7011 (36.3 per cent) were got rectified within three months; 7694 (39.9 per cent) within 3 to 6 months; 3565 (18.5 percent) within 6 to 9 months; 235 (1.2 per cent) within 9 to 12 months and 786 (4.1 per cent) irregularities were however closed as they were not rectifiable and in view of the assurance given by the employers not to repeat such irregularities. As many as 4,920 (20.3 per cent) irregularities were pending rectification at the end of the year under review.

Claims.- In all 251 claims cases were disposed of during the year of which 165 cases were in favour of the employees; 22 cases against the employees and 64 cases were withdrawn. The total amount awarded in respect of those cases which were decided in favour of employees was Rs.1,61,323.00

Prosecutions.- During the year under report 473 cases were filed and of these 189 cases were disposed of by the courts, of these as many as 170 cases resulted in conviction of the employers with fines amounting to Rs.9725.00.

Annual Returns.- As required under Rule 18 of the Payment of Wages (Mines) Rules 1956, during the year under review, 1873 mines employing 426,661 workers submitted the returns as against 1797 mines employing 372002 workers during the previous year. This shows a slight improvement in this respect. The total wages paid to these workers amounted to about 494 million rupees. Deductions of Rs.449.00, Rs.1221.00 and Rs.228.00 were made from wages of workers due to fines imposed, for damage or loss and breach of contract respectively. An amount of Rs.468.00 was disbursed from the fines Fund during the year.

Conclusions.- It will be seen that during the year as compared to the previous year, the number of inspections made has increased by 590 and the number of irregularities detected also increased by 405. The enforcement of the Act and the rule was quite effective and purposeful during the year under review.

(Indian Labour Journal Vol. IX No.8 August 1968 - pp. 952-954).

66. Strikes and Lockout Rights

India - May-August 1968.

Ordinance on Strikes

The Union Government issued an ordinance known as the Essential Services Maintenance Ordinance 1968 to prohibit strikes in any essential services, including strikes by the Central Government employees. This step was taken in the wake of the proposed strike by the Central Government employees on 19 September to press their demands which include, a need-based minimum wage.

The following is the text of the ordinance:

Whereas Parliament is not in session and the President is satisfied that circumstances exist which render it necessary for him to take immediate action:

Now therefore, in exercise of the powers conferred by Clause (1) of Article 123 of the Constitution, the President is pleased to promulgate the following ordinance:

1. (1) This ordinance may be called the Essential Services Maintenance Ordinance, 1968.

(2) It extends to the whole of India:

Provided that it shall not apply to the State of Jammu and Kashmir except to the extent to which the provisions of this ordinance relate to union employees.

(3) It shall come into force at once.

2. (1) In this ordinance -
(A) "Essential Service" means -
(I) Any postal, telegraph or telephone service;

(II) Any railway service or any other transport service for the carriage of passengers or goods by land, water or air;

(III) Any service connected with the operation or maintenance of aerodromes, or with the operation, repair or maintenance of aircraft;

(IV) Any service connected with the loading, unloading, movement or storage of goods in any port;

(V) Any service connected with the clearance of goods or passengers through the customs or with the prevention of smuggling.

(VI) Any service in any mint or security press;

(VII) Any service in connection with the affairs of the Union, not being a service specified in any of the foregoing sub-clauses;

(VIII) Any other service connected with matters with respect to which Parliament has power to make laws and which the Central Government being of the opinion that strikes therein would prejudicially affect the maintenance of any public utility service, the public safety or the maintenance of supplies and services necessary for the life of the community or would result in the infliction of grave hardship on the community, may, by notification in the official gazette, declare to be an essential service for the purposes of this ordinance.

(B) "Strike" means the cessation of work by a body of persons employed in any essential service acting in combination or a concerted refusal or a refusal under a common understanding of any number of persons who are or have been so employed to continue to work or to accept employment, and includes:

(I) Refusal to work overtime where such work is necessary for the maintenance of any essential service;

(II) Any other conduct which is likely to result in, or result in, cessation or substantial retardation of work in any essential service.

(2) Every notification issued under Sub-Clause (IX) of Clause (A) of Sub-Section (1) shall be laid before each House of Parliament as soon as may be after it is made and shall cease to operate at the expiration of 40 days from the re-assembly of Parliament unless before the expiration of period a resolution approving the issue of the notification is passed by both Houses of Parliament.

Explanation.- Where the Houses of Parliament are summoned to reassemble on different dates, the period of 40 days shall be reckoned from the later of those dates.

3. (1) If the Central Government is satisfied that in the public interest it is necessary or expedient so to do, it may, by general or special order, prohibit strikes in any essential service specified in the order.

(2) An order made under Sub-Section (1) shall be published in such manner as the Central Government considers best calculated to bring it to the notice of the persons affected by the order.

(3) An order made under Sub-section (1) shall be in force for six months only, but the Central Government may by a like order, extend it for any period not exceeding six months if it is satisfied that in the public interest it is necessary or expedient so to do.

(4) Upon the issue of an order under Sub-Section (1)-

(A) No person employed in any essential service to which the order relates shall go or remain on strike;

(B) Any strike declared or comenced, whether before or after the issue of the order, by persons employed in any such service shall be illegal.

4. Any person who commences a strike which is illegal under this ordinance or goes or remains on, or otherwise takes part in, any such strike shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to two hundred rupees, or with both.

5. Any person who instigates, or incites other persons to take part in, or otherwise acts in furtherance of a strike which is illegal under this ordinance shall be punishable with imprisonment for a term which may extend to one year or with fine which may extend to one thousand rupees, or with both.

6. Any person who knowingly expends or supplies any money in furtherance or support of a strike which is illegal under this ordinance shall be punishable with imprisonment for a term which may extend to one year, or with fine which may extend to one year, or with fine which may extend to one thousand rupees, or with both.

7. Notwithstanding anything contained in the Code of Criminal Procedure, 1898, any police officer may arrest without warrant any person who is reasonably suspected of having committed any offence under this ordinance.

8. The provisions of this ordinance and of any order issued thereunder shall have effect notwithstanding anything inconsistent therewith contained in the Industrial Disputes Act, 1947, or in any other law for the time being in force.

PATRIOT
("The ~~Amritsar Patriot~~" dated 14.9.1968)

68. Labour Courts

India - May-August 1968

Workers' Union Leaders not Entitled to Special Leave

Partly allowing an appeal of the Indian Oxygen Company management against the award of the Industrial Tribunal, Patna, the Supreme Court ruled that trade union representatives were not entitled to any special leave to attend the annual convention of their federation or of the Central organisation nor to attend executive committee meetings. The Court held that they were not even entitled to special leave to attend courts in matters connected with industrial disputes. The Court upheld the over-time allowances of one-and-half time of normal wage for the workmen awarded by the tribunal.

The tribunal had directed that representatives of the workmens union should be allowed Special leave with pay to attend law courts for matters connected with workers and management, to attend executive committee meetings of their union and to attend conventions of workmens' federation or unions.

The Supreme Court held the view that meetings of the federation or of the workers committees can be attended by union delegates by availing of their earned leave. Moreover management was giving different kinds of leave like casual, medical, earned and festival leave.

(National Herald dated 6.8.1968)

CHAPTER 7 - PROBLEMS PECULIAR TO CERTAIN CATEGORIES OF WORKERS

INDIA - MAY-AUGUST 1968

71. Employees and Salaried Intellectual Workers

Madras: Dearness Allowance of State Government Employees raised to Central Rates.

The Madras Government has revised the rates of dearness allowance of its employees so as to be on par with those of the Central Government with effect from 1 June 1968. The enhanced rates will benefit employees in receipt of pay upto Rs. 500- This rate will also apply to employees of local bodies and teachers in aided institutions.

The additional cost on account of the increased rates of D.A. is estimated at approximately Rs. 36 million in a full year and Rs. 27 million in the current year. The following will be the new rates of dearness allowance for various pay groups as against the old rates given in brackets below:-

Rs. 90	Rs. 65	(59)
Rs. 90 and above but below 150	91	(84)
Rs. 150 and above but below 210	114	(106)
Rs. 210 and above but below 400	137	(128)
Rs. 400 and above but below 450	150	
Rs. 450 and above but below 500	153	

Pay exceeding Rs. 500 but not exceeding Rs. 532 - amount by which pay falls short of Rs. 653.

There will be no change in the existing rates of dearness allowance payable to employees in the higher pay ranges.

(Hindu: 30. 5. 68)

Retirement Age at 55 upheld by Madras High Court

In a judgment given by the Madras High Court on 21 June 1968, it has upheld the order of the State Electricity Board fixing the age of retirement in respect of all officers including engineers at 55.

The decision of the Board was challenged in a writ petition moved on behalf of Mr. K.V.O. Krishnamachar, Divisional Engineer (Electrical). He prayed for a direction to quash the order of the Board dated April 30 this year retiring him on three months' notice.

His Lordship Mr. Justice P.S. Kailasam, who gave this ruling, said that he was satisfied that the decision of the Board reverting the age of retirement from 58 to 55 was amply justified in the circumstances now prevailing.

The Hindu, 25 June 1968

Andhra Pradesh D.A. of Government employees brought on par with Central Government rates.

The dearness allowance of Government employees in Andhra Pradesh has been increased to the level of Central Government rates with effect from 1 June. The increase will mean an additional expenditure of Rs. 4 crores. The D.A. increase has been effected as follows. Employees drawing below Rs. 90 will get an additional D.A. of Rs. 7, increasing the total to Rs. 91. Those having a salary of Rs. 90 to below Rs. 150 will get Rs. 7, making a total of Rs. 91. Employees with a pay of Rs. 150 to below Rs. 210 get Rs. 8, the D.A. totalling Rs. 114. For those drawing a salary between Rs. 210 and below Rs. 400, the D.A. sanctioned is Rs. 9, making a total of Rs. 137. Those with a salary from Rs. 400 to below 450 get Rs. 10, making a total of Rs. 150. Employees drawing Rs. 450 to below 499 will get Rs. 13, raising the total D.A. to Rs. 153.

The Hindu, 9 June 1968

CHAPTER 8 - MANPOWER PROBLEMS

INDIA - MAY-AUGUST 1968

81. Employment Situation

Employment Exchanges Working during May 1968

According to the Review of the principal activities of the Directorate-General of Employment and Training for the month of May 1968, the position of registrations, placements, live register, vacancies notified and employers using employment exchanges is shown in the following table:

	April 1968	May 1968	+ Increase or - Decrease
Registrations	3,02,264	341,108	+ 38,844
Placements	31,811	34,306	+ 2,495
Live Register	27,18,824	2754, 634	+ 35,810
Vacancies Notified	67,666	70,014	+ 2,348
Employers who used exchanges	11,727	12,976	+ 1,249

The total number of Employment Exchanges in the country at the end of May 1968 was 442.

Displaced persons from East Pakistan

301 East Pakistan migrants were registered in the various Employment Exchanges during the month under report. 79 migrants were placed in employment. The live register of East Pakistan migrants stood at 10,871.

Repatriates from Burma

248 Repatriates from Burma were registered at various Employment Exchanges during the month. 246 Repatriates were placed by various Employment Exchanges during May. The Live Register of Burma Repatriates stood at 2,168.

Repatriates from Ceylon

24 Repatriates from Ceylon were registered at various Employment Exchanges during May. The Live Register of Ceylon Repatriates stood at 120.

Deployment of surplus and retrenched personnel

During the month under review, 109 persons were retrenched and were registered with the Special Cell of the DGET. Out of a total of 2863 persons who required employment assistance, 112 were placed in employment and 2751 were availing employment assistance at the end of May 1968.

Apprentices Act

The number of apprentices undergoing training under the Act was 32297 at the end of March 1968 of which 28066 were full-term Apprentices and 4231 short-term Apprentices. These apprentices were engaged in 2505 establishments.

(Review on the Principal Activities of the Directorate-General of Employment and Training for the month of May 1968: Ministry of Labour and Employment, Government of India, New Delhi)

Tea and Rubber Plantations planned for Ceylon Displaced Persons.

The Central Government has sanctioned a number of plantation schemes to rehabilitate persons of Indian Origin, who will be rehabilitated from Ceylon.

Among major schemes on which work has already started is the project in Mysore State to develop 8000 acres for rubber plantations. The cost of the scheme is estimated to be 27.5 million rupees and a sum of Rs. 18.72 lakhs has already been released. Rubber plantations scheme in the Andamans and Nicobar islands are expected to absorb 1200 families over a period of four years. Estimated to cost 45.00 million rupees, the scheme is intended to develop 6000 acres of land in the Island. The Centre is awaiting a report from the Madras Government for their project to develop 3700 acres of forest land in Nilgiris which would absorb 1700 families over a 15 year period. The development of this land mainly for tea plantation is expected to cost 37.5 million rupees.

Under the SIRIMAVO - SHASTRI pact, 535,000 people of Indian origin are to be repatriated to India over a period of 15 years. The expenditure involved in rehabilitating them will be borne partially by the State Government and partially by the Centre. In this year's Budget, the allocation of Rs. 89.75 lakhs had been made to be given as loans to State Govts. There is also a provision for Rs. 46 lakhs as grants-in-aid.

Over 90 per cent of the persons to be repatriated from Ceylon are plantation workers.

(Hindustan Times - 1.6.68)

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83. Seminar for providing vocational guidance to students held by the Bangalore University.

A three-day seminar was organised recently by the University of Bangalore for the benefit of about 40 teachers of its constituent colleges. The objective was to chalk out a plan to provide an efficient and reliable service of counselling to students on the choice of careers.

The formidable nature of the task of discovering the latent aptitudes of the students was pointed out by the Minister for Labour, Mr. K. Puttaswamy, who for his part preferred the idea of students acting for themselves in the light of suggestions offered by the University authorities to the university assuming for itself the responsibility of choosing the right job or career for a student./ Skills in great demand in various walks of life not being found among youths coming out of the portals of the colleges and schools was also pointed out by the Minister at the Seminar.

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While the need for making the secondary educational course both universal for all and also terminal, in the sense of equipping each student with a minimum knowledge of the sciences and the humanities was felt by the seminar to be important, the role of the well-trained teacher in counselling the right type of career or employment to a student in the light of his latent talent and aptitude at the time of admission to a college was also considered by the seminar to be vital. Frustration among youths who lacked a clear idea in regard to their future was thought by the seminar to be too much in evidence to-day to be left unnoticed.

(The Hindu, 17 June 1968)

CHAPTER 9. SOCIAL SECURITY

INDIA - MAY-AUGUST 1968

92. LEGISLATION -

The Public Provident Fund Act 1968

An Act to provide for the institution of provident fund for the general public known as the "Public Provident Fund Act 1968" received the assent of the President on 16th May 1968. This act extends to the whole of India.

The Central Government may frame a scheme to be called the Public Provident Fund Scheme for the establishment of a provident fund for the general public and there shall be established a fund in accordance with the provisions of the Act. Any individual may, on his own behalf or on behalf of a minor, of whom he is a guardian, subscribe to the fund in such manner and subject to such maximum and minimum limits as may be specified in the Scheme. All subscriptions made shall bear interest. A subscriber shall be entitled to make withdrawls from the amount standing to his credit in the fund, to such extent and subject to such terms and conditions as may be specified in the Scheme. A subscriber may be granted bonus out of the annual standing to his credit in the fund. If a subscriber dies and there is in force at the time of his death a nomination in favour of any person, all amounts standing to his credit in the fund shall be payable to the nominee. The amount standing to the credit of any subscriber in the fund shall not be liable to attachment under any decree on order of any Court in respect of any debt on liability incurred by the subscriber.

(The Gazette of India; Extraordinary Part II Section I, May 17, 1968 PP. 271 to 273)

CHAPTER 9. SOCIAL SECURITY

INDIA - MAY-AUGUST 1968

93. APPLICATION -

Review on the Working of the Workmen's Compensation Act 1923, during the year 1965.

This Act extends to the whole of the Indian Union except the State of Jammu and Kashmir. This review is based on the annual returns received from all States and the Union Territories except Assam and Manipur. In addition, the annual returns were also furnished by Railways and Posts and Telegraphs Departments.

The following table shows the number of compensated accidents and the amount of compensation paid during the period 1957 - 65.

Table I

Year	Average daily No. of workers employed in establishments submitting returns	Number of Compensated Accidents Resulting in: Death	Permanent Disablement	Temporary Disablement	Total
1	2	3	4	5	6
1957	4,123,610	1,032 (0.25)	6,661 (1.62)	64,215 (15.57)	71,908 (17.44)
1958	4,388,343	1,903 (0.43)	4,887 (1.11)	76,548 (17.45)	83.338 (18.99)
1959	3,447,521	1,075 (0.28)	5,066 (1.36)	70,086 (18.33)	76.227 (19.97)
1960	4,631,338	1,425 (0.31)	4,875 (1.05)	82,655 (17.85)	88,955 (19.21)
1961	4,770,185	1,238 (0.26)	4,897 (1.03)	87,603 (18.36)	93,738 (19.65)
1962	4,575,502	1,058 (0.23)	5,665 (1.24)	82,633 (18.06)	89,356 (19.53)
1963	5,228,610	1,466 (0.28)	5,425 (1.04)	110,368 (21.11)	117,259 (22.43)
1964	5,255,581	1,627 (0.31)	5,344 (1.02)	111,385 (21.19)	118,356 (22.52)
1965	4,792,040	1,575 (0.33)	6,170 (1.29)	156,656 (32.69)	164,401 (34.31)

Amount of Compensation paid (Rs) *

Death	Permanent Disablement	Temporary Disablement	Total
1	2	3	4
22,75,026 (2,204)	19,78,525 (297)	19,33,195 (30)	61,86,746 (86)
37,00,225 (2,298)	26,61,492 (545)	21,26,078 (28)	84,87,795 + (102) +
26,30,565 (2,447)	26,59,701 (525)	18,53,418 (26)	71,43,684 (94)
44,29,908 (3,109)	28,12,984 (577)	22,50,412 (27)	94,93,304 (107)
27,66,389 (2,235)	25,58,495 (522)	26,74,112 (31)	79,98,996 (85)
26,48,079 (2,503)	24,09,658 (425)	23,79,410 (29)	74,37,147 (83)
60,41,306 (3,439)	35,34,702 (652)	36,10,862 (33)	1,21,86,870 (104)
71,78,939 (4.412)	49,40,372 (924)	40,98,935 (37)	1,62,18,246 (137)
87,28,600 (5,542)	60,11,232 (974)	39,89,290 (25)	1,87,29,122 (114)

\+ Amount of compensation paid in respect of
\+ 293 cases of death not known.

* Figures in brackets show average compensation paid per case.

~~* Figures in bracket show rate per 1000 workers~~

It will be seen from the above table that a sum of Rupees 18.7 million was paid as compensation for 164401 accidents. The accident rate per one thousand workers employed was 34.31 during the year under review as against 22.52 in the previous year.

Analysis of the compensated accidents during 1965 shows that 95.3 per cent of the cases related to temporary disablement, 3.7 per cent to permanent disablement and only 1.0 per cent to death. The average amount of compensation paid per case during 1965 was Rs. 5,542, Rs. 974, Rs. 25 and Rs. 114 in respect of death, permanent disablement, temporary disablement and "all cases" combined respectively.

The average amount of compensation paid per case of death was the highest in Building and Construction (Rs. 7,618) followed by Docks and Ports (Rs. 7024) and Mines (Rs. 6,985). The average amount of compensation paid for permanent disablement was the highest in industry group, Miscellaneous (Rs. 1,445) followed by Railways (Rs. 1,439) and Building and Construction (Rs. 1,400). The average amount of compensation paid per case has decreased during 1965 in Railways, Tramways, Municipalities and Miscellaneous Industries as compared to the corresponding figures in 1964.

The incidence of cost of compensated accidents per worker by important industry groups has been obtained by dividing the amount of compensation paid by the corresponding figures of average daily employment and the data are given below:-

Incidence of Cost of Compensated Accidents per worker (in Rupees)

Industry Group	During 1964	During 1965
Factories	2.36	2.09
Plantations	0.48	0.69
Mines	7.92	14.33
Railways	3.48	3.88
Docks & Ports	15.08	17.43
Tramways	4.99	4.54
Posts & Telegraphs	0.44	0.67
Buildings and Construction	2.79	12.12
Municipalities	0.41	0.40
Miscellaneous	3.32	4.90
All Industries	3.08	3.91

It will be seen from the above that in 1965 the cost was highest in Docks and Ports but was relatively much less in Municipalities, Posts and Telegraphs and Plantations.

The average amount of compensation paid per case was the highest in Himachal Pradesh (Rs. 1658) followed by Kerala (Rs. 1297) and

Uttar Pradesh (Rs. 635). The average amount of compensation paid per fatal case was the highest in Kerala (Rs. 34,650, while the lowest was in Orissa - Rs. 2,562). The average amount of compensation paid per case of permanent disablement was the highest in Madras (Rs. 2,521) and the lowest in Gujrat (Rs. 288). In case of accidents involving temporary disablement, average compensation was the highest in Delhi (Rs. 178) and the lowest(Rs. 0.50) in Orissa.

The Workmen's Compensation Act also provides for the payment of compensation in case of certain occupational diseases. Information in respect of occupational diseases is available for Andhra Pradesh and Mysore in the annual returns for the year 1965. In Andhra Pradesh a sum of Rs. 4,536 was paid as compensation for 9 cases of permanent disablement which occurred as a result of occupational diseases. In Mysore, five cases of death and 142 cases of permanent disablement were reported against occupational diseases. A sum of Rs. 16,800 and Rs. 384,524 was paid respectively as compensation in these cases. In Railways one case of permanent disablement was reported for which a sum of Rs. 23 was paid during the year.

Cases before Commissioners of Workmen's compensation:

The Commissioners for workmen's compensation are required to maintain particulars of the cases coming up before them. As many as 12.5 per cent of the accidents involved workers getting less than Rs. 50 per month. The percentages of accidents involving workers in the wage-groups of Rs. 50-100 and Rs. 100 and above were 35.7 and 51.8 respectively. Out of the 11,197 cases dealt by the Commissioners, 4066 (36.3%) related to temporary disablement, 4883 (43.6%) to permanent disablement and 2248(20.1%) to fatal cases.

Under Section 10 for award of Compensation, 10,266 cases were pending for disposal at the beginning of the year in various States and 11,999 cases were received during the year under review. Out of this total of 22,265 cases 87,17 cases were disposed of and 13,548 cases remained pending with the Commissioners at the end of the year as against 10,379 cases at the end of the previous year. The Commissioners also disposed of or transferred to other Commissioners for disposal, 5122 cases under Section 8 pertaining to deposits and 2242 cases were reported pending at the end of the year.

At the beginning of the year under review, 116 appeals were pending. During the year 118 appeals were filed bringing the total number of appeals for disposal to 234. Of these only 72 appeals were disposed of. The number of appeals pending at the end of the year under review was thus 162.

(Indian Labour Journal - Vol. IX No. 8 - August 1968 P.P. 937-939)

Background paper on
Job Security

SEMINAR

ON

JOB SECURITY
AND
RECOGNITION OF TRADE UNIONS

VIGYAN BHAVAN
AUGUST 27 - 28, 1968

COUNCIL OF INDIAN EMPLOYERS
FEDERATION HOUSE
NEW DELHI-1

CONTENTS

INTRODUCTION

Undoubtedly, security of employment is of fundamental importance to all employees. Employers also have a direct interest in the matter for, a contented labour force is an asset. However, unrealistic procedures under law or practice regulating job security can easily create barriers to production and to improvement of production methods.

1.2. Improvement in the conditions of employment of industrial workers has occured gradually in all countries. In India also there has been a marked improvement in the working conditions of workers both because of economic advancement and by protective legislation. There can be no two opinions that real, meaningful improvement in working conditions could be possible only when there exist conditions that make rapid economic growth possible. Regulations which retard the pace of economic growth will ultimately work to the disadvantage of workers. The large volume of protective labour legislation enacted in the course of the last two decades have ensured the Indian workers a measure of security which their counterparts in other countries do not enjoy.

1.3. The determination of complement of employees, as also matters pertaining to discipline, are essentially a management function and any external intervention including courts would not be conducive for efficient functioning of an industrial organisation.

1.4. The insecurity of employment of a workman can generally arise from two causes —internal and external. By internal cause, we mean punishment of discharge or dismissal invited by a workman himself, upon committing acts of misdemeanour which violate the constitution of an industrial organisation. External cause ordinarily connotes prevalence of unfavourable economic factors in business which largely influence instability of employment. If there is contraction of business activities due to factors beyond the control of an employer, an establishment might be forced to retrench or lay off some or all its workers, or it may even be compelled to close down its business altogether.

1.5. However, an employer is not at liberty to dispense, unquestioned, with the services of a worker whenever any of the above reasons subsist. In point of fact, his decisions are invariably subject to the review by judicial authority who may or may not approve of the action taken by an employer. Unlike India, security of employment in U.K. and U.S.A. largely rests on the provisions of collective agreements concluded between employers and workers.

Practice in some other countries :

2.1 In foreign countries, for instance, in the U.K. and the U.S.A., the employers right to hire and fire is almost unquestioned. The only restraint is a watchful and strong

trade union. No domestic enquiry is required to be held except when the worker refers his dispute or girevance for settlement to internal joint bodies, like the Joint Committees set up under the agreements, from which it may go to a neutral umpire or the arbitration tribunal in the event of difference of opinion among members of the committee or if the aggrieved worker remains dissatisfied with the decision of the Committee. Under the common law (in the U.K.), the aggrieved worker may only institute a suit to secure compensation (damages) from his employer for a breach of contract if the employee thinks that he has been wrongfully dismissed. In the United Kingdom, such a suit is tried by the regular judicial tribunals. According to the Contracts of Employment Act, enacted in 1962, by the U.K. Government, an employer has to give a fortnight's notice to an employee before he can terminate his service.

2.2 Moreover, in many advanced countries, where a worker's service is terminated wrongfully, and when this is proved in a court of law, the normal relief awarded to him is an amount of compensation for wrongful dismissal, but he cannot claim reinstatement. These countries strictly go by the law of Master and Servant. In their view, an unwanted worker cannot be forced on an unwilling employer, in the same way as an unwilling worker cannot be compelled to serve an employer against his wish beyond the terms of his contract. In India, however, the worker is (definitely) better off, not only because he has an ultimate remedy in labour courts, but also an inherent right of being reinstated in his job. Such rare job security is unheard of even in industrially advanced countries.

ILO Recommendation on Termination of Employment :

3.1 The ILO Recommendation (119) on Termination of Employment of Workers at the initiative of employees, adopted in 1963, lays down certain standards of general application concerning individual dismissals, such as grounds of dismissal, remedies for unjustified dismissals, period of notice, certificate of service, severance allowance, reduction of work force, etc. Let us analyse some of the important aspects of this Recommendation in the light of the position obtaining in India.

3.2 The ILO Recommendation lays down that "termination of employment should not take place unless there is a valid reason for such termination connected with the capacity or conduct of the worker or based on the operational requirements of the undertaking, establishment or service."

3.3 The following, inter alia, should not constitute valid reasons for termination of employment :

"(*a*) Union membership or participation in union activities outside working hours, or, with the consent of the employer, within working hours;

(*b*) seeking office as, or acting or having acted in the capacity of, a worker's representative;

(*c*) the filing in good faith of a complaint or the participation in a proceeding against an employer involving alleged violation of laws or regulation; or

(*d*) race, colour, sex, marital status, religion, political opinion, natural extraction or social origin."

3.4 The ILO instrument further states that " a worker who feels that his employment has been unjustifiably terminated should be entitled unless the matter has been satisfactorily determined through such procedures within the undertaking, establishment or service, as may exist or be established, consistent with this Recommendation, to appeal, within a reasonable time, against the termination with the assistance, where the worker so requests, of a person representing him to a body established under a collective agreement or to a neutral body such as a court, an arbitrator, an arbitration committee of a similar body."

3.5 For cases of dismissal the ILO instrument provides :

"(1) In case of dismissal for serious misconduct, a period of notice or compensation in lieu thereof need not be required, and the severance allowance or other types of separation benefits paid for by the employer, where applicable, may be witheld.

(2) Dismissal for serious misconduct should take place only in cases where the employer cannot in good faith be expected to take any other course.

(3) An employer should be deemed to have waived his right to dismiss for serious misconduct if such action has not been taken within a reasonable time after he has become aware of the serious misconduct.

(4) A worker should be deemed to have waived his right to appeal against dismissal for serious misconduct if he has not appealed within a reasonable time after he has been notified of the dismissal.

(5) Before a decision to dismiss a worker for serious misconduct becomes finally effective, the worker should be given an opportunity to state his case promptly, with the assistance where appropriate of a person representing him."

Law and practice in India

4. It will be pertinent to point out that the Indian law and practice not only fulfils every requirement indicated in the ILO instrument, but, in some respects, provides for more liberal provisions than the ILO Recommendation. For example, the ILO Recommendation is that a worker, who is dismissed without justification, should, unless reinstated, be paid adequate compensation. In other words, it is optional for the employer either to reinstate or pay compensation to the worker; the choice is left to the employer. In India, Industrial Tribunals, in almost every case, order reinstatement of discharged workers with back wages. Thus, reinstatement is obligatory and not an alternative course to follow, as envisaged in the ILO Recommendation.

Industrial Employment (Standing Orders) Act :

5.1 An important statute safeguarding workers' right to job is the Industrial Employment (Standing Orders) Act. Under this Act, every establishment employing 100 or more

workers is required to adopt Standing Orders which govern the conditions of service of its workmen. These Standing Orders have to be certified by an authority approved by Government. This authority looks into the reasonableness or otherwise of the Standing Orders as proposed by the employers and may modify before certifying them. Under the Standing Orders, the basic conditions of service are prescribed including circumstances under which a workman may be discharged, dismissed or laid-off.

5.2 *Simple Discharge* : As regards termination of service of individual workers, it is generally provided in the Standing Orders that no worker can be discharged without giving at least 14 days' notice or pay in lieu of notice. There must, however, be full justification for such termination of service. In practice, it is extremely difficult for management to discharge a worker by giving notice, because an aggrieved worker can immediately take recourse to conciliation or adjudication and have the order examined by the appropriate Governmental machinery. The Tribunals do not permit the use of this provision to terminate the service of a workman, except on genuine grounds such as, loss of confidence in employee and similar valid reasons. The employer must establish *bona fides* of his action. It has been held by the Supreme Court that management cannot resort to termination of service of workmen by a colourable exercise of power under Standing Orders. The Supreme Court has, in many cases, disallowed the action of the management and upheld the workers case.

5.3 *Dismissal* : There are two sets of misconduct under the Standing Orders. For some minor and first offences, a workman is liable to be warned, censured or fined in accordance with the provisions of the Payment of Wages Act. But there are other acts and omissions which are of a serious nature and for which disciplinary action in the form of suspension or dismissal without notice would be merited. A worker who commits any of the misconducts listed in the Standing Orders becomes liable either to suspension from service for 4 days and hence loss of wages for that period or to a summary dismissal without notice or compensation *in lieu* thereof. In etither case, the management is required to follow a strict procedure of enquiry which is intended to ensure that the workman concerned has an adequate opportunity to rebut the charges against him.

5.4 In the case of suspension for misconduct the procedure requires that the worker must be given (*a*) an order in writing setting out in detail the alleged offence and (*b*) an opportunity to explain the circumstances. If, after hearing the worker, the management comes to the conclusion that the workman is guilty of misconduct, the suspension order may be confirmed and the worker shall not be entitled to wages for the period of suspension which cannot exceed four days. If the enquiry shows that the worker has not committed the misconduct or that this is not established to the satisfaction of the management, the order of suspension is rescinded and the workman treated as on duty and paid the wages due to him.

5.5 *Subsistence Allowance* : The Government of India has lately amended the Industrial Employment (Standing Orders) Central Rules. Model Standing Order No. 14 provides, *inter alia*, for payment of subsistence allowance to workman placed under suspension. The

rate of payment is 50% of the normal wages, but in special circumstances specified in the new amendment the rate goes up to 3/4th of the wages. The new Order even compels an employer to pay subsistence allowance to workman during suspension even when the latter is involved in a criminal case and arrested by the Police. The amendment also further provides that subsistence allowance already paid to a worker, who has been dismissed, shall not be recoverable from the employee. The payment of subsistence allowance is subject to the workman concerned not taking any employment during the period of suspension.

5.6 *Domestic Enquiry*: Where a workman has committed a misconduct which, in the opinion of the management, would merit dismissal, as for example, theft or assault, the law and practice require that the management observes a detailed procedure designed to ensure that no hasty decision is taken against, or injustice done to, the workman. The various steps of the enquiry which have been laid down by law and court decisions are, in brief, as follows : First, the management should hold a preliminary enquiry into the alleged offence of the workman; secondly, if satisfied prima facie that the workman has committed the alleged offence, he should be given a charge-sheet setting out exactly what acts or omissions were committed and what was the alleged misconduct; thirdly, an independent officer should be appointed to enquire into the offence; fourthly, the management should consider his report and, finally, if the finding of the enquiry officer is that the workman is guilty of the misconduct, it may pass the order of dismissal. In issuing the dismissal order, the management should take into account not only the fact that the worker was guilty, but must give due weight to the gravity of the offence, the previous record of the workman and any other extenuating or aggravating circumstances.

5.7 *Principles of natural justice* : The domestic enquiry, although conducted by an independent officer of the undertaking concerned, must conform to the principles of natural justice. The Courts and Tribunals have laid down that the enquiry must be fair and proper, that both the management and workers may call their witnesses, cross-examine them and adduce such other evidence as they deem fit, to prove their case. In cases where witnesses are not examined in the presence of the person charged, he should be given a copy of the statement made by the witnesses which are to be used at the enquiry well in advance before the enquiry begins. There have been many instances where an order of dismissal has been set aside by the Court even on the ground that the procedure followed by the employer was defective and resulted in injustice to the workman. It has also been held by the Supreme Court that although domestic enquiries need not be conducted in accordance with the technical requirements of Criminal trials, they must be conducted fairly. Where the Enquiry Officers are themselves witnesses to the alleged misconduct, the enquiry should be left to be held by some other person who is not an eye-witness to the impugned incident and that the Enquiry Officer should not import his personal knowledge or the knowledge of his colleagues to the enquiry and should not rely on reports received from other witnesses. Dismissal orders have also been challenged before Labour Tribunals on the ground that the action of management was *mala fide* or actuated by motives of unfair labour practice or victimisation. The Supreme Court has also held that Industrial Tribunals have power to hold a de novo

enquiry and come to their own conclusions, if they find that there was a travesty of the principles of natural justice in domestic enquiry.

Industrial Disputes Act :

6.1 *Dismissal during the pendency of proceedings* : Under Section 33 of the Industrial Disputes Act, an employer is under an obligation to seek prior permission of the conciliation officer or the adjudicators concerned for dismissal or discharge of a workman guilty of misconduct connected with the dispute pending before the conciliation officer or the adjudicator. In cases of misconduct, not connected with the dispute, an employer may discharge or dismiss an employee, provided—

(1) the employers pays one month's wages to the worker; and

(2) makes an application to the authority for approval of action taken by him.

6.2 Another class of workmen who have been given protection against victimization is the "protected workmen". In every establishment a certain number of men who are officers of a registered trade union connected with establishment are recognised as "protected" workmen, In the case of these "protected" workmen, express permission in writing of the Labour Court is essential, when an employer desires to alter the service conditions or to punish a 'protected' workman for misconduct. The permission has to be applied for whether or not the misconduct is connected with the industrial dispute.

6.3 *Scope of Tribunal's Powers in Dismissal Cases* : Let us now consider the scope of the powers of the tribunals, as laid down by the Supreme Court decisions to interfere with decisions of the management regarding termination of service and dismissals of workmen and to see whether they are adequate or inadequate to ensure security of service of workmen.

6.4 Taking the case of dismissals first, the power of tribunals to interfere with decisions of the management has been defined by the Supreme Court in the Indian Iron and Steel Company's case reported in 1958 I LLJ 260. In this case, the Supreme Court has only confirmed the decision of the Labour Appellate Tribunal reported in 1951 II LLJ 314 which laid down that a tribunal may interfere with decisions of the management

(1) when there is a want of good faith,

(2) when there is victimisation or unfair labour practice,

(3) when the management has been guilty of a basic error or violation or a principle of natural justice, and

(4) when on the materials the finding is completely baseless or perverse.

In laying down these rules for the guidance of tribunals, the Supreme Court has emphasised that undoubtedly the management of a concern has power to direct its own internal administration and discipline but this power is not unlimited and, therefore, the above safeguards have been provided for the workmen. The Supreme Court has not lost sight of the right of workmen with regard to security of service.

6.5 In any event as the law interpreted by the Supreme Court stands at present, if an employer terminates the services of an employee by giving him notice or wages in lieu of

notice without assigning any reason and if the employee raises a dispute the tribunal has power to enquire whether the discharge has been effected in the *bona fide* exercise of power conferred by the contract. In other words, it can examine the reason for the discharge and interfere with the decision of the management on the ground that the decision is *mala fide*.

6.6 As the law stands at present, the management has to hold a proper and fair enquiry and not just a formal enquiry. This is the law as laid down by the Supreme Court. If the tribunal comes to the conclusion that an enquiry is not proper and fair, it is open to the tribunal to reverse the decision of the management. Further if the conclusions reached in the enquiry are held to be perverse or if the punishment is held to be vindictive and *mala fide*, the tribunal has power now to interfere with the decision of the management and grant appropriate relief.

6.7 Personal prejudices, *mala fides* and other forms of undesirable human behaviour are not peculiar to the industrial world. They are present in varying degrees in almost all organisations including Government service and the law as it stands cannot provide complete protection against the working of such forces. But there is no reason whatsoever to give the industrial worker special treatment which is not enjoyed by other persons who work in similar services.

Safeguards for retrenched employees :

7.1 Economic factors beyond the control of an employer often compel him to curtail production or completely close down the factory. Some times, the introduction of better working, modern upto date machinery and adoption of advanced technique of production may result in some surplus labour. In all such cases, the employer is not free to make necessary man power adjustments.

7.2 With a view to ensuring that the reasonable interests of workers are safeguarded, several provisions have been incorporated in the Industrial Disputes Act, 1947. The sections relating to retrenchment in the Act apply to employees who (a) have put in continuous service of one year and (b) are employed in industrial undertakings employing 50 or more workers. The Act, *inter alia*, lays down that, where a workman is retrenched, he must be given one months' notice or pay in lieu of notice; besides, he must be paid monetary compensation at the rate of 15 days' pay for every year of service put in by him in the establishment. Moreover, the workers' rights to provident fund, gratuity and leave wages remain unaffected by his retrenchment. The retrenched worker has also a right to be re-employed in the same establishment in the event of a future vacancy.

7.3 The employer is required to observe a specific retrenchment procedure. Under this procedure, unless the employer and the workman agree otherwise, the employer must ordinarily follow the principle of "last come, first go" in effecting retrenchment in a particular category of workers. If, however, he wishes to retrench any other workman, the reasons for so doing must be recorded. In practice, the rule of seniority is generally followed except where the union agrees to a different arrangement.

Rationalisation and Automation without tears :

7.4 The 15th Session of the Indian Labour Conference held in July 1957 made specific recommendations on the conditions which should precede the introduction of any scheme of rationalisation. These recommendations, among other things, are : (*i*) the existing employees should not be discharged or their individual earnings reduced; but advantage may be taken of natural separation of personnel or wastage and (*ii*) advance notice of three weeks to three months should be given to the unions before a change is effected.

7.5 The Tripartite national forum has also discussed the question of Automation. Although this term 'Automation' is loosely used to include not only such sophisticated instruments as computers, but also any form of rationalisation of work force, mechanisation of work or adoption of improved methods which reduces number of persons presently engaged in performing a specific work. The twenty-fourth Session of the Indian Labour Conference held in July 1966 generally considered that what was called for was a regulation of the pace of technological change to facilitate a smooth and orderly transition with the minimum of social costs. It was agreed that the requirements of the Model Agreement on Rationalisation should be fully complied with while introducing Automation also. This matter was reopened at the 25th Session of the Indian Labour Conference held in April 1968. However, no discussion took place, and it was decided to convene a special session; accordingly, a special session of the Standing Labour Committee was convened on the 18th July 1968. At this special session, from the workers side, earlier conclusions were questioned; there was a tendency not to differentiate, as was previously done, between "production work" and "table work"; an attempt was made to ensure the placing of a ban on all automative devices and machines, at any rate for placing further safeguards, such as, clearance by a Tripartite Committee for proposals to introduce automation so as to better protect the interests of workers. At the end of the Session, the position, if anything, is more confused than before, for no agreed conclusions as such were arrived at.

7.6 There are no such legal obligations in industrially developed countries with market economies. Although some collective bargaining agreements provide for prior consultation with the trade unions regarding redundancy plans, this parctice is by no means widespread. Besides, re-employment is not always made on seniority basis, as in India, but on the basis mainly of efficiency and the past record of the employee.

Lay-Off :

7.7 Somtimes the employer may be unable to provide continuous employment to workers on the muster roll of his establishment on account of shortage of power, coal or raw materials required for full working even when they present themselves for work. In such circumstances, the workers will have to be "laid-off".

7.8 When workers are thus "laid-off", the law provides for the payment of compensation to them. Whenever a workman is laid off, he is to be paid by the employer for all

days during which he is laid off, except for such weekly off days, as may intervene compensation to be equal to 50% of the total of the basic wages and dearness allowance that would have been payable to him had he not been so laid off : If during any period of 12 months, a workman is laid off for more than 45 days, no such compensation is payable in respect of any period of the lay off after the expiry of just 45 days, if there is an agreement to that effect between the workmen and the employer.

7.9 In advanced countries like the U.S.A. and the U.K. no such 'lay-off' compensation is payable to industrial labour. In the United States, for instance, the security provisions applicable to lay-off cases obtain only under a few agreements, whereas in the United Kingdom, such cases are dealt with under the provisions of the redundancy plans which have been drawn up by some employers on their own accord. Since 1966, the U.K. Government has enacted a law providing for redundancy schemes and payment of compensation arising out of redundancy of workers.

Closures :

7.10. Due to certain factors, as for instance, the decline in demand, shortage of raw materials, power or fuel, accumulaiotn of stock, expiry of licence, financial difficulties, etc. the employer may have to close down his undertaking. In all such cases, the workers' interests have been safeguarded by law. The workman concerned are treated on the same footing as workers who are retrenched and are entitled to the same terms of notice and compensation. Even workers employed on temporary work such as construction of bridges, dams, canals, and buildings are entitled to these privileges and must be given compensation when the work closes down, provided that construction work is not completed within two years.

7.11 In industrial adjudications on closure of industrial undertakings the Industrial Tribunals have generally held that it is the fundamental right of a citizen to discontinue his business; nevertheless, a tribunal, if it so wishes, can examine whether the alleged closure of the undertaking was on account of financial difficulties or accumulation of undisposed stock and as such was beyond the control of the employer. It is only when these difficulties are coupled with other circumstances that a closure may be said to have been caused by unavoidable circumstances beyond the control of the employer.

Section 2A—Dismissal of an individual workman :

8.1 The suggestion to amend the Industrial Disputes Act in order to enable individual employees to approach directly an appellate authority regarding their termination of emlpoyment or dismissal was discussed at the 17th Session of the Indian Labour Conference held in Madras in July 1959 and it was decided at that Conference that—

(*a*) Disputes relating to individual cases including dismissals should, as far as possible, be sponsored by a union.

(*b*) In the absence of a union to sponsor such cases or the union concerned declining to sponsor them, the aggrieved individual might approach the Government conciliation machinery for redressal.

(*c*) The Government official authorised for the purpose should be empowered to refer such cases to a labour court for adjudication.

8.2 The Conference further agreed that there should be careful screening of cases before these were referred for adjudication, and that the model principles approved by the Conference should be followed in making reference of disputes to adjudication. In the model principles, the criteria for referring individual disputes to adjudication are the following :—

"Industrial disputes raised in regard to individual cases, *i.e.* cases of dismissal, discharge or any action of management on disciplinary grounds, may be referred for adjudication when the legality or propriety of such action is questioned, and, in particular :—

(*i*) if there is a case of victimisation or unfair labour practice,

(*ii*) If the Standing Orders in force or the principles of natural justice have not been followed, and

(*iii*) if the conciliation machinery reports that injustice has been done to the workman.

NOTE : If there is prima facie evidence in the possession of the appropriate machinery to show that the workman concerned has committed a serious breach of the Code of Discipline, adjudication may ordinarily be refused."

8.3 Should an individual workman have such a right ? Any workman who is aggrieved is free to go to the trade union and the trade union, if it comes to the conclusion that the action of the management is not justified, is free to raise an industrial dispute. The 17th Session of the Indian Labour Conference had provided for cases where there were no trade unions functioning, although it is hard to find industries in which some trade union is not operating.

Individual grievance is an "industrial dispute" :

9.1 The Government of India amended in 1965 the Industrial Disputes Act by inserting a new section 2A so as to provide that where any employer discharges, dismisses, retrenches or otherwise, terminates the services of an individual workman any dispute or difference between that workman and his employer connected with or arising out of such discharge, dismissal retrenchment or termination shall be deemed to be an industrial dispute notwithstanding that no other workman nor any union of workmen is a party to the dispute. In amending the Act, the Government explained that Courts have taken the view that a dispute between an employer and an individual workman cannot *per se* be an industrial dispute, but it may become one, if it is taken up by a union or a number of workmen, making a common cause with the aggrieved individual workman. As a result, the appropriate Government is now empowered to refer for arbitration or adjudication the individual case of dismissed or discharged employees.

9.2 While Government has undoubtedly the authority to enact a legislation on any matter it deems fit, nevertheless an objective view of the implications of any legislation, particularly in relation to above amendment, is necessary. No substantial relief is going to be gained by an individual worker as a result of the amendment. On the other hand, such kind of legislation will tend to disturb industrial peace, give rise to multiplicity of disputes, weaken an organised union, and finally erode faith in mutually accepted Grievance Procedure. Above all, the amendment tends to encourage litigation.

9.3 Thus, even an individual workman is entitled to seek a remedy through the machinery provided in the Industrial Disputes Act although the main object of the Act is to settle collective disputes.

9.4 The vires and validity of Section 2A of the Industrial Disputes Act, 1947 has been challenged in Delhi High Court and the case is pending before the Division Bench.

The Study Group of the National Labour Commission on Port & Dock has in its report recommended that Section 2A of the Industrial Disputes Act should be deleted as it undermines the influence of a representative union.

Proposed Section 10B : unfettered discretion to tribunals :

10.1 Recently a Bill to amend the Industrial Disputes Act has been introduced in Parliament which further widens the jurisdiction of industrial tribunals and labour courts to enable them to virtually sit as appellate authorities over disciplinary action taken by management and also to vary or modify the punishment meted out to workmen after a full and proper domestic enquiry. If the proposed amendment is written into law, it means that Tribunals would be vested with power to review management's orders of dismissals or discharge of workers for misconduct. In other words, the Tribunals would no longer be restricted by the decisions of the Supreme Court which in its wisdom has laid down the principle that in cases of dismissals for misconduct, the Tribunal should not act as a court of appeal and substitute its own judgment for that of management.

10.2 In the present economic state of the country where enhanced production is of paramount importance and in the prevailing circumstances of increasing indiscipline, it is not known as to what compelling reasons induced the Government to disturb this healthy balance established by the existing law. There is no doubt that the proposed amendment would tend to increase litigation, keep industry in a ferment, encourage indiscipline in industry and ultimately affect production.

Tendency of tribunals to order reinstatement in all cases :

11.1 The Standing Orders as well as the codified law on the subject of reinstatement, etc., assure sufficient protection to the employees governed by Industrial Law. Time has now come to consider the advisability of some of the principles laid down by the Courts and Tribunals in regard to reinstatement of an employee whose services are found to be

wrongfully terminated. The courts generally order reinstatement of a worker if employer fails to observe strictly even some minor legal procedure. The Seminar might consider whether in cases where the employers fail to follow only the proper procedure and where the employee does not deserve to be reinstated on merits, would it be proper for the Tribunal to order reinstatement.

11.2 Similarly in the case of retrenchment there have been recent decisions by Tribunals that when the employer fails to abide by the procedure laid down in Sec. 25-F and the relevant rules the retrenchment is illegal, and, therefore, the retrenched worker is ordered to be reinstated with full back wages. The Seminar might discuss that in a case of this type where the employee is found surplus to the requirements and therefore is bonafide retrenched, would it be proper that such an employee should be reinstated merely because the employer fails to observe one or two conditions such as immediate payment of wages to the employee at the time of retrenchment. The utmost that the employee would be entitled to, is the unpaid amount of compensation and wages and additional compensation for the failure of the employer to pay the statutory compensation in time. There is certainly no justification for reinstatement of an employee who is genuinely found to be surplus.

11.3 In a decision given by the Punjab High Court a retrenched worker was ordered to be reinstated because the employer failed to send the amount to the workman by money order immediately after the order of retrenchment as required by Sec. 25-F. The Seminar might agree that such order of reinstatement is hardly in keeping with the spirit of Sec. 25-F of the I.D. Act, the object of which is to offer compensation to the emloyee by way of payment of compensation.

Dismissal for misuse of E.S.I. Benefits barred :

12.1 The provisions in the Employees' State Insurance Act lending protection from dismissal, discharge, during the period an employee is in receipt of sickness benefit, has imposed further restrictions on employees to dispense with the services of defaulting employees and led to gross indiscipline. Whilst the principle underlying such provisions is good it is often abused by workers who obtain E.S.I. benefits to delay the management action in disciplinary cases.

12.2 To sum up, the job security which the Indian worker enjoys today compares very favourably with that of his counterpart elsewhere in the world. This is the result partly of the legislative measures and partly of the principles and procedures laid down by industrial courts and tribunals. In certain respects, the law and practice for ensuring job security goes far beyond the provisions contained in the ILO Recommendation. Moreover, the institutional factors, such as the influence of trade unions and a Government comparatively sympathetic to labour have also contributed a great deal of security to industrial workers india.

Who all need Job Security :

13.1 The definition of the term 'workman' varies from statute to statue. For regulation of industrial relations, we are led by the definition of this term under the Industrial Disputes Act, 1947 and the corresponding State laws. Section 2(s) of the Industrial Disputes Act defines the term 'workman' as—

> "any person (including any apprentice) employed in any industry to do any skilled or unskilled manual supervisory, technical or clerical work for hire or reward, whether the terms of employment be express or implied and for the purposes of any proceedings under this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of, that dispute, or whose dismissal, discharge or retrenchment has led to that dispute" execept those employed mainly in a managerial or administrative capacity or supervisory capacitiy drawing monthly wages exceeding Rs. 500/-.

The definition of this term under the State laws is more or less similar to the one under the Industrial Disputes Act. The definition is wide enough to cover skilled, unskilled operatives, technicians, apprentices, clerks and supervisory staff. Though it excludes managers and administrative staff and such of the supervisory staff who draw more than Rs. 500 per month as wages, it covers engineers and pilots, drawing salary as high as Rs. 2000 to Rs. 3,000 per month. Definitely, in an undertaking, all employees cannot be treated alike for purposes of industrial relations. The whole staff could be rationally divided into three categories : Top Management; Middle Management; and the Workmen. A clear line of demarcation has to be drawn between the Workmen and the Middle Management. Certainly between the Workmen and Top Management.

In more than one way, the employees who form Middle Management cannot be treated like Workmen for purposes of industrial relations. There are definite responsibilities which the Middle Management has to discharge vis-a-vis Workmen for regulation of industrial relations. A maintenance engineer or a pilot in an airlines has undoubtedly a greater responsibility as compared to an ordinary machine operator in a factory. The rights and obligations of the employee should, therefore, be in consonance with the level at which he functions. Provisions of the industrial law as they stand now have made effective and efficient management almost impossible. If the persons who have to discharge the management functions start participating in trade union activities like strikes, etc. and they are over protected by law, enforcement of the management policy decided by the Top Management becomes impossible.

13.2 The Council of Indian Employers in its Memorandum to the National Commission or Labour has urged that the existing definition of the term 'workman' should be substituted by a simpler one to cover all employees getting Rs. 500 per month as wages, subject, however, to the exclusion of the managerial categories.

13.3 It would be pertinent to mention here that the Study Group on Labour Relations of the National Commission on Labour has in its interim report suggested a uniform labour code and that the definition of the term 'employee' in the Code should be sufficiently wide to cover all categories of employees who should normally be brought within the ambit of the Code. However, in the case of those employees who fall normally in the category of managerial, the Study Group feels that they could have their own trade unions. It should, however, be permissible through legislation or collective bargaining to circumscribe their activities in certain spheres. As an alternative, the Study Group has suggested that certain percentage of employees be excluded from the purview of the Code.

13.4 As compared to the practice in India, in the United Kingdom an employee is not a 'workman' if manual labour is not the real or substantial part of his employment. In the United States the definition of 'employee' in the Fair Labour Standards Act excludes executives, administrators, supervisors, etc.

14. In the light of the above discussions, the following points are placed for consideration of the Seminar :

(1) Definition of the term "job security"—Does it exclude dismissal for misconduct, lay-off and retrenchment ?
(2) The quasi-judicial procedure for disciplinary action—Does it not provide sufficient job security ? —The difficulties encountered by the small and middle scale establishments in adhering to the requirements of the quasi-judicial procedure.
(3) The Standing Orders—Do they ensure job security ?
(4) Section 2A of the Industrial Disputes Act—Has it contributed to job security ? Sections 33 and 33A of the Industrial Disputes Act—Have they contributed to job security ?
(5) The suggestion from the National Commission on Labour regarding decision on all enquiry proceedings being taken not by management but by a third person, e.g., an arbitrator—What has been the impact on discipline and efficiency of the existing safeguards and protections ?
(6) Has job security in Government services contributed to efficiency ?
(7) If trade recession causes redundancy, how should surplus workmen be dealt with ?
(8) The proposed Section 10B empowers Tribunals to review cases of discharges and dismissals of employees. Will this not impinge on the right of an employer to carry out his business activities in the best interests of the organisation e.g. maintenance of morale of the supervisory staff, uninterrupted production, etc. ?
(9) In view of misuse of sickness benefits under the Employees' State Insurance Act, 1948, is it not advisable to amend Section 73 and provide for necessary deterrent against malpractices ?
(10) How can economic development, which in essence means, technological improvement be reconciled with job security only for those who are already in employment.

(11) Who all need job security under law ?

(12) In view of the need for accelerated economic growth, are the present agreements on 'rationalisation and automation without tears' desirable, or these work as a drag ? If the latter, what should be the form of agreements which reconcile the interests of workers already employed and the needs of economic growth which will increase the total employment strength ?

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Background paper on
Recognition of Trade Unions

SEMINAR

ON

JOB SECURITY
AND
RECOGNITION OF TRADE UNIONS

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AUGUST 27 - 28, 1968

COUNCIL OF INDIAN EMPLOYERS
FEDERATION HOUSE
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RECOGNITION OF TRADE UNIONS

A cordial relationship between management and labour is imperative to bring about the accepted objectives of greater production and higher productivity increase. Even with the best of efforts aimed at harmonising their interests by mutual understanding and co-operation, differences may, and do often, arise between them. These differences must ideally be resolved through a process of collective bargaining which is regarded as *sine qua non* of an effective democratic system of industrial relations throughout the world. The right of workers to join unions of their choice is now firmly established in law and practice. In India out of total working force in both industry and agriculture amounting to 188·7 million, only about 2·3 million workers are affiliated to one or the other of four central Trade Unions viz. INTUC, AITUC, HMS or UTUC. Besides there are many independent Trade Unions, with membership strength of about 2 million.

1·2 Collective bargaining involves an employer and a union of his employees freely negotiating an agreement and writing the results of that agreement into a binding contract or collective agreement. It is, therefore, essential that there should be a recognised union supported by a majority of the employees who should be able to speak for and deliver goods on behalf of workers. The question of recognition of a representative union is central to the system of collective bargaining.

Trade union defined:

2.1 Before we discuss the question of recognition of unions, it may be necessary precisely to know what we mean by 'unions'.

2·2 According to section 2(h) of the Indian Trade Unions Act, 1926 "trade union" means any combination, whether temporary or permanent, formed primarily for the purpose of regulating the relations between workmen and employers or between workmen and workmen, or between employers and employers or for imposing restrictive conditions on the conduct of any trade or business, and includes any federation of two or more Trade Unions."

2·3 It will, thus, be seen that the connotation of the term "trade union" under Indian law is wide and includes even employers' associations. The discussion in this paper is, however, confined to the *unions of workers*. For the purpose of this paper, the traditional definition of trade unions seems to be more appropriate, namely, that "a Trade Union is a continuous association of wage-earners for the purpose of maintaining and improving the conditions of their working lives."

2·4 Two important issues connected with the recognition of unions are (1) what should be the procedure for ascertaining the strength of rival unions for the purpose of recognition,

and (2) whether or not the recognition should be statutory or voluntary. The following paragraphs seek to discuss, in brief, the practices prevalent in the U.S.A. and the U.K. The choice of these two countries is mainly on the ground that they provide examples of alternative methods viz. statutory recognition of unions by secret ballot (U.S.A.) and purely voluntary recognition of unions by the employers (U.K.).

RECOGNITION OF UNIONS IN OTHER COUNTRIES

United Kingdom:

3·1 In the United Kingdom, recognition of trade unions by employers is voluntary. The English and Scottish Law, however, implicitly recognise the moral right of employees "to bargain collectively through representatives of their own choosing"; but they do not translate it into a legal duty imposed upon employers to bargain with the unions. An employer who refuses to 'recognise the freedom of his workpeople to be members of trade unions' may not obtain government contracts. He cannot, however, be ordered by an administrative authority or by a court to stop this practice. Some of the public corporations, which administer nationalised industries, have, however, been placed under a duty to 'enter into' or 'to seek consultation with organisations appearing to them to be appropriate with a view to establishing machinery for collective bargaining and joint consultation."

Substantial proportion:

3. 2 To secure recognition a union usually has to show to the employer that it represents a 'substantial' proportion of employees in the branch of activity concerned—though not necessarily in the praticular undertaking which as a rule means neither a majority nor a minimum percentage. In practice, it is a matter of tradition and common sense. Much of the collective bargaining is carried on an industry—wide basis, and, where this happens, the terms of an agreement signed by a nationally recognised union will also apply within the industry concerned in which that union may have only a few members.

3. 3 The criterion of "substantial" representation has been applied through various occupations. For instance, as regards the non-industrial civil service generally, recognition depends on the degree of organisation attained by the unions, though Government has never laid down any percentage of trade union membership which would establish a claim to national recognition or raise the question of its withdrawal.

Inappropriate category or occupation:

3·4 The second basic requirement of trade union recognition is that the union should be appropriate to the particular occupation or category of employees. This requirement, which has evolved from the idea of craft-unions, is followed with respect to both industrial and non-industrial occupations.

3·5 It is clear from the above that trade unions are generally recognised by employers on fulfilling certain conditions. But this does not mean that recognition would be granted to any union. Industrial relations in the U.K. have already been moulded into a pattern and the existing trade unions cover the field quite effectively. Both the unions and managements hold the view that, by and large, the existing trade union net-work provides enough scope for the workers, whether manual or non-manual, to choose the most appropriate union. Further, they are both wary of 'splinter unions' which might have a disruptive effect on the trade union movement and upset the relationship carefully built up between workers and employers.

3·6 The British Government never encouraged the formation of break-away unions. Lately, they have been, in fact, discouraged by legislation. Under the Industrial Disputes Order, 1951, only unions that habitually took part in the settlement of terms and conditions of employment were empowered to report a dispute or an issue to the Minister of Labour, and in addition the reporting of dispute was confined to unions that represented a substantial proportion of the workers in the trade or industry concerned. Thus, such unions were the only ones that could take advantage of the services of the Industrial Disputes Tribunal. Under the Terms and Conditions of Employment Act, 1959, the requirement of representing a substantial proportion of the workers in an industry is preserved as a qualification for the reporting of claims by a union in order to enforce the observance of negotiated agreements to which it is a party.

U.S.A.

4·1 Two important features of the U.S. Industrial Relations system are (1) the election of representative unions, as bargaining agents, by secret ballot, and (2) the recognition of unions by statute. These provisions, among other things, are administered by the National Labour Relations Board, set up under the Wagner Act, 1935 and later retained under the Taft-Hartley Act (Labour—Management Relations Act) 1947. According to Section 9(*a*) of the Taft-Hartley Act, the representatives designated for collective bargaining purposes by the majority of the workers in an appropriate bargaining unit must be regarded as the *exclusive representative* of all the workers in that unit in matters relating to the negotiation of wages, hours of work and other conditions of employment. Under Section 9(*c*) of the Act, any worker or group of workers or organisation of employees or an employer may call upon the National Labour Relations Board to carry out inquiries as a preliminary to certifying a union as a bargaining agent in a particular unit.

4·2 Intervention in, and supervision of, the elections are not an unvarying practice of the Board since it is quite lawful for an employer to agree informally with a particular union that the latter should act as the representative of all the workers in a particular plant once the employer has satisfied himself that the union does in fact represent the majority of the employees.

A minimum of 30 per cent:

4·3 Whenever a worker, a group of workers or organisation of employees requests the Board to intervene, it must be proved that not less than 30 per cent of the workers in the unit concerned support the union. This evidence is insisted on by the Board and is usually provided by the production of authorisation cards signed by the workers.

The bargaining unit:

4.4 The Wanger Act had stipulated that it was for the Board to decide "whether the employer unit, the craft unit, the plant unit or a sub-division of any of these was the most appropriate for collective bargaining purposes".* Generally speaking, the Board in its decisions takes into account the unit that has evolved in collective bargaining over the years. The Taft-Hartley Act imposed certain restrictions on the Board thus: Professional workers (defined mainly as employees engaged in work predominantly intellectual and varied in character as opposed to routine non-manual or manual worker) could not form a unit together with other workers unless the professional workers themselves decided to do so; the Board could not refuse to allow the establishment of a craft-unit on the ground that it had previously established a different unit for the same workers unless a majority of the employees in the proposed craft unit voted against separate representation; in other words, craft unions will be given preference if they wished to split off from a bigger unit; persons employed guards (watch and ward staff) in an establishment could not belong to the same unit as the other workers.

4·5 The Board can intervene to decide whether a union is no longer sufficiently represented to act as an exclusive bargaining agent on the workers' behalf. No new elections may be held within 12 months of any valid election. If a contract already exists, it must be allowed to expire before application is made for decertification of the union provided that the contract is not for more than 2 years.

4·6 In determining what is the appropriate unit for collective bargaining, the Board generally takes into account the following factors:

(*a*) the history, extent and type of organisation of the employees;
(*b*) the history of their collective bargaining, including any contracts;
(*c*) the history, extent and type of organisation of the employers;
(*d*) the relationship between any proposed unit or units and the employers' organisation, management and operation of his business, including the geographical location of the various plants or parts of the system; and
(*e*) the skill, wages and working conditions of employees.

4·7 Once the appropriate bargaining unit is determined, if a union is unable, by agreement, to win recognition from an employer as the bargaining agent of an appropriate unit,

* Governmental Resolution of Industrial Relations by Hywell Evans P. 56.

it is free to file a petition with the National Labour Relations Board, which would demand satisfactory evidence from the union that it enjoyed substantial representation among the employees. On receipt of the application, the Board would set a date for a secret election to determine *whether the workers in the unit desired to be represented by a union and, if there was more than one in the field, by which one.* The union successful in an election becomes the representative of all the workers in the unit concerned.

I. L. O. CONVENTIONS

5·1 The I.L.O. Convention No. 87 (1948), on Freedom of Association and Protection of the Right to Organise, lays down that "workers and employers, without distinction whatsoever, shall have the right to establish and, subject only to the rules of the organisation concerned, to join organisations of their own choosing without previous authorization." Other Articles give full freedom to workers' organisations to draw up their constitutions, to elect representatives, to organise their activities to establish and join federations etc. Article 8 of the Convention lays down that "workers and employers and their respective organisations, like all others, shall respect the law of the land. The law of the land shall not be such as to impair, nor shall it be so applied as to impair, the guarantees provided for in the Constitution."

5·2 The I.L.O. Convention No. 98 (1949), the Right to Organise and Bargain Collectively, says that workers shall enjoy protection against acts of anti-union discrimination in respect of their employment. The protection is, in particular, directed in respect of acts calculated to (*a*) make the employment of a worker subject to the condition that he shall not join a union or shall relinquish trade union membership, and (*b*) cause the dismissal of, or otherwise prejudice, a worker by reason of union membership or because of participation in union activities outside working hours.

Background to recognition of unions in India

6·1 According to the Report of the Royal Commission on Labour (1933), the expression, "recognition of unions" owes its origin, as far as India is concerned, to the relations of Government with its servants. Unitl comparatively recent times, Government servants were prohibited from submitting collective memorials and petitions. When conceded, this right was granted only to combinations which conformed with certain rules. These are known as the Recognition Rules, and Unions which accepted them were then ordinarily granted formal 'recognition' and were able to conduct negotiations with Government on behalf of their members. Private employers, too, tended to adopt similar methods.

6·2 The Royal Commission observed: "Some (employers) seem to think that recognition means that the employer recognises the right of the union to speak on behalf of his workmen, or at any rate all the class for which the union caters. Influenced in some cases by this misconception and in others, we fear, by a desire to prevent the union from gaining

in strength, recognition has frequently been withheld on the ground that the union embraces only a minority of the class concerned. Other reasons given for refusing recognition are the prior existence of another union, the refusal of the union to dispense with the services of a particular official, the inclusion of outsiders in the executive and the failure of the union to register under the Trade Unions Act." The Commission recommended that "Government should take the lead, in the case of their industrial employees, in making recognition of unions easy and in encouraging them to secure registration."

Statutory recognition-past efforts

7 The progress of voluntary recognition of trade unions by employers as recommended by the Royal Commission was not considered satisfactory by Government. Accordingly, a Bill was introduced by the Government in the Central Legislative Assembly in 1943 providing for compulsory recognition of unions. The then Member for Labour, Dr. B. R. Ambedkar, justified the introduction of the Bill on the ground that it was felt by Government that the time had come when the compulsory recognition of trade unions must be provided for by legislation. To quote his words, "with all its limitations recognition by statute will at least clarify the position and give organised and well-conducted Trade Unions the status they deserve." The Bill (Indian Trade Unions (Amendment) Bill, 1943) was placed before the Fifth Session of the Standing Labour Committee held in New Delhi in June 1944. There was some discussion on the underlying principle and the proposed provisions of the Bill; but it did not lead to any agreed recommendation .

The Trade Unions (Amendment) Bill:

8·1 In the light of the opinion received on the Bill, it became necessary to amend the Bill referred to above. As the amendments were of a substantial nature, Government considered it advisable to inrtoduce a revised Bill in the Legislature instead of proceeding with the old Bill. The Bill, as revised, was accordingly placed for discussion at the Seventh session of the Indian Labour Conference held in November 1945.

8.2 After some discussion, it was agreed that a small Committee representing two members from the employers' side and two members' from the workers' side, be appointed and that Government would be prepared to call them at short notice and place before them their final proposals with regard to the Bill. The Sub-Committee of the Conference met at New Delhi in January 1946. The Employers' representatives on the Committee opposed the principle of according recognition by means of compulsion, as it would not result in bringing about harmonious relations between employers and employees. It was their considered opinion that a union to be really representative of workers, should have in its membership not less than 25 per cent of the total number of workers. The Chairman, Dr. B. R. Ambedkar, however, opined that, in the present unorganised state of labour in India, it was absolutely inadvisable to lay down any rigid condition with regard to the percentage of membership. He agreed that the statement of Objects and Reasons appen-

ded to the earlier Bill, and about which employers had taken strong exemption, would be altered when the New Bill was introduced. The Government introduced the Indian Trade Union (Amendment) Bill in the Central Legislative Assembly on February 21, 1946, providing for obligatory recognition of representative trade unions by employers by an order of Labour Court, but was not proceeded with during that Session. Again, the same Bill was introduced in the Central Legislature on October 29, 1946, by Mr. Jagjivan Ram, the Labour Minister of the Interim Government. The Bill was referred to a Select Committee which submitted its report on February 28, 1947.

8.3 The Committee was of the opinion that the Bill had not been so altered as to require re-publication and that it might be passed as amended by it. Amongst the most important amendments made by the Select Committee, the following may be mentioned: (1) The Labour Court in deciding the representative character of a Union, shall have regard to the percentage of membership which might be prescribed either generally or in respect of any locality, any particular employer, or industry. (2) The Labour Court should be empowered finally to decide the question of recognition, and not merely to make a recommendation to the appropriate Government. (3) A proviso was added to the Section on 'unfair practices by employers', whereby the refusal of an employer to permit his workmen to engage in Trade union activities during their working hours shall be deemed to be an 'unfair practice' on his part. The Bill was passed on November 19, 1947, and received the assent of the Governor-General on December 20, 1947.

Conditions for recognition under 1947 Act :

9 Under the provisions of this Act, the recognition might be granted by the employer by agreement or a trade union might apply for grant of recognition by Labour Court, on fulfilling the following conditions:

(*a*) That all its ordinary members are workmen employed in the same industry or industries closely allied or connected with one another;

(*b*) that it is representative of all workmen employed by the employer in that industry or those industries;

(*c*) that its rules do not provide for the exclusion from membership of any class of the workmen referred to in (*b*);

(*d*) that its rules provide for the procedure for declaring a strike;

(*e*) that its rules provide that a meeting of its executive shall be held at least once in every six months; and

(*f*) that it is a registered trade union, and that it has complied with all the provisions of the Trade Unions Act, 1926.

The Act has not, however, been enforced so far.

THE TRADE UNIONS BILL, 1950

10·1 The anxiety of Government to bring into force either the Trade Unions (Amendment) Act, 1947 or some similar legislative provision incorporated elsewhere and to ratify I.L.O. Convention 87 and 98, without such ratification having, in any way, undesirable repercussions on the Civil Service of the country led to the drawing up of two important Bills by the Government, viz the Labour Relations Bills, 1950, and the Trade Unions Bill, 1950.

10·2 On February2 3, 1950, the then Union Labour Minister, Mr. Jagjivan Ram, introduced in Parliament the Trade Unions Bill 1950. The Bill was primarily a consolidating measure, but there were a few new provisions. The new provisions were as follows:

(*a*) A trade union of civil servants shall not be entitled to recognition by the appropriate Government if it does not consist wholly of civil servants or if such union is affiliated to a federation of trade unions to which a trade union consisting of members other than civil servants is affiliated.

(*b*) A trade union shall not be entitled to recognition by an employer in relation to any hospital or educational institution by order of a Labour Court if it does not consist wholly of employees of any hospital or educational institutions, as the case may be.

(*c*) A trade union consisting partly of supervisors and partly of other employees, or partly of the watch and ward staff and partly of other employees shall not be entitled to recognition by an employer by order of a Labour Court."

10·3 It was also laid down in the Bill that "where application for recognition is made by more than one registered trade union, the trade union having the largest membership will have preference to other trade unions."

10·4 The Ministry of Labour placed the Bill for discussion at the 10th Session of the Indian Labour Conference held at New Delhi in March 1950. The main point made by the employers' representative was that Chapter IV of the Bill relating to recognition of Unions should not be made applicable in the case of those workers who were covered by a certified bargaining agent under the Labour Relations Bill. This was in the interest of the proper growth of trade unionism and would avoid multiplicity of union shaving bargaining status at the same time.

10·5 The workers' representatives crtitcised the clause relating to the restriction of the number of outsiders on the executive of a trade union. They also pressed for the deletion of clause 32 which permitted an employer to recognise any number of trade unions. It was urged that such a provision would encourage unhealthy rivalry between various trade unions and result in employers promoting "company unions."

10·6 The Bill was referred to a Select Committee of Parliament. The Report of the Select Committee was not unanimous. There were three minutes of dissent appended to the Report. One important point made out was that the provisions relating to unions of civil

servants had the effect of denying to civil servants the right of Association and the right to organise. In contrast, another member suggested that workers in munitions and factories run by the Defence Department should not be brought under the trade union law, and that they should be specifically excluded from the purview of the Bill.

10·7 Other observations contained in the minutes of dissent related to the restriction placed on the number of outsiders on executives the need for making political levy compulsory, and the cumbrous procedure for securing the registration of a trade union.

10·8 Because of the opposition to the Bill from various quarters, particularly from workers' side, the Government of India did not proceed with it. On dissolution of the legislature, the Bill lapsed and has not since been brought forward by Government before the Parliament.

State legislation on recognition of unions:

11·1 Although there is no central legislation at present governing recognition of trade unions, there are State enactments which regulate recognition in a number of States. The *Bombay Industrial Relations Act*, 1946, contains elaborate provisions covering recognition and rights of unions. The B.I.R. Act distinguishes between three of unions, viz. (1) Representative Union, (2) Qualified Union and (3) Primary Union. These are defined as follows:

(1) Any union, which has for the whole of the period of three months next preceding the date of its so applying a membership of not less than 15% of the total number of employees employed in any industry in any local area, may be registered as a *Representative Union* by the Registrar of Trade Unions.

(3) If in any local area a Representative Union has been registered in respect of an industry, a union which has for the whole of the period of three months next preceding the date of its so applying a membership of not less than 5% of the total number of employees employed in such industry in the said area may be registered as a *qualified Union* for such industry in such local area.

(3) If, in any local area, neither a Representative Union nor a Qualified Union has been registered in respect of an industry, a union having a membership of not less than 15% of the total number of employees employed in any undertaking in such industry in the said area may be registered as a *Primary Union* for such industry in such local area.

With the bifurcation of Bombay State, the B.I.R. Act is applicable both in Maharashtra and Gujarat.

The C. P. and Berar Act, 1947 laid down the following conditions for recognition of unions:

(*i*) The membership of the Union is open to all the employees irrespective of caste, creed or colour;

(*ii*) The Union has for the whole of the period of six months next preceding the date of application a membership of not less than between 15 and 20% as the State Govern-

ment may prescribe for that local area of the employees employed in the industry in that area;

(*iii*) The constitution of the Union shall be such as may be provided by or under this Act, and in particular, shall require that :—

(*a*) the subscription payable for membership shall not be less than two annas a month and that the account of the union shall be audited by an auditor appointed by the State Government;

(*b*) the executive of the Union shall meet at least once in three months and that all resolutions passed by the executive and the General Body shall be recorded in a minute book; and

(*c*) the union shall not sanction a strike as long as conciliation and arbitration are available and shall not declare a strike until a ballot is taken and the majority of the members of the Union vote in favour of the strike.

The Madhya Pradesh Industrial Relations Act, 1960, which replaced the above Act, however, lays down that a union for the purpose of recognition should have "not less than 25% of the total number of employees employed in the industry in such local area."

PLAN POLICY ON RECOGNITION

Second Five Year Plan:

12 The Second Five Year Plan (1956-61) recommended that "since recognition has played a notable part in strengthening the movement (trade union) in some States, some statutory provision for securing recognition should be made, where such recognition does not exist at present. In doing so the importance of one union for an industry in a local area requires to be kept in view. It is equally importance that while mere numbers would secure recognition to a union, it should, for functioning effectively, exhaust the accepted procedure and the machinery for the settlement of disputes before it has recourse to direct action."

Third Five Year Plan:

13 The Third Five Year Plan (1961-66) laid stress on voluntary recognition of unions. It was stated therein that "the basis for recognition of unions, adopted as a part of the Code of Discipline, will pave the way for the growth of a strong and healthy trade unionism in the country. A union can claim recognition, if it has a continuing membership of atleast 15 per cent of the workers in the establishment over a period of six months and will be entitled to be recognised as a representative union for an industry or a local area, if it has membership of atleast 25 per cent of workers. Where there are several unions

in an industry or establishment, the union with the largest membership will be recognised. Once a union has been recognised, there should be no change in its position for a period of two years, if it has been adhering to the provisions of the Code of Discipline".

VOLUNTARY RECOGNITION OF UNIONS UNDER THE CODE OF DISCIPLINE IN INDUSTRY

14 The Code of Discipline which was evolved in broad outline at the 15th Session of the Indian Labour Conference held in 1957 was finally adopted at the 16th Session of the Indian Labour Conference in 1958. It came into force from July 1, 1958. The Code is a statement, *inter alia*, of obligations of managements and unions. One of the obligations of management is to accord recognition to a union which fulfilled the criteria appended to the Code. These criteria are as follows:

(1) Where there is more than one union, a union claiming recognition should have been functioning for at least one year after registration. Where there is only one union, this condition would not apply.

(2) The membership of the union should cover at least 15% of the workers in the establishment concerned. Membership would be counted only of those who had paid their subscriptions for at least three months during the period of six months immediately preceding the reckoning.

(3) A union may claim to be recognised as a representative union for an industry in a local area if it has a membership of at least 25% of the workers of that industry in that area.

(4) When a union has been recognised there should be no change in its position for a period of two years.

(5) Where there are several unions in an industry or establishment, the one with the largest membership should be recognised.

(6) A representative union for an industry should have the right to represent the workers in all the establishments in the industry, but if a union of workers in a particular establishment has a membership of 50% or more of the workers of that establishment it should have the right to deal with matters of purely local interest, such as, for instance, the handling of grievances pertaining to its own members. All other workers who are not members of the union might either operate through the representative union for the industry or seek redress directly.

(7) In the case of trade union federations which are not affiliated to any of the four central organisations of labour, the question of recognition would have to be dealt with separately.

(8) Only unions which observed the Code of Discipline would be entitled to recognition.

Rights of recognised unions:

15.1 A recognised union has undoubtedly a right to negotiate with employers on terms and conditions of service of its members. However, the different State enactments lay down certain specific rights of unions.

15.2 The Bombay Industrial Relations Act, 1946 has laid down certain rights of a "Representative Union":

(*a*) A representative union has the first preference to appear or act in any proceeding under the Act as the representative of employees in an industry in any local area, next in importance is a qualified or primary union.

(*b*) No individual is to be permitted to appear in any proceeding wherein a representative union has appeared as the representative of employees. Nor can a Labour Officer appear in any proceedings in which the employees who are parties thereto are represented by representative union.

(*c*) Any employer or a representative union or any other registered union may submit a dispute for arbitration.

(*d*) A representative union is entitled to make a special application to the Labour Court to hold an enquiry as to whether a strike, lock-out, etc. is illegal.

(*e*) Managements cannot dismiss, discharge or reduce any employee of such a union or punish him in any other manner merely because he is an officer or member of registered union or a union which has applied for recognition under the Act.

(*f*) In the case of agreements, awards, etc., in which a representative union is a party, the State Government may, after giving the parties affected an opportunity of being heard, direct such agreements etc. shall be binding upon such employers or employees as may be specified.

15·3 The category of Approved Unions, under the B. I. R. Act, enjoy the following rights:

(*a*) collect sums payable by members to the Union on the premises where wages are paid to them;

(*b*) put up or cause to be put up a notice board on the premises of the undertakings in which its members are employed and affix or cause to be affixed notices thereon;

(*c*) hold discussions on the premises of the undertaking with its members and to discuss with the employer or his representatives the grievances of its members for the purpose of prevention of settlement of an industrial dispute; and

(*d*) inspect, if necessary, any place in the undertaking where any of its members is employed.

Rights of recognised union under the Code:

16 The question of rights of unions recognised under the Code of Discipline vis-a-vis unrecognised union was discussed at the 20th Session of the Indian Labour Conference (August 1962). While a decision on the rights of unrecognised unions was deferred for future consideration, it was agreed that unions granted recognition under the Code of Discipline should enjoy the following rights:

(*i*) to raise issues and enter into collective agreements with employers on general questions concerning the terms of employment and conditions of service of workers in an establishment, or in the case of a Representative Union, in an industry in a local area;

(*ii*) to collect membership fees/subscriptions payable by members to the union within the premises of the undertaking;

(*iii*) to put up or cause to put up a notice board on the premises of the undertaking in which its members are employed and affix or cause to be affixed thereon notices relating to meetings, statements of accounts of its income and expenditure and other announcements which are not abusive, indecent or inflamatory or subversive of discipline or otherwise contrary to the Code;

(*iv*) for the purpose of prevention of settlement of an industrial dispute:—

(*a*) to hold discussions with the employees who are members of the union at a suitable place or places within the premises of office/factory/establishment as mutually agreed upon;

(*b*) to meet and discuss with an employer or any person appointed by him for the purpose, the grievances of its members employed in the undertaking;

(*c*) to inspect, by prior arrangement, in an undertaking any place where any member of the union is employed;

(*v*) to nominate its representatives on the Grievance Committee constituted under the Grievance Procedure in an establishment;

(*vi*) to nominate its representatives on Joint Management Councils; and

(*vii*) to nominate its representatives on non-statutory bipartite committees, e.g. Production Committees, Welfare Committees, Canteen Committees, House Allotment Committees, etc. set up by management.

Rights of non-recognised union:

17 The question of the rights of unrecognised unions was raised and discussed at the 24th Session of the Indian Labour Conference held in 1964. The consensus of opinion at the Conference was that "the recognition of category/department-wise unions should not be encouraged. Unions not recognised under the Code of Discipline should, however, have the right to represent individual grievances relating to dismissal and discharge or other

disciplinary matters affecting their members." This conclusion has, however, been objected to by employers who have stated that they had not agreed to give any rights to a non-recognised union.

Difficulties encountered by employers:

18 Although a large number of employers have accorded voluntary recognition to unions in their undertakings under the Code of Discipline, there are various practical difficulties arising from the following factors: (1) the multiplicity of unions, (2) inter-union and intra-union rivalries; (3) outside leadership of unions and their political motivation. According to Section 4 of the Indian Trade Unions Act, 1926, any seven or more members may come together and form a Trade Union and by subscribing their names to the rules of the Trade Union and by otherwise complying with the provisions of the Act with respect to registration, apply for registration of the union. Thus, employers are confronted with the curious phenomenon of more than one union each claiming to represent the workers of the same plant/industrial enterprise. Even when the employer has recognised a union there is no guarantee that the recognised union will be able to deliver the goods on behalf of all workers or that the union will abide by the contract.

Determining a representative union:

19 The existence of more than one union in an industry unit/industry raises the question of ascertaining the strength of the union for the purpose of recognition. The system prevalent in India is the membership verification carried out usually by the Labour Commissioner under the Code of Discipline.

Verification of membership:

20.1 In 1960, a detailed procedure laying down the different steps that a Labour Commissioner was to take when verifying the membership of a union seeking recognition under the Code of Discipline in Industry was spelt out by the Government of India and subsequently agreed to by the Central Workers Organisations.

20.2 According to the procedure, on receipt of a representation from a Union for recognition, the Central/State Implementation machinery has first to ascertain (*a*) the names of unions functioning in the establishment; (*b*) whether any of the unions functioning in the establishment was responsible for an established breach of the Code during the past one year; and (*c*) whether the existing recognised union, if any, had completed a period of two years of recognition. The procedure, inter alia, involves production of a list of the members of respective trade unions before the Government authority within the stipulated period, checking of subscriptions paid by the members of each trade union, personal interrogation of those workers denied membership of a particular union, etc. The results of the veri-

fication are to be intimated to the management which has to accord recognition to the majority union.

Drawbacks of the verification method:

21·1 The methods of recognising unions through membership verification is, however, criticised by its opponents, particularly the central organisations of workers other than the INTUC, on the ground that verification of membership is a farce and that the results are rigged up by the official machinery to boost the INTUC Union. According to them, there are various ways of inflating membership figures. One method is that money is shown as collected as membership fees from non-existent members and is shown as spent on union activities. It is not easy for Audit to find out the correctness or otherwise of such accounts. Another method is reported to be to collect from the employers against the names of the workers who, really are the members of some other unions. Thus, the membership of a union is boosted for claiming recognition.

21·2 It is further argued that, if the entire body of workers are to be represented by the recognised union, a membership check would not be an appropriate way of ascertaining the preference of workers. Membership then ceases to be a common yardstick for measuring the preference of union and non-union workers. In such situations, the recognised unions are not able to carry the rank and file with them. As such, the collective agreements, if entered into with them, may not be effective in actual implementation.

Secret ballot:

22·1 It is, therefore, urged by the central trade union organisations, other than the INTUC, that the representative character of the unions should be determined through elections conducted by secret ballot. The method of ascertaining the strength of the union through secret ballot is supported by its advocates on the following grounds:

22·2 If election through secret ballot is good enough for entrusting the reins of Government to a political party, it must be equally good enough for a much smaller purpose, namely, representing workers in collective bargaining and in various other labour—management questions. Election through secret ballot is the democratic way of ascertaining the wishes of the people and is followed in U.S.A. and other countries.

22·3 If a union has a record of performance, that is bound to be reflected in the election results. In an election each union is given an opportunity to counter the propaganda of the other union and can effectively place its views before the workers. If there has been no violence or intimidation in four General Elections held in the country there is no reason to apprehend that election for union representation would result in fights or other unfair practices.

22·4 The Council of India Employers has evolved a formula to meet the conflicting points of view regarding recognition of unions. In its Memorandum submitted to the National Commission on Labour, the Council has suggested that :

"A. Where there is only one union, the Registrar of Trade Unions or other independent Authority established for the purpose should certify the actual number of members covered by the union and the certificate issued by the Registrar in this respect should be conclusive as far as the employer is concerned;

B. Where there is more than one union,

(*a*) The membership of each of two or more unions should be verified by the Registrar or other Authority to ascertain whether each union covered 30 per cent or more membership of the workers in the establishment or work group;

(*b*) If it is found that, of two or more unions, each has 30 per cent or more membership and the difference in the verified membership between any two of them is 10 per cent or less, than a ballot should be taken by the Registrar or other Authority of all workers in the Establishment/work-group to decide which of the unions should be recognised as bargaining agent;

(*c*) Where a ballot is taken, each union which has a duly verified membership of 20 per cent or more of the workmen in the ascertainable workgroup would have the right to stand as a 'candidate' in the election for ascertaining which union should be the recognised bargaining agent.

There should be provision in law for an appeal by an aggrieved union to the Labour Court against the result of a ballot".

22·5 The argument against secret ballot runs as follows:

In the election even workers who are not members of any union will have the right to vote and this cannot be accepted. Irresponsible trade unions are likely to make fantastic promises which will bring them the highest number of votes. After election, inter union rivalry will take a turn for the worse, particularly on the question of fairness or otherwise of the election. For conducting the elections a huge administrative machinery will be required, entailing heavy expenses.

22·6 In its Memorandum submitted to the National Commission on Labour, the INTUC, *inter alia*, states:

"The INTUC is convinced that verified membership is the only basis for ascertaining the strength of a trade union. Voting by secret ballot may not give the real strength of a trade union. Any contesting union may whip up an agitation on the eve of the elections and sway the electroate for a moment. The subscription paid by a member month after month is the best and solid vote; and a continuous payment of subscription over a year is the sustained vote to that organisation. Further if the representative union is to be decided by ballot, it will lead to endless trouble. There may be an allegation that membership verification has not properly been done by the defeated unions. But that cannot make the membership basis defective. For that matter even election by secret ballot may be questioned by the defeated union as not having been fair. These allegations by the defeated party will always be there and that therefore should not be the reason to give up the

membership basis. As to who would be the electorate will also create complications."

22·7 It is interesting to note that in Bihar, employers and workers have agreed to voluntary recognition of unions on the basis of a decision by an independent authority which may adopt either secret ballot or verification of membership method.

22·8 The Bihar Central Labour Advisory Board at its meeting held in January, 1968 passed a Resolution on "Recognition of Unions". The principles laid down in the said Resolution were as follows:

(*i*) Where there is a single registered trade union in an establishment, that union must be recognised by the employer provided it has had some standing, say of a year's work, irrespective of the strength of its membership.

(*ii*) In the case of intra-union dispute relating to the office-bearers, they should be referred to the State Branch of the All India Organisation to which the union claims affiliation and the decision of the said body should be accepted. If however, such a decision is not available within a specified time or where the union is not affiliated to an All India Organisation, the dispute should be determined either by verification or by secret ballot.

(*iii*) All cases of inter-union rivalry should also be determined by verification or by secret ballot.

(*iv*) The decision whether the dispute will be decided by verification or by secret ballot will be taken in each case by an independent tripartite body.

(*v*) The procedure of verification and secret ballot would be laid down by this independent body.

(*vi*) Only the members of the Registered Unions who are parties to the dispute and who have paid union subscription for at least a year before the dispute arose would be entitled to cast their votes in the secret ballot.

(*vii*) Where there is already a recognised union the rival union claiming recognition should get 75 per cent of the votes cast before it can be allowed to unseat a recognised union.

(*viii*) In case a secret ballot concerning intra-union disputes or in cases of union rivalry where no union is recognised, recognition should be given to the Union or the persons by simple majority.

22·9 Dr. P. B. Gajendragadkar, Chairman of the National Commission on Labour, is reported in the Press to have offered a compromise formula as follows:

"All the existing permanent employees in an existing unit and all the new entrants at the time of being made permanent should be asked to indicate to the employer the union to which they owed allegiance. The employer will maintain this record on the basis of which the representative character of the union and therefore the disputes regarding recognition and intra-union rivalry could be decided."

22·10 The suggestion obviously implies the direct involvement of the employer in ascertaining the wishes of an employee regarding his preference for one or another union. The unions may argue that this amounts to an interference by employers into their internal affairs; nor would employers like to undertake the responsibility. When there is more than

one union in an industrial enterprise, the employers will have to face the charge of supporting a particular union even when that enjoys the whole-hearted backing of the majority of the workers in that unit. An independent outside authority would not be subject to these objectives.

Appropriate collective bargaining unit:

23.1 Another question is: whether unions should be recognised unit-wise or industry-wise? or how to determine the bargaining unit? The Labour Relations Bills, 1950 (which lapsed on dissolution of the Central Legislative Assembly) had laid down as follows:

"The appropriate Government may, by notification in the official Gazette, declare any establishment or class of establishments to be appropriate for collective bargaining.

An application for certification as the bargaining agent in respect of any establishment or class of establishments in any local area may be made to the Labour Court by

(*a*) a registered federation of trade unions having a membership in good standing of not less than 15 per cent of the total number of employees employed in that establishment or class of establishments in that area; or

(*b*) a registered trade union having a membership in good standing of not less than 30 per cent of the total number of employees in that establishment or class of establishments in that area.

A membership of a registered trade union or registered federation of trade unions shall be deemed to be in good standing if such membership has not lapsed during the ninety days preceding the date of the application by the Union."

It was further laid down that "two or more trade unions may join in an application for considering as a bargaining agent."

23·2 In recognising an industry-wise union, one of the difficulties is that such a union may not have adequate membership in all the units of the industry. But the industry-wise recognition may be found useful in cases where a pattern of negotiations and collective bargaining between the industry and the representative union has developed or where terms and conditions of employment in all the units of the industry have been standardised. Collective bargaining should, however, ideally take place at the unit level.

Craft-unions:

24·1 A question may arise whether or not a union which does not represent a majority of workers but is confined to specific categories of employer such as technicians, weavers or spinners, watch & ward staff, clerks, supervisors or monthly rated workers could be recognised as sectional unions for such particular categories in addition to or in place of the majority union recognised for the entire establishment or industry. The Indian Labour

Conference at its 19th Session held in October, 1961, which considered the question of representation of technicians, supervisory staff, etc., by a representative union, recommended:

"Technicians, supervisory staff, etc. should be free to form their own unions to represent their interests. If, however, a majority of technicians etc. are members of a general union, and that union is a representative union, such a union would be entitled to represent the interests of technicians, etc. also."

24·2 The above recommendations has two parts—one dealing with the formation of a union of technicians, supervisory staff, etc. to represent their interests and the other with the representation of the interests of technicians, etc. by a general union which has its members a majority of such employees. There is no difficulty where such a general union exists and is recognised to represent the interests of technicians etc., in addition to others in an establishment or industry. The difficulty arises in the case where a majority of technicians, clerks etc. are not members of a general union but have formed a separate union of their own as is envisaged in the recommendation of the Conference.

24·3 If such a category-wise union is recognised in an establishment or industry in addition to the general union representing a majority of workers, there will be more than one recognised union in the establishment or industry. Where there are several such categories, recognition of department-wise unions may also give rise to a multiplicity of recognised unions, which, in turn, may adversely affect the scope and standing of the majority (recognised) union.

24·4 If, on the other hand, a category-wise or department-wise union is not permissible, the management may refuse to deal with it on the ground that it is not bound under the Code to do so when a recognised union exists in the establishment or industry. The position would be even more anomalous if the general union has no membership of such category of workers or department. In the absence of recognition, the category-wise or occupational union may carry on agitation against the management, unless the management agrees to deal with them even though they are not unions recognised under the Code.

Other suggestions

25·1 The National Commission on Labour has appointed a number of Study Groups and following recommendations of some of these Groups on recognition of trade union will be of interest to the participants in the Seminar:

Study Group on Labour Legislation:

25·2 "There must be statutory provision for recognition as that would help substantially towards greater stability of employer employee relations. Further, that where crafts are clearly defined, craft unions may also be permitted to be recognized."

Study Group on Industrial Relations (Southern Region):

25·3 "It would be ideal to have only one trade union in each establishment. However, where there are two or more unions, a proper method should be evolved for selecting the union for recognition. The relevant provision in the Code of Discipline which relates to the recognition of unions may be given statutory backing so that recognition of unions is made on objective and not on subjective consideration of employers or political parties to which the unions may belong.

Persons who are found guilty of committing, abetting, inciting or conniving the breach of the Code of Discipline should be debarred from holding trade union offices. In order to determine whether a person has been guilty of committing, abetting, inciting, or conniving the breach of the Code of Discipline, an independent machinery other than a Government Official should be created and this machinery should fix the period for which a person who is guilty of acts mentioned above should not hold an office in the trade union.

A safe method would be to recognise a union by proper verification of the membership by the independent machinery. Once a union is recognised on the basis of the highest membership, a check-off system should be introduced so that thereafter verification of membership of the recognised union will be on the basis of membership of those who agree to a deduction from their wages for paying union subscription. After the recognition, new unions should be allowed to be registered only if they have a membership of at least 25% of the workers in the establishment or industry as the case may be. If this is done, the mushroom growth could be arrested. Check-off system should be legalised by amending the Payment of Wages Act.

Once a union is selected by the independent machinery for recognition, the employer must recognise that union and it should be the responsibility of the employers' organisation to ensure that their members honour this obligation.

A union once recognised should continue to be recognised for at least three years before its status is challenged. When its status is challenged, the independent machinery should examine the rival claim and determine the union which should be recognised. The union which is recognised as a result of such investigation should have the status of a recognised union for a further period of three years so that frequent changes in recognition due to floor crossing may not take place."

Study Group for Ports and Docks:

25·4 "The Indian Trade Unions (Amendment) Act, 1947 should been forced with such modifications as might be deemed expedient for recognition of representative unions, and rules under the amended Act for the recognition of unions should be properly framed."

Study Group on Industrial Relations (Northern Region):

25·5 "The right of recognition and collective bargaining should be secured to trade unions, through law. For the determination of the majority union for purposes of recognition,

some suitable method acceptable to all trade union organisations should be evolved as early as possible; and this will have to be through legislation. The recognised union should enjoy the sole right to represent the employers in the undertaking or industry in all industrial matters and general disputes. The recognised union should be given the facility of check-off subject to the written consent of the workers concerned.

We are not in favour of the recognised union being given the right to union shop. However, where a recognised union exists in a unit, all workers in that unit should be required to join either that union or any other union of their choice. The existing limited rights of the non-recognised unions should continue. For deciding the majority union, certifying the recognised union as the bargaining agent, for determining the areas of bargaining, for deciding issues of unfair labour practices and dealing with other related matters, it would be desirable to set up a judicial agency independent of the normal labour administrative machinery."

Points for discussion:

26 The above analysis throws up several issues for discussion. The important points are:

1. Should employers recognise a union?
2. What should be the criteria for recognition?
3. Should recognition be statutory or voluntary?
4. What should be the method for ascertaining the strength of unions for recognition?
   (*i*) By membership verification?
   (*ii*) By secret ballot?
   (*iii*) Any other via-media?
5. If 4 (*ii*) above, who should conduct the elections: (*a*) Management (*b*) Government (*c*) Trade Unions or (*d*) An Independent quasi-judicial or judicial authority.
6. If 4 (*iii*) above, what should be the ideal formula? (*a*) Should management be involved in ascertaining the strength of the union? (*b*) If so, what are its implications?
7. Should all workers or only the members of trade unions be allowed to vote?
8. Should there be any minimum period of existence/minimum membership for a union to be eligible to contest the elections?
9. Should there be a periodical election to ascertain the strength of the recognised union? If so, what should be the frequency (interval) at which elections should be held?
10. Should unions be recognised plant-wise, industry-wise, region-wise or region-cum-industry-wise?
11. Should technicians, supervisory and watch and ward staff be allowed to join trade unions wherein all other category of workers are also members? or should they

have separate unions—craft-unions? If so, what should be the status of category-wise unions vis-a-vis general unions for collective bargaining purposes?

12. Apart from membership as ascertained by verification or secret ballot should there be any other condition for recognition of unions such as—(*a*) political acceptability; (*b*) exclusion of outsiders; (*c*) agreement not to indulge in unfair labour practices during the period of recognition etc.
13. What should be the rights and obligations of recognised unions?
14. Should any rights be given to minority i.e. non-recognised unions? If so, what?
15. If minority unions are allowed to take part in collective bargaining/negotiations, what should be the basis for giving them representation? (i) membership strength (*ii*) votes cast in favour of the union (*iii*) Ad hoc decision of the management.
16. What should be the precise role of management in such situations? i.e. should management seek and accept the advice of the recognised union or should it nominate representatives, *ad hoc*, on its own accord?
17. If the recognised union takes objection to the representation of minority unions in collective bargaining process and boycott the proceedings, how and who can and should break the deadlock?
18. In the context of the existence of minority unions, what steps are necessary to ensure the compliance of agreements reached between the recognised unions and the managements?
19. When and under what circumstances a recognised union should be derecognised?