MBA SEMESTER-III

INDUSTRIAL RELATIONS

Syllabus

HRM 304: INDUSTRIAL RELATIONS

Objective: to enlighten the students with the Concepts and Practical applications of Industrial Relations.

Unit – I: Industrial Relations: Scope and Significance – Causes and Consequences of Industrial Disputes – Recent Trends in Industrial Relations

Unit—II : Trade Unions: Trade Union Structure and Movement in India – Changing Role in the Context of Liberalisation

Unit – III: Promotion of Harmonious Relations – Machinery for Prevention and Settlement of Industrial Disputes – Conciliation – Arbitration and Adjudication – Code of Discipline.

Unit-IV: Grievances and Discipline: Grievances Redressal Machinery – Discipline in Industry _ Measures for dealing with Indiscipline.

Unit – V: Collective Bargaining (CB) – CB Practices in India – Participative Management Forms and Levels – Schemes of Workers' Participation in Management in India.

Unit – I: Industrial Relations: Scope and Significance – Causes and Consequences of Industrial Disputes – Recent Trends in Industrial Relations

Introduction

In simple terms Industrial Relations deals with the worker employee relation in any industry Government has attempted to make Industrial Relations more health by enacting Industrial Disputes Act 1947. To solve the dispute and to reduce the regency of dispute. This in turn improves the relations.

What is Industry? Where we want to have better relations. ―Industry means any systematic activity carried on by co operation between an employer and his employee whether such workmen are employed by such employer directly or by or through any agency including a contractor for the production supply or distribution of goods or sources with a overview to satisfy human want or wishes (not being wants or wishes which are merely spiritual or religious in nature) whether or not (i) any capital has been invested for the purpose of carrying on such activity or (ii) such activity is carried on with a motive to make any gain or profit and includes any activity relating to the promotion of sales or business or both carried on by an establishment but does not include.

i) Normal Agriculture operations

ii) Hospital, Dispensaries.

iii) Educational, Scientific Research Training Institution,

iv) Charitable Philanthropic Service

v) Khadi Village Industries

vi) Domestic Services etc.

Industrial Relations (IR): Concept, Scope and Objectives

According to Dale Yoder', IR is a designation of a whole field of relationship that exists because of the necessary collaboration of men and women in the employment processes of Industry".

Armstrong has defined IR as "IR is concerned with the systems and procedures used by unions and employers to determine the reward for effort and other conditions of employment, to protect the interests of the employed and their employers and to regulate the ways in which employers treat their employees"

In the opinion of V. B. Singh "Industrial relations are an integral aspect of social relations arising out of employer-employee interaction in modern industries which are regulated by the State in varying degrees, in conjunction with organised social forces and influenced by the existing institutions. This involves a study of the State, the legal system, and the workers' and employers' organizations at the institutional level; and of the patterns of industrial organisation (including management), capital structure (including technology), compensation of the labour force, and a study of market forces all at the economic level".

SCOPE OF IR:

Based on above definitions of IR, the scope of IR can easily been delineated as follows

1. Labour relations, i.e., relations between labour union and management.

2. Employer-employee relations i.e. relations between management and employees.

3. The role of various parties' viz., employers, employees, and state in maintaining industrial relations.

4. The mechanism of handling conflicts between employers and employees, in case conflicts arise.

The main aspects of industrial relations can be identified as follows:

1. Promotion and development of healthy labour — management relations.

2. Maintenance of industrial peace and avoidance of industrial strife.

3. Development and growth of industrial democracy.

OBJECTIVES OF IR:

The primary objective of industrial relations is to maintain and develop good and healthy relations between employees and employers or operatives and management. The same is sub- divided into other objectives.

1. Establish and foster sound relationship between workers and management by safeguarding their interests.

2. Avoid industrial conflicts and strikes by developing mutuality among the interests of concerned parties.

3. Keep, as far as possible, strikes, lockouts and gheraos enhancing the economic status of workers.

4. Provide an opportunity to the workers to participate in management and decision making process.

5. Raise productivity in the organisation to curb the employee turnover and absenteeism.

6. Avoid unnecessary interference of the government, as far as possible and practicable, in the matters of relationship between workers and management.

7. Establish and nurse industrial democracy based on labour partnership in the sharing of profits and of managerial decisions.

8. Socialise industrial activity by involving the government participation as an employer.

According to Krikaldy, industrial relations in a country are influenced, to a large extent, by the form of the political government it has. Therefore, the objectives of industrial relations are likely to change with change in the political government across the countries.

INDUSTRIAL RELATIONS IN INDIA: AN OVERVIEW

IR is dynamic in nature. The nature of IR can be seen as an outcome of complex set of transactions among the major players such as the employers, the employees, the trade union, and the state in a given socio-economic context. In a sense, change in the nature of IR has become sine quo non with change in the socio-economic context of a country.

Keeping this fact in view, IR in India is presented under the following two sections:

1. IR during Pre- Independence

2. IR during Post-Independence

1. IR during Pre-Independence:

The structure of the colonial economy, the labour policies of colonial government, the ideological composition of the political leadership, the dynamics of political struggle for independence, all these shaped the colonial model of industrial relations in pre-independent India". Then even union movement was an important part of the independence movement.

However, the colonial dynamics of the union movement along with the aggressiveness of alien capital, the ambivalence of the native capital and the experience of the outside political leadership frustrated the process of building up of industrial relations institutions. Other factors like the ideology of Gandhian class harmony, late entry of leftists and the bourgeois character of congress also weakened the class approach to the Indian society and industrial conflict".

Till the Second World War, the attitude of the colonial government toward industrial relations was a passive regulator only Because, it could provide, that too only after due pressure, the —um of protective and regulative legal framework for industrial relations Trade Union Act 1926 (TL A) Trade Disputes Act 1929 (TDA). It was the economic emergence of the Second World War that altered the colonial government's attitude on industrial relations.

The state intervention began in the form of introduction of several war time measures, viz. the Defense of India Rules (Rule 81- A), National Service (Technical Personnel) Ordinance, and the Essential Service (Maintenance) Ordinance As such in a marked contrast to its earlier stance, the colonial government imposed extensive and pervasive controls on industrial relations by the closing years of its era-. Statutory regulation of industrial relations was on plank of its labour policy. The joint consultative institutions were established primarily to arrive at uniform and agreeable labour policy.

The salient features of the colonial model of IR can be summarized as close association between political and trade union movement, dominance of 'outsiders' in the union movement, state intervention and federal and tripartite consultations.

The eve of Independence witnessed several instances that served as threshold plank for IR during post Independence era. The prominent instances to mention are passing of Indian Trade Unions (Amendment) Act, 1947, Industrial Employment (Standing Orders) Act 1946, Bombay Industrial Relations Act, 1946, and Industrial Disputes Act, 1947 and split in AITUC and formation of INTUC.

2. IR during Post-Independence:

Though Independent India got an opportunity to restructure the industrial relations system the colonial model of IR remained in practice for sometimes due to various reasons like the social, political and economic implications of partition, social tension, continuing industrial unrest, communist insurgency, conflict, and competition in the trade union movement. In the process of consultation and confrontation, gradually the structure of the industrial relations system (IRS) evolved.

State intervention in the IRS was a part of the interventionist approach to the management of industrial economy. Several considerations like unequal distribution of power in the labour market, neutrality of the state, incompatibility of free collective bargaining institution with economic planning etc. provided moral justification for retaining state intervention in the IRS. State intervention in the IRS is logical also when the state holds large stakes in the industrial sector of the economy.

However state intervention does not mean suppression of trade unions and collective bargaining institution. In fact, state intervention and collective bargaining were considered as complementary to each other. Gradually, various tripartite and bipartite institutions were introduced to supplement the state intervention in the IRS.

The tripartite process was considered as an important instrument of involving participation of pressure groups in the state managed system. Non formal ways were evolved to do what the formal system did not legistate, for one reason or other.

The political and economic forces in the mid 1960s aggravated industrial conflict and rendered non-formal system ineffective. In the process of reviewing the system, National Commission on Labour (NCL) was appointed in 1966.

Now the focus of restructuring shifted from political to intellectual. However, yet another opportunity was lost when there was an impasse on the NCL recommendations in 1972. The Janta Government in 1978 made, of course, a half-hearted attempt to reform industrial relations. Unfortunately, the attempt met with strong opposition from all unions. The BMS, for example, termed it as “a piece of anti-labour, authoritarian and dangerous legislation””.

Several committees were appointed to suggest measures for reforming die IRS. In the process, tripartism was revived in 1980s. Government passed the Trade unions and the Industrial Disputes (Amendment) Bill, 1988. But, it also proved yet another legislative disaster. The bill was severely criticised by the left parties. It was even viewed by some as a deliberate attempt to destroy “autonomous; organised or militant trade union movement”.

In consequence, the tripartite deliberations held at the ILC in 1990 decided three measures to reform IR in India:

(i) To constitute a bipartite committee of employers and unions to formulate proposals for a comprehensive legislation;

(ii) To withdraw the Trade Union and the Industrial Disputes (Amendment) Bill, 1988

(iii) To consider the possibility of formulating a bill on workers' participation in management, 1990. In the 33rd session of ILC, another bipartite committee was constituted to recommend changes in the TU and ID Acts. The government introduced a Bill on Workers, Participation in Management in Parliament in 1990

Thus, the striking feature of the history of IR in India has been that it is dynamic in nature. Particularly since 1991 i.e., the inauguration of liberalization process, die IR in India is marked by new challenges like emergence of a new breed of employees (popularly termed as 'knowledge workers'), failure of trade union leadership, economic impact, and employers' insufficient response"

RECENT TRENDS IN IR IN INDIA

Globalization and increased competition has lead to less strikes, lockouts and less man days lost due to strikes. Also now in the era of knowledge industry employees are educated and thus don't believe in violent activities. They are having responsibilities in cut throat competition and also are aware of their rights well leading to decline in strikes. Employers also avoid lockouts because decline in production for even hours results in heavy losses so forget about days or weeks.

Disinvestment: - it affects IR in following ways:

It changes ownership, which may bring out changes not only in work org and employment but also in trade union (TU) dynamics.

It changes the work organization by necessitating retaining and redeployment.

It affects the right of workers and Trade unions, including job/union security, income security, and social security.

Trade unions, mgt and government are responding to these challenges through various types of new, innovative, or model arrangements to deal with different aspects of disinvestment like.

1. Making workers the owners through issue of shares or controlling interests (latter is still not in India)
2. Negotiating higher compensation for voluntary separations
3. Safeguarding existing benefits
4. Setting up further employment generating programs, and
5. Proposals for setting up new safety nets that not only include unemployment insurance but also skills provisions for redundant workers.

Deregulation: - it is tried to ensure that public sector/ government employees receive similar protection as is provided in public/government employment. The worst affected are the pension provisions. this means, usually a reduction in pension benefits and an uncertainty concerning future provision of pension benefit due to

1. The absence of government guarantees
2. Falling interest rates
3. Investment of pension funds in stock markets

Decentralization of IR is seen in terms of the shift in consideration of IR issues from macro to micro and from industry to enterprise level. When the coordination is at the national or sectoral level then work in the whole industry can be paralyzed because of conflict in IR. But when the dispute is at the bank level, in the absence of centralized coordination by Trade unions only work in that bank is paralyzed and the other banks function normally. This weakens the bargaining power of unions.

New actors and the emerging dynamics: - Earlier IR was mainly concerned with Trade unions, mgt and government but now consumers and the community are also a part of it. When the right s of consumers and community are affected, the rights of workers and unions and managers / employers take a back seat. Hence there is ban on bandh and restrictions even on protests and dharnas.

Increasingly Trade unions are getting isolated and see a future for them only by aligning themselves with the interests of the wider society.

Pro-labour-pro-investor policies

This leads to decline in strength and power of Trade unions if not in numbers. Unions have to make alliances with the society, consumers and community and various civil society institutions otherwise they will find themselves dwindling.

Declining TU density

In government and public sectors workforce is declining because of non-filling of vacancies and introduction of voluntary / early separation schemes. New employment opportunities are shrinking in these sectors.

In the private sectors particularly in service and software sector, the new, young, and female workers are generally less eager to join unions.Workers militancy replaced by employer militancy

Due to industrial conflicts

In 1980-81 man days lost = 402.1 million

In 1990-91 man days lost = 210 million

Not because of improved IR but because of the fear of job security, concern about the futility of strikes, and concern to survive their organization for their income survival.

Trade unions have become defensive evident from the fact that there is significant shift from strikes to law suits. Instead of pressing for higher wages and improved benefits, Trade unions are pressing for maintenance of existing benefits and protection and claims over non-payment of agreed wages and benefits.

COLLECTIVE BARGAINING

Level of collective bargaining is shrinking day by day.

In India, while labour is in the Concurrent List, state labour regulations are an important determinant of industrial performance. The Survey notes evidences that states that had enacted more pro-worker regulations, had lost out on industrial production in general.

However, on the upside, the Survey said there was a secular decline in the number of strikes and lockouts during 2000-04. The total number of strikes and lockouts went down 13.6% from 552 in 2003 to 477 in 2004. The decline was sharper in the number strikes than in lockouts, it noted.

While most of the strikes and lockouts were in private sector establishments, overall industrial relations had improved, especially between 2003 and 2004, when there was a decline in the number of mandays lost by 6.39 million.

Among states, the maximum number of strikes and lockouts were in Left-ruled West Bengal, followed by Tamil Nadu and Gujarat. The sectors which saw instances of industrial disturbance were primarily textiles, engineering, chemical and food product industries.

Stressing on the importance of labour reforms to enhance productivity, competitiveness and employment generation, the Survey noted that a beginning had already been made in that direction. For instance, in the current year, there was a proposal to enhance the wage ceiling from Rs 1,600 per month to Rs 6,000 per month through The Payment of Wages (Amendment) Act 2005. Also, the proposal to empower the central government to further enhance the ceiling in future by way of notification is already in effect from November 9, 2005.

As regards women working on night shifts, The Factories (Amendment) Bill 2005, was under consideration to provide them flexibility and safety.

Also, to simplify the procedure for managements to maintain registers and filing returns, an amendment of Labour Laws (Exemption from Furnishing returns and maintaining Registers by Certain Establishments) Act 1988, was under consideration.

APPROACHES TO INDUSTRIAL RELATIONS:

DUNLOP'S APPROACH

Among the contributions, the most outstanding has been that of Prof. John T. Dunlop of Harvard University. His systems treatment deserves special mention in view of its wider applicability. Dunlop defines an industrial relations system in the following way: An industrial relations system at any one time in its development is regarded as comprised of certain actors, certain contexts, an ideology, which binds the industrial relations system together, and a body of rules created to govern the actors at the workplace and work community. There are three sets of independent variables: the 'actors', the 'contexts' and the 'ideology' of the system. Figure 1 depicts the main elements of the system and the environmental features, or contexts to which Dunlop draws attention. The principal groups identifiable in the system and which constitutes the structure of an industrial relations system are as follows:

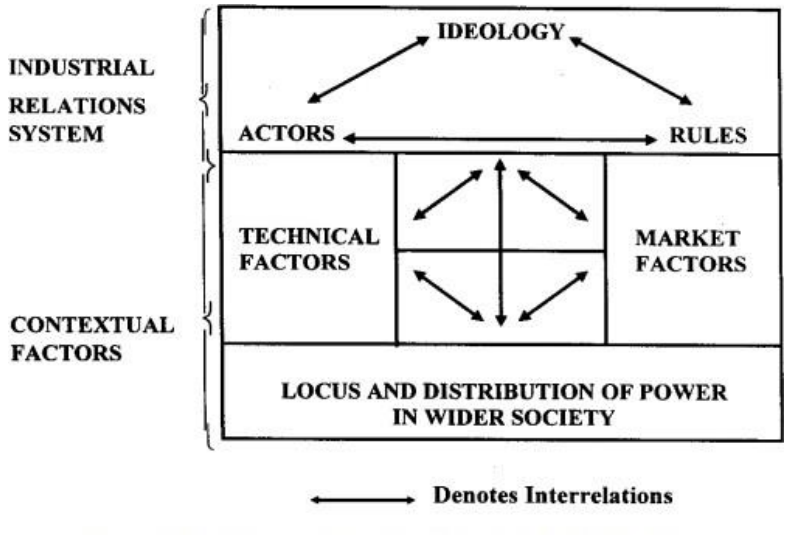

Figure 1: The Conceptualisation of an Industrial Relations System

The Actors in a System: The actors are: (a) hierarchy of managers and their representatives in supervision, (b) a hierarchy of workers (non-managerial) and any spokesmen, and (c) specialised governmental agencies (and specialised private agencies created by the first two actors) concerned with workers, enterprises, and their relationships. These first two hierarchies are directly related to each other in that the managers have responsibilities at varying levels to issue instructions (manage), and the workers at each corresponding level have the duty to follow such instructions

The Contexts of a System: In an industrial relations system, the contexts or the determinants are of greater importance. The significant aspects of the environment in which the actors interact are the technological characteristics of the workplace and work community, the market or budgetary constraints that impinge on the actors, and the locus and distribution of power in the larger society.

The Ideology of an Industrial Relations System: The ideology is a philosophy or a systematised body of beliefs and sentiments held by the actors. An important element that completes the analytical system of industrial relations is the ideology or a set of ideas and beliefs commonly held by the actors that helps to bind or to integrate the system together as an entity.

The Establishment of Rules: The actors in a given context establish rules for the workplace and the work community, including those governing contracts among the actors in an industrial relations system. This network or web of rules consists of procedures for establishing rules, the substantive rules, and procedures for deciding their application to particular situations. The establishment of these procedures and rules is the centre of attention in an industrial relations system.

THE OXFORD APPROACH

According to this approach, the industrial relations system is a study of institutions of job regulations and the stress is on the substantive and procedural rules as in Dunlop's model. Flanders, the exponent of this approach, considers every business enterprise as a social system of production and distribution, which has a structured pattern of relationships. The "institution of job regulation" is categorised by him as internal and external – the former being an internal part of the industrial relations system such as code of work rules, wage structure, internal procedure of joint consultation, and grievance procedure. He views trade unions as an external organisation and excludes collective agreements from the sphere of internal regulation. According to him, collective bargaining is central to the industrial relations system.

The "Oxford Approach" can be expressed in the form of an equation:

$$r = f(b) \text{ or } r = f(c)$$

where, r = the rules governing industrial relations
b = collective bargaining
c = conflict resolved through collective bargaining.

The "Oxford Approach" can be criticised on the ground that it is too narrow to provide a comprehensive framework for analysing industrial relations problems. It overemphasises the significance of the political process of collective bargaining and gives insufficient weight to the role of the deeper influences in the determination of rules.

THE INDUSTRIAL SOCIOLOGY APPROACH

G. Margerison, an industrial sociologist, holds the view that the core of industrial relations is the nature and development of the conflict itself. Margerison argued that conflict is the basic concept that should form the basis of the study of industrial relations. The author criticised the prevalent approach to industrial relations, which was more concerned with studying the resolution of industrial conflict than its generation; with the consequences of industrial disputes than on their causes. According to this school of thought, there are two major conceptual levels of industrial relations. One is the intra-plant level where situational factors, such as job content, work task and technology, and interaction factors produce three types of conflict – distributive, structural, and human relations. These conflicts are being resolved through collective bargaining, structural analysis of the socio-technical systems and man-management analysis respectively. The second level is outside the firm and, in the main, concerns with the conflict not resolved at the intraorganisational level. However, this approach rejects the special emphasis given to rule determination by the "systems and Oxford models". In its place, it suggests a method of inquiry, which attempts to develop sociological models of conflicts.

THE ACTION THEORY APPROACH

Like the systems model, the action theory approach takes the collective regulation of industrial labour as its focal point. The actors operate within a framework, which can at best be described as a coalition relationship. The actors, it is claimed, agree in principle to cooperate in the resolution of the conflict, their cooperation taking the form of bargaining. Thus, the action theory analysis of industrial relations focuses primarily on bargaining as a mechanism for the resolution of conflicts. Whereas the systems model of industrial relations constitutes a more or less comprehensive approach, it is hardly possible to speak of one uniform action theory concept.

THE MARXIST APPROACH

The class conflict analysis of industrial relations derives its impetus from Marxist social thinking and interpretation. Marxism is essentially a method of social enquiry into the power relationships of society and a way of interpreting social reality. The application of Marxian theory as it relates to industrial relations derives indirectly from later Marxist scholars rather than directly from the works of Marx himself. Industrial relations, according to Marxists, are in the first instance, market-relations. To Marxists, industrial relations are essentially politicized and part of the class struggle. For Marxists industrial and employee relations can only be understood as part of a broader analysis of capitalist society in particular the social relations of production and the dynamics of capital accumulation. As Marx himself put it, "the mode of production in material life determines the general character of the social, political and spiritual process of life." The Marxist approach is primarily oriented towards the historical development of the power relationship between capital and labour. It is also characterised by the struggle of these classes to consolidate and strengthen their respective positions with a view to exerting greater influence on each other. In this approach, industrial relations is equated with a power-struggle. The price payable for labour is determined by a confrontation between conflicting interests. The capitalist ownership of the enterprise endeavours to purchase labour at the lowest possible price in order to maximise their profits. The lower the price paid by the owner of the means of production for the labour

he employs, the greater is his profit. The Marxist analysis of industrial relations, however, is not a comprehensive approach as it only takes into account the relations between capital and labour. It is rather, a general theory of society and of social change, which has implications for the analysis of industrial relations within what Marxists would describe as capitalist societies.

THE PLURALIST APPROACH

Pluralism is a major theory in labour-management relations, which has many powerful advocates. The focus is on the resolution of conflict rather than its generation, or, in the words of the pluralist, on 'the institutions of job regulation.' Kerr is one of the important exponents of pluralism. According to him, the social environment is an important factor in industrial conflicts. The isolated masses of workers are more strike-prone as compared to dispersed groups. When industrial jobs become more pleasant and employees' get more integrated into the wider society, strikes will become less frequent. Ross and Hartman's cross national comparison of strikes postulates the declining incidents of strikes as societies industrialise and develop appropriate institutional framework. They claim that there has been a decline in strike activity all over the world in spite of an increase in union membership. The theories on pluralism were evolved in the mid-sixties and early seventies when England witnessed a dramatic resurgence of industrial conflicts. However, the recent theories of pluralism emanate from British scholars, and in particular from Flanders and Fox. According to Flanders, conflict is inherent in the industrial system. He highlighted the need for a formal system of collective bargaining as a method of conflict resolution. Fox distinguishes between two distinct aspects of relationship between workers and management. The first is the market relationship, which concerns with the terms and conditions on which labour is hired. This relationship is essentially economic in character and based on contracts executed between the parties. The second aspect relates to the management's dealing with labour, the nature of their interaction, negotiations between the union and management, distribution of power in the organisation, and participation of the union in joint decision-making.

WEBER'S SOCIAL ACTION APPROACH

The social action approach of Weber has laid considerable importance to the question of control in the context of increasing rationalisation and bureaucratisation. Closely related to Weber's concern related to control in organisations was his concern with "power of control and dispersal". Thus a trade union in the Weber's scheme of things has both economic purposes as well as the goal of involvement in political and power struggles. Some of the major orientations in the Weberian approach have been to analyse the impact of techno-economic and politico-organisational changes on trade union structure and processes, to analyse the subjective interpretation of workers' approaches to trade unionism and finally to analyse the power of various components of the industrial relations environment – government, employers, trade unions and political parties. Thus the Weberian approach gives the theoretical and operational importance to "control" as well as to the power struggle to control work organisations – a power struggle in which all the actors in the industrial relations drama are caught up.

THE HUMAN RELATIONS APPROACH

In the words of Keith Davies, human relations are "the integration of people into a work situation that motivates them to work together productively, cooperatively and with economic, psychological and

social satisfactions." According to him, the goals of human relations are: (a) to get people to produce, (b) to cooperate through mutuality of interest, and (c) to gain satisfaction from their relationships. The human relations school founded by Elton Mayo and later propagated by Roethlisberger, Whitehead, W.F. Whyte, and Homans offers a coherent view of the nature of industrial conflict and harmony. The human relations approach highlights certain policies and techniques to improve employee morale, efficiency and job satisfaction. It encourages the small work group to exercise considerable control over its environment and in the process helps to remove a major irritant in labour-management relations. But there was reaction against the excessive claims of this school of thought in the sixties. Some of its views were criticised by Marxists, pluralists, and others on the ground that it encouraged dependency and discouraged individual development, and ignored the importance of technology and culture in industry. Taking a balanced view, however, it must be admitted that the human relations school has thrown a lot of light on certain aspects such as communication, management development, acceptance of workplace as a social system, group dynamics, and participation in management.

THE GANDHIAN APPROACH

Gandhiji can be called one of the greatest labour leaders of modern India. His approach to labour problems was completely new and refreshingly human. He held definite views regarding fixation and regulation of wages, organisation and functions of trade unions, necessity and desirability of collective bargaining, use and abuse of strikes, labour indiscipline, workers participation in management, conditions of work and living, and duties of workers. The Ahmedabad Textile Labour Association, a unique and successful experiment in Gandhian trade unionism, implemented many of his ideas. Gandhiji had immense faith in the goodness of man and he believed that many of the evils of the modern world have been brought about by wrong systems and not by wrong individuals. He insisted on recognising each individual worker as a human being. He believed in non-violent communism, going so far as to say that "if communism comes without any violence, it would be welcome." Gandhiji laid down certain conditions for a successful strike. These are: (a) the cause of the strike must be just and there should be no strike without a grievance; (b) there should be no violence; and (c) non-strikers or "blacklegs" should never be molested. He was not against strikes but pleaded that they should be the last weapon in the armoury of industrial workers and hence should not be resorted to unless all peaceful and constitutional methods of negotiations, conciliation and arbitration are exhausted.

HUMAN RESOURCE MANAGEMENT APPROACH

The term, human resource management (HRM) has become increasingly used in the literature of personnel/industrial relations. The term has been applied to a diverse range of management strategies and, indeed, sometimes used simply as a more modern, and therefore more acceptable, term for personnel or industrial relations management. Some of the components of HRM are: (i) human resource organisation; (ii) human resource planning; (iii) human resource systems; (iv) human resource development; (v) human resource relationships; (vi) human resource utilisation; (vii) human resource accounting; and (viii) human resource audit. This approach emphasises individualism and the direct relationship between management and its employees. Quite clearly, therefore, it questions the collective regulation basis of traditional industrial relations.

Industrial Dispute : As per section 2 (K) of industrial dispute or difference between employers and employees employers and employers or employees and employees which is connected with the employment or non employment or the terms of employment or with the condition of labour of any person.

1. There must be a dispute or difference the dispute or difference must be between employers and employees employee and employees, employers and employers.
2. The dispute must be connected with employment or non employment or terms of employment or with the conditions of labour of any person.

The dispute which has resulted in strained relations is a controversy in which the workman is directly or substantially interested. It must also be a grievance felt by the workman which the employer is in a position to remedy. The existence of a grievance is necessary and it must be communicated to the employer.

General causes of industrial disputes strains which results in bad industrial relations are.

1. Close mindedness of employers and employees one thinking to extract maximum work with minimum remuneration, other thinking to avoid work and get more enhancements in pay and wages.
2. Irrational wage, wage system and structure not mutually acceptable
3. Poor working environment, low presence of safety, hygiene conditions vitiated atmosphere for smooth working
4. Poor human relations, and lack of dexterity on the part of management personnel
5. Lack of control over the situations erosion of discipline, which rebounds.
6. Introduction of new technology or automation mechanization, Computerization etc. without proper consultations, preparations and discussion with workers and creating climate.
7. Nepotism, unequal workloads, disproportionate wage, and responsibilities.
8. Adoption of unfair labour practices either by employer or employees and unions.
9. Unjustifiable profit sharing, and not considering workers as a co-shares of the gains of the industry.
10. Frequent union rivalries over membership foisting up of fake unions.
11. Strikes lock out, lay off, and resulting retrenchment due to high handedness on the part of the concerned.
12. Throwing away the agreements and arrived settlements
13. Militancy of the unions

14. Attitude of government and political parties who may indirectly control some the unions for their own gains or to get a hold on the industry.

Suggestions for the improvement of industrial relations and reduce disputes

1. Trade unions should be strengthened democratically so that they can understand and toe with the main stream of the national industrial activities. They can drop the somehow survive attitude by promising impossible and consequent perpetual strain.
2. Employers should have more transparency in their dealings with workers to build confidence and have progressive outlook.
3. They should have open minded flexible collective Bargaining.
4. Workers should be allowed to participate in the management through forums, committees and councils,
5. Sound labour policy, planning
6. Proper leadership and communication
7. Enforcement of discipline
8. Try to have union within workers fold.
9. Equity in distribution of wealth by acknowledging workers as team members

Definition of some important terms used in Industrial Relations

Arbitrator – Neutral person to decide on common issue, includes an umpire Average pay – average wages payable to a workman. In case of monthly paid workman in the three complete calendar months, in the case of weekly paid, in the four complete weeks, in the case of daily paid workman in the 12 full working days preceding

Award: An interim or a final determination of any industrial distribute or of any question relating thereto by any labour (court), industrial Tribunal or national Tribunal and includes an arbitration award

Conciliation officer: Means conciliation officer appointed under (1) Act to make conciliatory effort between employer and employees to bring amity.

Labour Court – Means a labour court constituted under (1.D) Act to adjudicate over industrial dispute cases etc.

Public utility Service – (I) Any Railway service or any transport service for carriage of passenger or goods by air (2) any service in major port to clock. Postal & Telegraph Industrial establishments on the working of which the safety of the establishments, or the workmen employed there in depends. Industries which supply power light, water to public, Public conservancy or sanitation. Few others indicated in Schedules.

Settlement: - means a settlement arranged or in the course of conciliation proceedings and include a written agreement between the employer and workmen arrived at otherwise than in the course of conciliation proceeding where such agreement has been signed by the parties there to in such manner as may be prescribed and a copy there of has been sent to an officer authorized in this behalf by the appropriate government and the conciliation officer

It means an adjustment arrived at in the course of conciliation proceeding before a conciliation officer or before Board of conciliation. It also includes a written agreement between the employer and the workmen otherwise than in the conciliation proceedings. In such a case the agreement must be signed by the parties in the prescribed manner and a copy of which must be sent to an officer authorized in this behalf by the

appropriate government and the conciliation officer. Thus the settlement indicates the agreement arrived at either in the conciliation proceedings or otherwise between employer and the workmen. Unfair labour practice. Generally to interfere with, restrain from, join or assist a trade union or to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection to establish employer sponsored trade union of workmen, to discharge or dismiss workmen by way of victimisation, to recruit workmen during a strike which is not an illegal strike etc.

PARTIES INVOLVED IN INDUSTRIAL RELATIONS ARE

1) Workers and their unions, the intelligence level knowledge of workers, back-ground of worker leaders, real or boghus their linkage with political unions, are to be considered for the effective relations.

2) Nature of employment and employers, whether benevolent, interested in workers or aiming to get as much profit as possible squeezing workers their attitude plays vital role in maintaining better relations. Whether they want to have team, and growth of their team as a whole or just hire and fire system.

3) Position of government, political will whether opportunitie favouring employers or interested in workers, are to be seen. Their interest in workers can be seen through their actions in creating Laws for labour welfare and implementing them effectively.

Causes of industrial unrest in India can be classified mainly under four heads they are

1) Financial Aspects

a) Demand for increase of wages, salaries and other perks. workers demand goes on increasing with the increase in cost of living

b) Demand for more perks, and fringe benefits. Issue of bonus also has become a contentious one, even though Bonus Act has come fixing minimum rate payable as 81/3% of their total salary inspite of profit or loss incurred by the industry.

c) Incentives festivals allowances, concessions etc requires a hike every now and then, workers compare these benefits with other industries and demand them – without comparing the capacity of the industry where they are working.

2) Non financial aspects

a) Working hours, rest hours, Traveling hours are source of disputes. If houses are provided some section of workers want to include travel time also as working hours.

b) Introduction of machines, computers modernisation, automation – In effect any act of management which may result in economy in man power is resisted

c) More facilities like free meals free group travel etc are sought every now and then

3) Administrators Causes

a) Non implementation of agreements awards and other local settlements – with full sprit

b) stifling with recognition of labour unions though registered,

c) Attempt to weaken existing trade unions and trying to foist fake unions

d) Un healthy working conditions

e) Lack of skill on the part of leaders supervisors

f) Disproportionate works loads, favoritism

g) Victimisation, nepotism attitude of management in recruitment, promotion, transfer etc

h) Instead of re deployment or skill improvement easier way of retrenchment forced voluntary retirement schemes (C.R.S) are adopted.

4) Government and political pressures

a) Industrial unions affiliating with political unions which are in power, resulting in frequent shift of loyalty and resultant unrest

b) Politician influencing workers group closes examples is the Nalco – taken over by Sterlite, the state government supported (propped up) strike at chattisgrah state against Nalco, for months together resulting in total stoppage of the industry for some time.

c) Some time unions, workers strike against mergers, acquisition, taken over, disinvestments policies, of government and private sectors.

5. Other causes of strained relations.

a. Refusal to have workers participation in the running of the industry.
b. Non adherence to laid out ‗standing orders' grievances procedures
c. Refusal to have free frank, and transparent collective bargaining.

a) d) Sympathetic strike – a show of readership to workers of neighboring industries, and conducting a token strike when they are in full strike. This may cause internal bitterness.

Forms of Industrial Disputes:

Strikes: Strike is the most important form of industrial disputes. A strike is a spontaneous and concerted withdrawal of labour from production. The Industrial Disputes Act, 1947 defines a strike as "suspension or cessation of work by a group of persons employed in any industry, 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 accept employment".

According to Patterson "Strikes constitute militant and organised protest against existing industrial relations. They are symptoms of industrial unrest in the same way that boils symptoms of disordered system".

Depending on the purpose, Mamoria et. al. have classified strikes into two types: primary strikes and secondary strikes.

(i) Primary Strikes:

These strikes are generally aimed against the employers with whom the dispute exists. They may include the form of a stay-away strike, stay-in, sit-down, pen-down or tools- down, go-slow and work-to-rule, token or protest strike, cat-call strike, picketing or boycott.

(ii) Secondary Strikes:

These strikes are also called the 'sympathy strikes'. In this form of strike, the pressure is applied not against the employer with whom the workmen have a dispute, but against the third person who has good trade relations with the employer.

However, these relations are severed and the employer incurs losses. This form of strike is popular in the USA but not in India. The reason being, in India, the third person is not believed to have any locus standi so far the dispute between workers and employer is concerned.

General and political strikes and bandhs come under the category of other strikes:

Lock-Outs:

Lock-out is the counter-part of strikes. While a 'strike' is an organised or concerted withdrawal of the supply of labour, 'lock-out' is withholding demand for it. Lock-out is the weapon available to the employer to shut-down the place of work till the workers agree to resume work on the conditions laid down by the employer. The Industrial Disputes Act, 1947 defined lock-out as "the temporary shutting down or closing of a place of business by the employer".

Lock-out is common in educational institutions also like a University. If the University authority finds it impossible to resolve the dispute raised by the students, it decides to close-down (or say, lockout) the University till the students agree to resume to their studies on the conditions laid down by the University authority. Recall, your own University might also have declared closure sometimes for indefinite period on the eve of some unrest / dispute erupted in the campus.

Gherao:

Gherao means to surround. It is a physical blockade of managers by encirclement aimed at preventing the egress and ingress from and to a particular office or place. This can happen outside the organisational premises too. The managers / persons who are gheraoed are not allowed to move for a long time.

Sometimes, the blockade or confinements are cruel and inhuman like confinement in a small place without light or fans and for long periods without food and water. The persons confined are humiliated with abuses and are not allowed even to answer "calls of nature".

The object of gherao is to compel the gheraoed persons to accept the workers' demands without recourse to the machinery provided by law. The National Commission on Labour has refused to accept 'gherao' as a form of industrial protest on the ground that it tends to inflict physical duress (as against economic press) on the persons gheraoed and endangers not only industrial harmony but also creates problems of law and order.

Workmen found guilty of wrongfully restraining any person or wrongfully confining him during a gherao are guilty under Section 339 or 340 of the Indian Panel Code of having committed a cognizable offence for which they would be liable to be arrested without warrant and punishable with simple imprisonment for a term which may be extended to one month or with a fine up to Rs. 500, or with both.

Gherao is a common feature even in educational institutions. You might have seen in your own University officers sometimes gheraoed by the employees / students to compel the officers to submit to their demands. Here is one such real case of gherao.

Gherao of the vice chancellor: A mini case study

The non-teaching employees of a Central University in the North-East India had some demands with the University authority for quite some time. Non-confirmation of some of the employees even after completion of six years service was one of the main demands. That the Vice Chancellor was to resign on 31st October was known to all in the University.

As the last pressure tactic, the employees started Vice Chancellor's gherao on 31st October at 11.00 a.m. They shut down the entrance gate of the administrative building at 3.00 p.m. to block the egress and ingress from and to the office in the administrative building.

The Vice Chancellor was kept confined in his office chamber. He was humiliated throughout the gherao by using abuses, disconnecting his telephone line, not allowing him food and water and even not allowing him to answer "calls of nature". This scene lasted for 18 hours and was over only by 5 a.m. next day when some 50 C.R.P.F jawans with local police came from the city which is about 20 kms. away from the University Campus.

They broke the entrance gate of administrative building, rescued the Vice Chancellor and arrested 117 employees confining the Vice Chancellor under Section 340 of the Indian Penal Code and kept them behind bars for a day.

On 1st November, the Vice Chancellor handed over the charge of his office to the senior most Professor of the University at his residence in the city. In the wee hours on 2nd November, he left for where he came from. The aftermath of gherao created a tuneful atmosphere in the University Campus for about two weeks.

Picketing and Boycott:

Picketing is a method designed to request workers to withdraw cooperation to the employer. In picketing, workers through display signs, banners and play-cards drew the attention of the public that there is a dispute between workers and employer.

Workers prevent their colleagues from entering the place of work and pursuade them to join the strike. For this, some of the union workers are posted at the factory gate to pursuade others not to enter the premises but to join the strike.

Boycott, on the other hand, aims at disrupting the normal functioning of the organisation. The striking workers appeal to others for voluntary withdrawal of co-operation with the employer. Instances of boycotting classes and examinations are seen in the Universities also.

Types of Industrial Disputes:

The ILO' has classified the industrial disputes into two main types.

They are:

1. Interest Disputes

2. Grievance or Right Disputes.

They are discussed one by one:

1. Interest Disputes:

These disputes are also called 'economic disputes'. Such types of disputes arise out of terms and conditions of employment either out of the claims made by the employees or offers given by the employers. Such demands or offers are generally made with a view to arrive at a collective agreement. Examples of interest disputes are lay-offs, claims for wages and bonus, job security, fringe benefits, etc.

2. Grievance or Right Disputes:

As the name itself suggests, grievance or right disputes arise out of application or interpretation of existing agreements or contracts between the employees and the management. They relate either to individual worker or a group of workers in the same group.

That's way in some countries; such disputes are also called 'individual disputes'. Payment of wages and other fringe benefits, working time, over-time, seniority, promotion, demotion, dismissal, discipline, transfer, etc. are the examples of grievance or right disputes.

If these grievances are not settled as per the procedure laid down for this purpose, these then result in embitterment of the working relationship and a climate for industrial strife and unrest. Such grievances are often settled through laid down standard procedures like the provisions of the collective agreement, employment contract, works rule or law, or customs /usage in this regard. Besides, Labour Courts or Tribunals also adjudicate over grievance or interest disputes.

Generally, industrial disputes are considered as 'dysfunctional' and 'unhealthy'. These are manifested in the forms of strikes and lock-outs, loss of production and property, sufferings to workers and consumers and so on. But, sometimes industrial disputes are beneficial as well.

It is the dispute mainly which opens up the minds of employers who then provide better working conditions and emoluments to the workers. At times, disputes bring out the causes to the knowledge of the public where their opinion helps resolve them.

Unit—II : Trade Unions: Trade Union Structure and Movement in India – Changing Role in the Context of Liberalisation

Meaning and Definition:

Trade union is a voluntary organisation of workers formed to protect and promote their interests through collective action. It may be formed on plant basis, industry basis, firm basis, regional basis or national basis. Different writers and thinkers have defined the trade union differently.

Trade union is a "continuous association of wage earners for the purpose of maintaining and improving the conditions of their working lives."

—Web

"A trade union means an association of workers in one or more occupation— an association carried on mainly, for the purpose of protecting and advancing the members' economic interests in connection with their daily work'.

—G.D.H. Gole

A trade union is a continuous association of persons in industry, whether employers, employees or independent workers—formed primarily for the purpose of the pursuit of the interest of its members and of the trade they represent.

—The Trade Union Act 1926

Objectives of Trade Union:

1. To improve the economic lot of workers by securing them better wages.
2. To secure for workers better working conditions.
3. To secure bonus for the workers from the profits of the enterprise/organization.
4. To ensure stable employment for workers and resist the schemes of management which reduce employment opportunities.
5. To provide legal assistance to workers in connection with disputes regarding work and payment of wages.
6. To protect the jobs of labour against retrenchment and layoff etc.
7. To ensure that workers get as per rules provident fund, pension and other benefits.
8. To secure for the workers better safety and health welfare schemes.
9. To secure workers participation in management.
10. To inculcate discipline, self-respect and dignity among workers.
11. To ensure opportunities for promotion and training.
12. To secure organizational efficiency and high productivity.
13. To generate a committed industrial work force for improving productivity of the system.

Functions of Trade Unions:

i. Collective bargaining with the management for securing better work environment for the workers/ employees.
ii. Providing security to the workers and keeping check over the hiring and firing of workers.
iii. Helping the management in redressal of grievances of workers at appropriate level.
iv. If any dispute/matter remains unsettled referring the matter for arbitration.
v. To negotiate with management certain matters like hours of work, fringe benefits, wages and medical facilities and other welfare schemes.

vi. To develop cooperation with employers.
vii. To arouse public opinion in favour of labour/workers.

Benefits of Trade Union:

Workers join trade union because of a number of reasons as given below:

1. A worker feels very weak when he is alone. Union provides him an opportunity to achieve his objectives with the support of his fellow colleagues.
2. Union protects the economic interest of the workers and ensures a reasonable wage rates and wage plans for them.
3. Union helps the workers in getting certain amenities for them in addition to higher wages.
4. Union also provides in certain cases cash assistance at the time of sickness or some other emergencies.
5. Union organize negotiation between workers and management and are instruments for settlement of disputes.
6. Trade union is also beneficial to employer as it organizes the workers under one banner and encourages them follow to peaceful means for getting their demands accepted.
7. Trade union imparts self-confidence to the workers and they feel that they are an important part of the organization.
8. It provides for promotion and training and also helps the workers to go to higher positions.
9. It ensures stable employment for the workers and opposes the motive of management to replace the workers by automatic machines.
10. Workers get an opportunity to take part in the management and oppose any decision which adversely effects them.

Trade Union Movement in India

The six phases of trade union movement in India are as follows: A. Pre-1918 Phase B. 1918-1924 Phase C. 1925-1934 Phase D. 1935-1938 Phase E. 1939-1946 Phase F. 1947 and Since.

Trade unionism is a world-wide movement. The evolution and growth of trade unionism has been sine qua non with growth in industrialisation. Accordingly, the evolution of trade unionism in India is traced back towards the latter half of the nineteenth century.

The origin and development of trade union movement in India may well be studied under distinct phases with their distinguishing features from others.

A. Pre-1918 Phase:

The setting up of textiles and jute mills and laying of the railways since 1850 payed the way for that emergence of industrial activity and, in turn, labour movement in India. Some researchers have traced the origin of labour movement in India dated back to 1860. However, most of the writers on the subject trace the history of labour movement in India since 1875.

The first labour agitation, under the guidance and leadership of Mr. S. S. Bengalee, a social reformist and philanthropist, started in Bombay in 1875 to protect against the appalling conditions of workers in factories, especially those of women and children and appealed to the authorities to introduce legislation for the amelioration of their working conditions.

As a result, the first Factory Commission was appointed in Bombay in the year 1875 and the first Factories Act was passed in 1881. Mr. N. M. Lokhande may be said to be the founder of organised labour movement in India who founded the first trade union in the country, namely, the Bombay Mill Hands Association (1890).

This was followed by a series of associations such as the Amalgamated Society of Railway Servants in India (1897), The Printers' Union of Calcutta (1905), The Madras and Calcutta Postal Union (1907), and the Kamgar Hitwardhak Sabha (1910). All these unions aimed at promoting welfare facilities for workers and spreading literacy among them.

The broad features of the labour movement during the pre-1918 phase may be subsumed as:

1. The movement was led mostly by the social reformers and philanthropists and not by the workers.
2. There was, in fact, no trade union in existence in the true sense.
3. The labour movement was for the workers rather than by the workers.
4. The movement was confined to the revolt against the conditions of child labour and women workers working in various industries under appalling conditions.

B. 1918-1924 Phase:

The phase 1918-1924 is considered as the era of formation of modem trade unionism in the country. The trade union movement got momentum just after the close of the World War I. The postwar economic and political conditions contributed to the new awakening of class consciousness among the workers. This led to the formation of trade unions in the truly modem sense of the term.

As a result, Ahmedabad Textile Labour Association (1917), led by Shrimati Ansuyaben Sarabhai; the Madras Labour Union (1918), led by B. P. Wadia; Indian Seamen's Union, Calcutta Clerk's Union; and All India Postal and RMS Association were formed.

The various factors that influenced the growth of trade union movement in India during this phase may be briefly catalogued as follows:

1. The wretched conditions of workers on account of spiralling prices of essential commodities during the post-World-War I led workers to form trade unions to improve their bargaining power and, in turn, living conditions.
2. The political scenario characterized by the home-rule movement and the martial law in Punjab made the politicians to recognize the workers movement as an asset to their cause. At the same time, workers also needed able guidance and leadership from the politicians to settle their grievances with the employers.
3. The Russian Revolution also swayed the labour movement in India showing a new social order to the common man in the country.
4. The setting up of the International Labour Organisation (ILO) in 1919 also gave a big fillip to the labour movement in India. India becoming a founder-member of the ILO required deputing delegates to the ILO. Mr. N. M. Joshi for the first time was deputed as the representative from India to International Labour Conferences and Sessions. It ignited workers' anxiety to organize. As a result, the All India Trade Union Congress (AITUC) was formed in 1920. By 1924, the trade union movement in India proliferated to the extent of 167 trade unions with a quarter million members.

This period in the history of trade union movement has been described as the Early Trade Union Period.

C. 1925-1934 Phase:

With increasing hardships of workers, the signs of militant tendencies and revolutionary approach in trade unionism got expression into violent strikes since 1924. The communists gained influence in L trade union movement during this period. They split the Trade Union Congress twice with their widening differences with the left-wing unionists.

The moderate section under the leadership of Mr. N. M. Joshi and Mr. V. V. Giri seceded from the Congress and set up a separate organization named the National Trade Unions Federation (NTUF).

Another split in AITUC took place in 1931 at its Calcutta session when the extreme left wing under the leadership of Messrs S. V. Deshpande and B T Randive broke away and formed a separate organization, namely, the All India Red Trade Union Congress Two Years later, the National Federation of Labour was formed to facilitate unity among all the left-wing organizations of labour. As a result, the AITUF and NFL merged to form the National Trade Union Federation (NTUF).

Another important feature of this period was the passing of two Acts, namely, the Trade Unions Act 1926 and the Trade Disputes Act, 1929 which also gave a fillip to the growth of trade unionism in India. The former Act provided for voluntary registration and conferred certain rights and privileges upon registered unions in return for obligations. The later Act provided for the settlement of trade unions. This phase of the Indian labour movement may be described as The Period of Left Wing Trade Unionism.

D. 1935-1938 Phase:

The Indian National Congress was in power in seven provinces in 1937. This injected unity in trade unions. As a result, the All India Red Trade Union Congress itself with the AITUC in 1935. After three years in 1938, the National Trade Union Congress (NTUC) also affiliated with the AITUC. Other factors that contributed to the revival of trade unions were increasing awakening among the workers to their rights and change in the managerial attitude towards trade unions.

In 1938, one of the most developments took place was the enactment of the Bombay Industrial Disputes Act, 1938. An important provision of the Act, inter alia, to accord compulsory recognition of unions by the employers gave a big fillip to the growth of trade unionism in India.

E. 1939-1946 Phase:

Like World War I, the World War II also brought chaos in industrial front of the country. Mass retrenchment witnessed during the post-World War II led to the problem of unemployment .This compelled workers to join unions to secure their jobs. This resulted in big spurt in the membership of registered trade unions from 667 in 1939-40 to 1087 in 1945-46.

Somuchso workers in the registered trade unions witnessed a phenomenal increase from 18,612 to 38,570 during the same period. The AITUC again split in 1941 when Dr. Aftab Ali, President of the Seamen s

Association, Calcutta disaffiliated his union from the Congress and formed a new organization known as the "Indian Federation of Labour".

The year 1946 was also marked by two important enactments, namely, the Industrial Employment (Standing Orders) Act, 1946 and the Bombay Industrial Relations Act, 1946. Both the Acts, through their provisions, contributed to strengthen the trade unionism in the country.

F. 1947 and Since:

Proliferation of trade unions in the pattern of proliferation of political parties has been a distinguishing feature in the trade union history of India during the post-Independence period. In May 1947, the Indian National Trade Union Congress (INTUC) was formed by the nationalists and moderates and was controlled by the Congress Party. Since by then, the AITUC is controlled by the Communists.

The Congress socialists who stayed in AITUC at the time of the formation of INTUC subsequently formed the Hind Mazdoor Sabha (HMS) in 1948 under the banner of the Praja Socialist Party. Subsequently, the HMS was split up with a group of socialist and formed a separate association, namely, "Bhartiya Mazdoor Sabha" (BMS) which is now an affiliate of the Bhartiya Janata Party (B JP). Years after, the communist party split into various fractions forming the United Trade Union Congress (UTUC) and the Center of Indian Trade Unions (CITU).

Later again, a group disassociated itself from the UTUC and formed another UTUC—Lenin Sarani. Of late, with the emergence of regional parties since 1960, most of the regional parties have shown its inclination to a trade union wing, thus, adding to the proliferation of trade unions in the country. Thus, it is clear that the origin and growth of trade union movement in India is riddled with fragmented politicization.

At present, there are 8 central trade union organisations. Of these, four major federations with their national network are:

1. All India Trade Union Congress (AITUC)
2. Indian National Trade Union Congress (INTUC)
3. Bhartiya Mazdoor Sangh (BMS)
4. Centre of Indian Trade Unions (CITU)

Table 26.2: gives some idea about the growth of the trade union movement in India.

Table 26.2: Growth of the Trade Union Movement in India:

Year	Number of Registered Trade Unions	Number of unions furnishing information	Membership of the unions submitting Returns (in lakhs)
1951-52	4,623	2,556	20
1961-62	11,614	7,087	40
1971	22,484	9,029	55
1981	35,539	6,082	54
1987	49,329	11,063	79
1990	52,016	8,828	70
1993	55,784	6,806	49.8

The membership scenario of the major central trade unions is borne out by the following Table 26.3.

Table 26.3: Union Membership as on end March, 1994

Trade Union	Membership Claimed	Membership Verified	Political Affiliation	Year of Establishment
INTUC	54,35,705	25,87,378	Congress	1947
AITUC	29,73,933	9,05,975	CPI	1920
HMS	43,56,034	13,18,804	PSP	1948
CITU	23,86,242	17,68,044	CPI(M)	1970
BMS	40,81,424	27,69,556	BJP	1955

It is clear from the Table 26.3 that the BMS which is an affiliate of the Bhartiya Janata Party has secured the top position in terms, of membership of 27.69 lakh accounting for 30.10% membership. INTUC, CITU and HMS follow in that order in terms of their share in total membership.

to the challenges thrown up by globalisation and develop new strategies to face these? Given the present orientation of the mainstream trade union movement in the country, this seems unlikely in the near future. The Effect of the Trade Unions towards Liberalisation & Globalisation

Trade unions have by and large opposed the liberalisation policies. They have organised nationwide strikes, bandhs (literally, stoppages) and rallies in different parts of the country. These have hardly had any effect in changing the policies. The only assurance given so far is that there will be no exit policy'. This is of little value, as we have seen earlier, as workers continue to lose their jobs through VRS and lay-offs caused by downsizing.

It is evident that all these forms of conventional protests may not be sufficient. There is need for undertaking a revaluation of the situation and developing new forms of opposition as well as alternatives to the present policies. While it cannot be denied that traditional means of protest including mass action play an important role in mobilisation of the working class and making them articulate their problems collectively, these methods may not achieve the purpose in the changing circumstances of globalisation and its onslaughts on workers' rights.

Ever since the liberalisation policies were introduced, the government and the media have presented a positive and vibrant picture of a 'new' India. In such a situation, the role of organised labour through trade unions is not appreciated. It is projected that organised labour tries to raise unnecessary and unreasonable protests against the new policies. These views are widely accepted by the growing middle class which is the greatest supporter of liberalisation.

One of the weaknesses of the trade union movement during these critical times for labour was that it had by and large restricted itself to unionising labour in the formal sector ignoring the vast pool of labour in the informal sector. The verification of union membership by the Labour Department in 1987 showed that of the total membership of the seven recognised national federations, only one per cent of their membership lay in the informal sector.

Even when the informal sector exists within the formal sector, trade unions have tended to overlook them. A study of contract and casual labour in eight industries showed that casual and contract labour formed between 30 and 50 per cent of the labour force (Davala 1993). Except in one industry, tea, these workers were not unionised. In some cases, unionised workers regarded them as rivals who would take away their jobs. Rare instances like SEWA apart there are hardly any instances of trade unions in the informal sector. We shall return to this issue of unionising the informal sector later.

Fortunately, the national trade unions have tried to overcome this deficiency by enrolling informal sector workers in the unions. However, despite the increase in strength, trade unions are still ignored by government and the media whenever they stage protests.

Protests in some industries though, depending on their strategic importance, can be more effective in highlighting the cause of the workers. For example, a strike in the banking industry for a single day can paralyse the economy; however, even if five times the number of agricultural workers strike it might hardly be noticed. The unfortunate part of this process of change is that the authorities and a large section of the public have become insensitive to the problems of the working class.

At the same time, globalisation is something that cannot be wished away. It has led to a degree of pauperisation and insecurity of the working class all over the world. Labour in developed countries too has to face its consequences. For example, the outsourcing process reduces secure jobs in developed countries and it creates insecure jobs in the developing ones. But is this new for human society? Any sudden change results in situations that are not easily perceived. It therefore gets labelled as anti-people and there are moves to oppose it.

Globalisation has raised certain challenges for the working-class movement. The question now is: can the labour movement adapt itself to face these challenges? Or rather, the question can be reframed as: is the labour movement willing to adapt

Trade union strategies, as of now, revolve around two issues: firstly, use of traditional means of protest, such as strikes, rallies and bandhs, whenever the issue of closure or redundancy arises in the organised sector; and secondly, the issue of opposing globalisation itself. Both strategies have achieved limited

success in their objectives. The question is therefore not of opposing globalisation per se, but rather, how best the interests of the working people can be safeguarded.

In other words, is mere opposition enough to combat the adverse effects of globalisation or should the labour movement promote some positive alternatives? A related, but more crucial, question is: can trade unions function merely as opposition bodies, or, should they offer alternatives? This is the crucial question facing the labour movement today.

Unit – III: Promotion of Harmonious Relations – Machinery for Prevention and Settlement of Industrial Disputes – Conciliation – Arbitration and Adjudication – Code of Discipline.

Industrial Unrest in India: Causes and Policy of the Government

By industrial unrest is meant conflict between employers and workers in industries.

The industrial labour display their protests in the form of strikes, gheraos, go slow tactics, demonstrations and so on, whereas the employers show their might by retrenchment, dismissals, lockouts etc. Industrial unrest causes industrial recession and decline in national income.

The major factors behind such unrest in recent times are as follows.

1. The trade union leaders try image-building exercises.
2. Taking advantage of the political instability the country, the trade union leaders seek concessions from the government and factory owners.
3. Rampant trade unionism has led to a deteriorating work culture among workers.
4. The New Economic Policy, 1984 empowered the employers to punish workers by endorsing the methods of lockout.

The share of lockouts in total man-days lost is on the increase. Thus, there has been a qualitative change in the industrial disputes which strongly suggests an unfavourable treatment of the labourers.

Causes of Industrial Unrest:

1. Wage Related Issues:

The wage levels in different industries vary tremendously. The disparity in wages between skilled and unskilled labour is large even within an enterprise. This is true in both the organised and the unorganised sectors. The demand for higher bonus has been a major cause for industrial disputes.

2. Lack of Welfare and Social Security:

Social security measures can be divided into two categories (i) social insurance and (ii) social assistance. Social insurance schemes are generally financed by the employees, employers and the State. However, such welfare measures face the following problems: (a) insufficient coverage, (b) lack of employment insurance, (c) inherent bottlenecks of an exit policy, (d) overlapping schemes, and (e) lack of facilities vis-a-vis requirement of beneficiaries.

3. Improved Working Conditions:

Demand for lesser working hours, better-safety measures, holidays, leave etc., provoke trade unions to fight against employers.

4. Wave of Globalisation:

The new policy of liberalisation has opened up the avenue of foreign investment in India resulting in an intense competition in the economy. The entrepreneurs are often forced to squeeze wages and push productivity for survival in today's market-driven economy.

5. New Lifestyles:

The workers are increasingly adopting new urban lifestyles and this is expensive and requires a larger income for the family. The workers are often drawn into industrial battle by such compulsions.

6. Low-cost Production Alternatives:

The employers often defeat the purpose of trade unions by searching out low-cost production alternatives in the form of small-scale subsidiary units in smaller towns where low wages will do.

7. Rising Wages and Low Productivity:

The big companies often close down their units because labour productivity often fails to keep pace with inflated wages. Such moves taken often invite industrial tension.

Policy of the Government:

The Industrial Relations Policy has two basic objectives: (i) prevention and peaceful settlement of disputes, and (ii) promotion of good industrial relations via labour management and cooperation.

The first major step was taken in 1947 with the passing of the Industrial Disputes Act. It provided for (a) a joint working committee of employers and employees for promotion of good relations between the parties; (b) the recruitment of conciliation officers by the government for bringing both the parties together; (c) appointment by the government of a Board of Conciliation to go into any industrial dispute and to suggest remedial measures; (d) the appointment of a Court of Enquiry consisting of one or two independent persons to investigate the matters of dispute and submit its report to the government; (e) labour courts to be set up by the state governments to investigate matters relating to disputed orders of the employers and dismissals and suspensions of employees by the management.

Beyond these would be the industrial tribunals. These tribunals exist at state and national levels. The state government has the authority to adjudicate disputes regarding wages, bonus, sharing of profit, etc., by appointing one or more industrial tribunal. A person holding the rank of a High Court Judge is to be on the tribunal. The Central government appoints the national tribunal for adjudicating disputes which involve issues of national importance.

Apart from the above methods, the following practices are becoming common.

Joint Management Councils enable workers to participate in management, help them to understand industrial problems and bring about better relations between the management and labour.

The Indian Labour Conference evolved a Code of Discipline in industry in 1958. According to the code, employers as well as labourers voluntarily agree to maintain mutual trust and cooperation.

The code listed the following activities in factories:

1. For declaring strikes and lock-outs prior notice is required.
2. The parties can take any action only after consulting each other.
3. There should not be any deliberate attempt to damage plant or property.
4. Disputes should be settled speedily.

Several employers and trade unions, which are not members of any central employees and labour organisation, have accepted the code.

An Industrial Truce Resolution was adopted in November 1962 by a joint meeting of the central organisation of employers and labourers so that, during emergency, the production is not slowed down or interrupted. Both the Industrial Truce Resolution and Code of Discipline stress on dispute settlement through voluntary arbitration.

The National Arbitration Promotion Board was established in July 1967 by the Government of India to promote voluntary arbitration for dispute settlement. The Board has representatives belonging to the employers' and labourers' organisations, PSUs, etc. The Board endeavours to ensure that employers and labourers take voluntary initiatives to settle disputes.

As an after effect of the liberalisation policy of 1991, a National Renewal Fund (NRF) was set up. The main objectives: (i) providing assistance to cover the costs of training and re-employing employees in the event of modernisation, technology upgradation and industrial restructuring; (ii) providing funds for compensating employees affected by restructuring or closure of industries both in public and private sectors; and (iii) building a safety net through funds for employment generation schemes for employers.

IMPORTANCE OF HARMONIOUS INDUSTRIAL RELATIONS

There has been a phenomenal growth in employment, wages, benefits ,working conditions ,status of the worker .educational facilities etc, with the growth and spread of industry .Moreover ,career patterns have also changed wi9dely by providing change for wide varieties of jobs to the working communities .This has been possible only through fast industrial development which, in its turn ,depends on Industrial peace. There has been an acute necessity in India especially during the post-independence period ,to industrialise her economy in order to tackle the multifarious socio-economic problems .In the words of Pandit Jawaharlal Nehru " The alternative (to industrialization) is to remain in a backward .under-developed ,poverty –stricken and a weak country .We can't even retain our freedom without industrial growth." Hence one of the main goals of the Five Year Plans in India has been rapid industrialization and more employment in secondary and tertiary industries .It is also viewed that one of the essential steps for building up an economically free and self-sustaining India is, large scale industrialization at rapid and steady growth. With the attainment of independence and with the launching of Planning era ,serious and earnest efforts have been made towards rapid economic development of India .India has been … in the midst of an ambitious and critically important effort to raise the living standards of her people by a integrated …industrial and economic development plan." The size of Industrial labor in India has increased remarkably due to rapid and planned industrial development .The increase in Industrial labor led to the formation and development of trade unions and various social groups. It has also been recognized that management would be disorganized .ill- equipped and ineffective It is realized that the

concrete co-operation between labor and management is highly essential to fulfil the demonstrated the fact that," an economy organized for planned production and distribution ,aiming at the realization of social justice and the welfare of masses can function effectively only in an atmosphere of industrial peace. All these necessitate the maintenance of harmonious industrial relations so as to maintain higher productivity to fulfil the goals of the Five Year Plans in India. The investment in and the scope of industries in India have been growing plan after plan .Much of the success or failure of Indian Five Year Plans would be dependent on the maintenance of harmonious employee-employer relations Frequent industrial conflicts not only affect the management and labor but also tend to impoverish the community as a whole. They lead to wastage ,forment class hatred .embitter mutual relations and inflict damages on the progress of the nation. They affect production and national income in an adverse manner .They also clog the progress and development of the nation .Further ,it is not an exaggeration to say that if we are successful in industry the answers to class-antagonisms and world conflicts becomes easier. Need for Industrial Peace. The objectives of maintenance of industrial peace is not only find out way6s and means to solve conflicts or to settle differences but also to secure the unreserved cooperation of and goodwill among different groups in industry with a view to drive their energies and interest towards economically viable commercially feasible ,financially profitable and socially desirable channels. It also aims at the development of a sense of mutual confidence ,dependence and respect and at the same time encouraging them to come to closer to each other for removing misunderstanding ,redressing grievances ,if any ,in a peaceful atmosphere and with open mind and fostering industrial pursuits for mutual benefits and social progress ,But the maintenance of congenial industrial relations ,particularly in a democratic society like ours is not only a significant task but also a complicated one.

Dispute Settlement Machineries for Settling Industrial Disputes

Some of the major industrial dispute settlement machinery are as follows: 1. Conciliation 2. Court of Inquiry 3. Voluntary Arbitration 4. Adjudication.

This machinery has been provided under the Industrial Disputes Act, 1947. It, in fact, provides a legalistic way of setting the disputes. As said above, the goal of preventive machinery is to create an environment where the disputes do not arise at all.

Even then if any differences arise, the judicial machinery has been provided to settle them lest they should result into work stoppages. In this sense, the nature of this machinery is curative for it aims at curing the aliments.

1. Conciliation:

Conciliation, is a form of mediation. Mediation is the act of making active effort to bring two conflicting parties to compromise. Mediation, however, differs from conciliation in that whereas conciliator plays only a passive and indirect role, and the scope of his functions is provided under the law, the mediator takes active part and the scope of his activities are not subject to any statutory provisions.

Conciliation is the "practice by which the services of a neutral party are used in a dispute as a means of helping the disputing parties to reduce the extent of their differences and to arrive at an amicable settlement of agreed solution."

The Industrial Disputes Act, 1947 provides for conciliation, and can be utilised either by appointing conciliation officers (permanently or for a limited period) or by constituting a board of conciliation. This conciliation machinery can take a note of a dispute or apprehend dispute either on its own or when approached by either party.

With a view to expediting conciliation proceeding, time-limits have been prescribed—14 days in the case of conciliation officers and two months in the case of a board of conciliation, settlement arrived at in the course of conciliation is binding for such period as may be agreed upon between the parties or for a period of 6 months and with continue to be binding until revoked by either party. The Act prohibits strike and lock-out during the pendency of conciliation proceedings before a Board and for seven days after the conclusion of such proceedings.

Conciliation Officer:

The law provides for the appointment of Conciliation Officer by the Government to conciliate between the parties to the industrial dispute. The Conciliation Officer is given the powers of a civil court, whereby he is authorised to call the witness the parties on oath. It should be remembered, however, whereas civil court cannot go beyond interpreting the laws, the conciliation officer can go behind the facts and make judgment which will be binding upon the parties.

On receiving information about a dispute, the conciliation officer should give formal intimation in writing to the parties concerned of his intention to commence conciliation proceedings from a specified date. He should then start doing all such things as he thinks fit for the purpose of persuading the parties to come to fair and amicable settlement of the dispute.

Conciliation is an art where the skill, tact, imagination and even personal influence of the conciliation officer affect his success. The Industrial Disputes Act, therefore, does not prescribe any procedure to the followed by him.

The conciliation officer is required to submit his report to the appropriate government along with the copy of the settlement arrived at in relation to the dispute or in case conciliation has failed, he has to send a detailed report giving out the reasons for failure of conciliation.

The report in either case must be submitted within 14 days of the commencement of conciliation proceedings or earlier. But the time for submission of the report may be extended by an agreement in writing of all the parties to the dispute subject to the approval of the conciliation officer.

If an agreement is reached (called the memorandum of settlement), it remains binding for such period as is agreed upon by the parties, and if no such period is agreed upon, for a period of six months from the date on which the memorandum of settlement is signed by the parties to the dispute, and continues to be binding on the parties after the expiry of the period aforesaid, until the expiry of two months from the date on which a notice in writing of an intention to terminate the settlement is given by one of the party or parties to the settlement.

Board of Conciliation:

In case Conciliation Officer fails to resolve the differences between the parties, the government has the discretion to appoint a Board of Conciliation. The Board is tripartite and ad hoc body. It consists of a chairman and two or four other members.

The chairman is to be an independent person and other members are nominated in equal number by the parties to the dispute. Conciliation proceedings before a Board are similar to those that take place before the Conciliation Officer. The Government has yet another option of referring the dispute to the Court of Inquiry instead of the Board of Conciliation.

The machinery of the Board is set in motion when a dispute is referred to it. In other words, the Board does not hold the conciliation proceedings of its own accord. On the dispute being referred to the Board, it is the duty of the Board to do all things as it thinks fit for the purpose of inducing the parties to come to a fair and amicable settlement. The Board must submit its report to the government within two months of the date on which the dispute was referred to it. This period can be further extended by the government by two months.

2. Court of Inquiry:

In case of the failure of the conciliation proceedings to settle a dispute, the government can appoint a Court of Inquiry to enquire into any matter connected with or relevant to industrial dispute. The court is expected to submit its report within six months. The court of enquiry may consist of one or more persons to be decided by the appropriate government.

The court of enquiry is required to submit its report within a period of six months from the commencement of enquiry. This report is subsequently published by the government within 30 days of its receipt. Unlike during the period of conciliation, workers' right to strike, employers' right to lockout, and employers' right to dismiss workmen, etc. remain unaffected during the proceedings in a court to enquiry.

A court of enquiry is different from a Board of Conciliation. The former aims at inquiring into and revealing the causes of an industrial dispute. On the other hand, the latter's basic objective is to promote the settlement of an industrial dispute. Thus, a court of enquiry is primarily fact-finding machinery.

3. Voluntary Arbitration:

On failure of conciliation proceedings, the conciliation officer many persuade the parties to refer the dispute to a voluntary arbitrator. Voluntary arbitration refers to getting the disputes settled through an independent person chosen by the parties involved mutually and voluntarily.

In other words, arbitration offers an opportunity for a solution of the dispute through an arbitrator jointly appointed by the parties to the dispute. The process of arbitration saves time and money of both the parties which is usually wasted in case of adjudication.

Voluntary arbitration became popular as a method a settling differences between workers and management with the advocacy of Mahatma Gandhi, who had applied it very successfully in the Textile industry of Ahmedabad. However, voluntary arbitration was lent legal identity only in 1956 when Industrial Disputes Act, 1947 was amended to include a provision relating to it.

The provision for voluntary arbitration was made because of the lengthy legal proceedings and formalities and resulting delays involved in adjudication. It may, however, be noted that arbitrator is not vested with any judicial powers.

He derives his powers to settle the dispute from the agreement that parties have made between themselves regarding the reference of dispute to the arbitrator. The arbitrator should submit his award to the government. The government will then publish it within 30 days of such submission. The award would become enforceable on the expiry of 30 days of its publication.

Voluntary arbitration is one of the democratic ways for setting industrial disputes. It is the best method for resolving industrial conflicts and is a close' supplement to collective bargaining. It not only provides a voluntary method of settling industrial disputes, but is also a quicker way of settling them.

It is based on the notion of self-government in industrial relations. Furthermore, it helps to curtail the protracted proceedings attendant on adjudication, connotes a healthy attitude and a developed outlook; assists in strengthening the trade union movement and contributes for building up sound and cordial industrial relations.

4. Adjudication:

The ultimate remedy for the settlement of an industrial dispute is its reference to adjudication by labour court or tribunals when conciliation machinery fails to bring about a settlement. Adjudication consists of settling disputes through intervention by the third party appointed by the government. The law provides the adjudication to be conducted by the Labour Court, Industrial Tribunal of National Tribunal.

A dispute can be referred to adjudication if hot the employer and the recognised union agree to do so. A dispute can also be referred to adjudication by the Government even if there is no consent of the parties in which case it is called 'compulsory adjudication'. As mentioned above, the dispute can be referred to three types of tribunals depending on the nature and facts of dispute in questions.

These include:

(a) Labour courts,

(b) Industrial tribunals, and

(c) National tribunals.

The procedure, powers, and provisions regarding commencement of award and period of operation of award of these three bodies are similar. The first two bodies can be set up either by State or Central

Government but the national tribunal can be constituted by the Central Government only, when it thinks that the adjudication of a dispute is of national importance. These three bodies are into hierarchical in nature. It is the Government's prerogative to refer a dispute to any of these bodies depending on the nature of dispute.

(a) Labour Court:

A labour court consists of one person only, who is normally a sitting or an ex-judge of a High Court. It may be constituted by the appropriate Government for adjudication of disputes which are mentioned in the second schedule of the Act.

The issues referred to a labour court may include:

1. The propriety or legality of an order passed by an employer under the Standing Orders.

2. The application and interpretation of Standing Orders.

3. Discharge and dismissal of workmen and grant of relief to them.

4. Withdrawal of any statutory concession or privilege.

5. Illegality or otherwise of any strike or lockout.

6. All matters not specified in the third schedule of Industrial Disputes Act, 1947. (It deals with the jurisdiction of Industrial Tribunals).

(b) Industrial Tribunal:

Like a labour court, an industrial tribunal is also a one-man body. The matters which fall within the jurisdiction of industrial tribunals are as mentioned in the second schedule or the third schedule of the Act. Obviously, industrial tribunals have wider jurisdiction than the labour courts.

Moreover an industrial tribunal, in addition to the presiding officer, can have two assessors to advise him in the proceedings; the appropriate Government is empowered to appoint the assessors.

The Industrial Tribunal may be referred the following issues:

1. Wages including the period and mode of payment.
2. Compensatory and other allowances.
3. Hours of work and rest intervals.
4. Leave with wages and holidays.
5. Bonus, profit sharing, provident fund and gratuity.
6. Shift working otherwise than in accordance with the standing orders.
7. Rule of discipline.
8. Rationalisation.
9. Retrenchment.
10. Any other matter that may be prescribed.

(c) National Tribunal:

The Central Government may constitute a national tribunal for adjudication of disputes as mentioned in the second and third schedules of the Act or any other matter not mentioned therein provided in its opinion the industrial dispute involves "questions of national importance" or "the industrial dispute is of such a nature that undertakings established in more than one state are likely to be affected by such a dispute".

The Central Government may appoint two assessors to assist the national tribunal. The award of the tribunal is to be submitted to the Central Government which has the power to modify or reject it if it considers it necessary in public interest.

It should be noted that every award of a Labour Court, Industrial Tribunal or National Tribunal must be published by the appropriate Government within 30 days from the date of its receipt. Unless declared otherwise by the appropriate government, every award shall come into force on the expiry of 30 days from the date of its publication and shall remain in operation for a period of one year thereafter.

Conciliation As A Process To Resolve Business Disputes

In all types of Businesses, some or other kinds of problems are bound to arise. Some or many of them can easily be solved through common sense while some may become a dispute, the resolution of which requires a great understanding and therefore, it becomes important to resolve such disputes amicably as well as speedily as lurking on it forever would bring the Business to a standstill.

What is Conciliation?

As per Oxford Dictionary, conciliation means; 'The action of stopping someone from being angry.' As mentioned above, it is important to solve Business disputes while maintaining the cordial relation between the parties involved.

It has been derived from the word 'concile.' Conciliate and reconcile are both employed in the sense of uniting men's affections but under different circumstances.

Conciliation means 'bringing of opposing parties or individuals into harmony to settle the dispute.'

Conciliation can easily solve the following types of disputes: commercial, financial, family, real estate, employment, intellectual property, insolvency, insurance, service, partnerships, environmental and product liability. Apart from commercial transactions, the mechanism of conciliation is also adopted for settling various types of disputes such as labor disputes, service matters, antitrust matters, consumer protection, taxation, excise, etc

This method provides the parties with an opportunity to negotiate, converse and explore options aided by a neutral third party, the conciliator, to exhaustively determine if a settlement is possible.

Conciliator

Conciliator, also called conciliating officer tries to resolve the dispute between parties by lowering down the tensions between them or say, in a way, calms both the parties by talking to them separately. They try to improve communications between both by interpreting the key issues that caused the conflict and encourage them to explore the solutions which are beneficial to all the parties involved, that is, he tries to create a win-win situation and arrive at a mutually acceptable outcome.

However, the conciliator does not have any power to impose the settlement arrived at. All he does is to try to break the deadlock and encourage the parties to reach an amicable settlement by acting as a conduit for communication, filtering out the disturbing elements and allowing the parties to focus on the underlying core objectives. In all, conciliator doesn't decide; he just helps the parties to arrive at a decision.

Conciliation as process to resolve disputes

It is the fastest growing alternate dispute resolution (ADR) mechanism in today's world and is commonly used in the U.S., U.K. and Europe as an effective way of settling disputes, be it commercial, contractual or personal.

However, it is not necessary to have a prior conciliation clause in the agreement to refer the dispute to resolution. Cases may be referred for conciliation with the consent of both the parties. The process is risk-free, and parties are not bound by it till they arrive at and sign the agreement. Once a solution is reached between the disputing parties before a conciliator and signed by them, the agreement has an effect of the arbitration award and is legally enforceable in any court in the country.

India is already familiar with the system of panchayats where the panchs usually try to solve the dispute in a friendly manner between the parties. So, it is slowly gaining ground and awareness of its merits is developing in India. However, ADR is still in the experimental stages in India.

LEGISLATIONS ON CONCILIATION IN INDIA

The Arbitration & Conciliation Act, 1996

This Act consolidates and brings the law relating to Arbitration in India by bringing it under one statute when the various provisions relating to arbitration were spread over three separate Acts. It was drafted as per the UNCITRAL Model Arbitration Law and the UNCITRAL Conciliation Rules and for the first time statutorily recognized conciliation by providing elaborate rules of engagement.

The Code of Civil Procedure (CPC)

For the past several decades, India's court system has suffered from an overwhelming backlog of cases. An average civil case takes almost a decade to be adjudicated. In 1996, the Indian Legislature recognized that to lessen the burden on the courts by introducing a more efficient case management system, mediation/conciliation would have to be integrated as a dispute resolution option in appropriate civil and commercial matters. As a consequence, in 2002, the CPC was amended to make ADR an integral part of the judicial process. Regarding the newly inserted section 89 of CPC, if it appears to the court that there exist elements, which may be acceptable to the parties, the court may formulate the terms of a possible settlement and refer the same for arbitration, conciliation, mediation or judicial settlement.

Conciliation procedure

The first step is to decide unanimously between the parties that they want to resolve their dispute through conciliation. Next step is to choose a conciliator as agreed by the parties together and he must be neutral to the parties involved.
Initially, in the first session, a decision is taken as to who will attend the conciliation and what will be the cost. The cost is shared equally between both the parties. The process is explained to both parties, and the conciliator is introduced. Ground rules of courtesy and propriety are laid down and scrupulously followed.

In the next session, parties explain their case and not just the legal aspect of it but, also their feelings. At this stage, the conciliator will only listen for the purpose of identifying the key issues. These sessions are private and confidential and at a time, only one party is there.

After this, a deliberation session follows, and creative solutions are explored. Joint sessions further follow this. If parties are reluctant to disclose certain information in joint sessions, the conciliator may request them to join him/her in a private session. In this, the conciliator will skillfully draw out relevant information. This can also be kept confidential, should the party wish so. The final stage is when the parties reach a consensus which is usually a win-win situation for both, and a written agreement is drafted to be signed by both the parties. Monitoring and reviewing the case is very important in the end.

Advantages

1. Conciliation offers a more flexible alternative to arbitration as well as litigation, for resolution of disputes in the widest range of contractual relationships, as it is an entirely voluntary process.
2. In conciliation proceedings, the parties are free to withdraw from conciliation, without prejudice to their legal position, at any stage of the proceedings.
3. The matter is settled at the threshold of the dispute, avoiding protracted litigation efforts at the courts. As conciliation can be scheduled at an early stage in the dispute, a settlement can be reached much more quickly than in litigation.

4. Parties are directly engaged in negotiating a settlement.
5. The conciliator, as a neutral third party, can view the dispute objectively and can assist the parties in exploring alternatives which they might not have considered on their own.
6. Parties save money by cutting back on unproductive costs such as traveling to court, legal costs of retaining counsels and litigation and staff time.
7. The parties may carefully choose conciliators for their knowledge and experience.
8. Conciliation enhances the likelihood of the parties continuing their amicable business relationship during and after the proceedings.
9. Creative solutions to special needs of the parties can become a part of the settlement.
10. Confidentiality is maintained throughout the proceedings on information exchanged, the offers and counter offers of solutions made and the settlement arrived at. Also, information disclosed at a conciliation meeting may not be divulged as evidence in any arbitral, judicial or another proceeding.

ARBITRATION:

The definition provided by Romilly M.R. in Collins V. Collins as "An arbitration is a reference to the decision of one or more persons, either with or without an umpire, of some matter or matters in difference between the parties"

Hogg states that "An Arbitration is the reference for binding judicial determination of any matter in controversy capable of being compromised by an agreement by way of accord and satisfaction or rendered arbitrable by statute between two or more parties to some person or persons other than a Court of competent jurisdiction".

"Arbitration is usually no more and no less than litigation in the private sector. The arbitrator is called upon to find the facts, apply the law and grant relief to one or other or both of the parties". "Arbitration is a procedure in which a dispute is submitted, by agreement of the parties, to one or more arbitrators who make a binding decision on the dispute. In choosing arbitration, the parties opt for a private dispute resolution procedure instead of going to court".

The definition propounded by Fouchard, Gaillard, Goldman describes arbitration as: "A device whereby the settlement of a question, which is of interest for two or more persons, is entrusted to one or more other persons – the arbitrator or arbitrators – who derive their powers from a private agreement, not from the authorities of a State, and who are to proceed and decide the case on the basis of such an agreement". "The essence of arbitration is that some dispute is referred by the parties for settlement to a tribunal of their own choosing instead of to a court".

VARIETIES OF ARBITRATION

There are various arbitrations depending upon the terms, subject matter of the dispute and the law governing the arbitration agreement.

DOMESTIC ARBITRATION

Domestic arbitration refers to arbitration, which takes place in India, wherein parties are Indians and disputes are decided in accordance with the substantive law of India. The term 'domestic arbitration' as such has not been defined in the Arbitration and Conciliation Act of 1996. However a co joint reading of Section 2 (2) (7) of the Act 1996, it is apparent that 'domestic arbitration' means an arbitration in which the arbitral proceedings are held in India, and in accordance with Indian substantive and procedural law, and the cause of action for the dispute has wholly arisen in India, or where the parties are subject to Indian jurisdiction.

INTERNATIONAL ARBITRATION

When arbitration takes place within India or outside India containing ingredients of foreign origin in relation to the parties or the subject mater of the dispute is called as International Arbitration. Depending upon the facts and circumstances of the case and the contract in this regard between the respective parties the law applicable may be Indian or foreign law. To satisfy the definition of International Arbitration it is suffice if any one of the parties to the dispute is resident or domiciled outside India or if the subject matter of dispute is abroad.

The term 'International Commercial Arbitration' has been defined in Sec. 2(f) of the Arbitration and Conciliation Act 1996. International Arbitration is 'commercial' if it relates to disputes arising out of a legal relationships, whether contractual or not, considered as commercial under the law in force in India and where at least one of the parties is- (1) an individual who is a national of, or habitually resident in, any country other than India or (2) a body corporate which is incorporated in any country other than India, or (3) a company or an association or a body of individuals whose central management and control is exercised in any country other than India or (4) the government of a foreign country. In International Commercial Arbitration the arbitral tribunal shall decide the dispute in accordance with the rules of law designated by the parties as applicable to the substance of the dispute; any designation by the parties of the law or legal system of a given country shall be construed, unless otherwise expressed, as directly referring to the substantive law of that country and not to its conflict of laws rules.

INSTITUTIONAL ARBITRATION

When arbitration is conducted by an arbitral Institution, it is called Institutional Arbitration. The parties may specify, in the arbitration agreement, to refer the dispute or differences to be determined in conformity with the rules of a particular arbitral Institution. One or more arbitrators are appointed in such arbitration from a pre-selected panel by the governing body of the institution or even by selection by the disputants themselves but restricted to the limited panel. "Institutional Arbitration" is arbitration conducted under the rules laid down by an established arbitral organization. Section 2(6) of the Arbitration and Conciliation Act 1996 provides that where Part I except section 28, leaves the parties free to determine a certain issue, that freedom shall include the right of the parties to authorize any person including an institution, to determine that issue. Section 2(8) of the Act expressly provides that where Part I 'refers to the fact that the parties have agreed or that they may agree, or in any other way refers to an agreement of the parties, that agreement shall include any arbitration rules referred to in that agreement'.

ADHOC ARBITRATION

Without resorting to an Institution, if the parties themselves agree and arrange for arbitration, it is termed as Adhoc Arbitration. It may be domestic, international or foreign arbitration. Russell on Arbitration has this to say on the definition of ad hoc arbitration: "The expression 'Ad Hoc', as in 'Ad Hoc Arbitration' or 'Ad Hoc Submission' is used in two quite different senses: an agreement to refer an existing dispute, and/or an agreement to refer either future or existing disputes to arbitration without an arbitration institution being specified to supervise the proceedings, or at least to supply the procedural rules for the arbitration. This second sense is more common in international arbitration."91 Ad Hoc Arbitration means that the arbitration is not conducted pursuant to the rules of an arbitral institution. Since, parties are not obliged to submit their arbitration to the rules of an arbitral institution; they may largely stipulate their own rules of procedure. In other words, Ad Hoc Arbitration is a do it yourself arbitration. The geographical location of Adhoc Arbitration will be of great importance, because most of the difficulties concerning the arbitration will be resolved in accordance with the national law of the seat of arbitration.

SPECIALIZED ARBITRATION

"Specialized Arbitration" is arbitration conducted under the auspices of arbitral institutions which might have framed special rules to meet up the exact needs for the conduct of arbitration in respect of disputes of particular types, such as, disputes as to commodities, construction or specific areas of technology. "Look Sniff" or 'Quality Arbitrations" are hybrid kind of arbitrations which may be found in particular commodity trades. Ronald Bernstein states: "The procedure envisaged, by long established practice, is that the arbitrator will be chosen for his expertise in the particular trade: will be sent copies of the contract and of any other relevant documents, and (If the sale is by sample) be sent the sample or part if it

STATUTORY ARBITRATION

When arbitration is conducted in accordance with the provisions of a special enactment, which specifically provides for arbitration in respect of disputes arising on matters covered by that enactment, it is called Statutory Arbitration. Statutory Arbitration is such a proceeding where the parties are referred to the arbitrator in terms of the provision made in a particular statute. There are a number of Central and State Acts, which provide for such arbitrations.

FLIP-FLOP ARBITRATION

In this arbitration, the parties prepare their own cases, and then request the arbitrator to decide one of the two. On the proof adduced by the parties, the arbitrator decides upon the correctness of either submissions and passes an award finally in favour of that party. This system has travelled from the USA to the United Kingdom, Department of the Environment, Transport have produced a glossary of commercial property terms. Flip-flop Arbitration is defined as being 'A form of arbitration under which the arbitrator bases his award on the submission he considers most reasonable. It is claimed that this encourages parties to be more reasonable in their submissions and reduces polarization'. Flip Flop Arbitration is also called as 'Pendulum Arbitration'. However, the use of pendulum arbitration has been endorsed in employment arbitrations and encourages both employers and employees to start negotiations from a realistic starting point. This method is adopted on the basis that the parties being businessmen, will take a pragmatic approach and should be encouraged to be reasonable in the formulation of their cases.

FAST TRACK ARBITRATION

Fast Track Arbitration also called as documents only arbitration is time bound arbitration, with stricter rules of a procedure, which do not allow for any laxity or scope for extensions of time and delays. Fast Track Arbitrations are best suited in those cases, which can be resolved on the foundation of documents, and that oral hearings and witnesses are not necessary. The reduced span of time makes it cost effective.

ADVANTAGES OF ARTBITRATION

Supporters of arbitration hold that it has a multitude of advantages over court action. The following are a sample of these advantages.

Choice of Decision Maker – For example, parties can choose a technical person as arbitrator if the dispute is of a technical nature so that the evidence will be more readily understood.

Efficiency – Arbitration can usually be heard sooner than it takes for court proceedings to be heard. As well, the arbitration hearing should be shorter in length, and the preparation work less demanding.

Privacy – Arbitration hearings are confidential, private meetings in which the media and members of the public are not able to attend. As well, final decisions are not published, nor are they directly accessible. This is particularly useful to the employer who does not want his 'dirty laundry' being aired.

Convenience – Hearings are arranged at times and places to suit the parties, arbitrators and witnesses.

Flexibility – The procedures can be segmented, streamlined or simplified, according to the circumstances.

Finality – There is in general, no right of appeal in arbitration. (Although, the court has limited powers to set aside or remit an award).

Having cited the above list of advantages, it is only appropriate to mention some of the most commonly perceived drawbacks of arbitration.

Cost - One or both of the parties will pay for the arbitrator's services, while the court system provides an adjudicator who does not charge a fee. The fees for an arbitrator can be hefty. To give an example, for an amount of claims up to $100,000, the minimum fee for a single arbitrator is $2,000. The maximum fee can reach ten percent of the claim. However, supporters of arbitration argue that this should be more than compensated for by the potential for the increase in the efficiency of arbitration to reduce the other costs involved.

'Splitting the Baby' – Thomas Crowley states that because of the relaxation of rules of evidence in arbitration, and the power of the arbitrator to 'do equity' (make decisions based on fairness), the arbitrator may render an award that, rather than granting complete relief to one side, splits the baby by giving each side part of what they requested. Thus both parties are leave the table feeling that justice was not served.

No Appeal – Unless there is evidence of outright corruption or fraud, the award is binding and usually not appealable. Thus if the arbitrator makes a mistake, or is simply an idiot, the losing party usually has no remedy.

Narcotic/Chilling Effects – The chilling and narcotic effects are two related concepts, which many theorists, including David Lipsky, believe to be inadequacies of interest arbitration. Chilling occurs when neither party is willing to compromise during negotiations in anticipation of an arbitrated settlement. Two measures most commonly used to weigh this effect are: the number of issues settled during negotiations versus the amount of issues left for arbitration, and a comparison with the management's and union's initial offers (chilling takes place when the two parties take extreme positions and are not willing to budge). The narcotic effect refers to an increasing dependence of the parties on arbitration, resulting in a loss of ability to negotiate. Common methods of assessing the narcotic effect are: the proportion of units going to arbitration over time and, perhaps more importantly, the number of times an individual unit returns to arbitration over a series of negotiations.

Typical Steps in an Arbitration

The process of arbitration differs among cases. The following is a list of the main steps in arbitration, however it should not be viewed as an exhaustive list.

Initiating the Arbitration – A request by one party for a dispute to be referred to arbitration.

Appointment of Arbitrator – Arbitrators may be appointed by one of three ways: (1) Directly by the disputing parties, (2) By existing tribunal members (For example, each, each side appoints one arbitrator and then the arbitrators appoint a third), (3) By an external party (For example, the court or an individual or institution nominated by the parties).

Preliminary Meeting – It is a good idea to have a meeting between the arbitrator and the parties, along with their legal council, to look over the dispute in question and discuss an appropriate process and timetable.

Statement of Claim and Response – The claimant sets out a summary of the matters in dispute and the remedy sought in a statement of claim. This is needed to inform the respondent of what needs to be answered. It summarizes the alleged facts, but does not include the evidence through which facts are to be proved. The statement of response from the respondent is to admit or deny the claims. There may also be a counterclaim by the respondent, which in turn requires a reply from the claimant. These statements are called the 'pleadings'. Their purpose is to identify the issues and avoid surprises.

Discovery and Inspection – These are legal procedures through which the parties investigate background information. Each party is required to list all relevant documents, which are in their control. This is called 'discovery'. Parties then 'inspect' the discovered documents and an agreed upon selection of documents are prepared for the arbitrator.

Interchange of Evidence – The written evidence is exchanged and given to the arbitrator for review prior to the hearing.

Hearing – The hearing is a meeting in which the arbitrator listens to any oral statements, questioning of witnesses and can ask for clarification of any information. Both parties are entitled to put forward their case and be present while the other side states theirs. A hearing may be avoided however, if the issues can be dealt with entirely from the documents.

Legal Submissions – The lawyers of both parties provide the arbitrator with a summary of their evidence and applicable laws. These submissions are made either orally at the hearing, or put in writing as soon as the hearing ends.

Award – The arbitrator considers all the information and makes a decision. An award is written to summarize the proceedings and give the decisions. The award usually includes the arbitrator's reasons for the decision

ARBITRATION AGREEMENT

The essential requirement to attract provisions of the Arbitration and Conciliation Act 1996 is that there must be an arbitration agreement. The question what is an arbitration agreement assumes importance because an arbitration agreement is the foundation on which the jurisdiction of an arbitrator rests. The conception of Arbitration Agreement is spelled out in Section 2 (1) (b) of the Arbitration and Conciliation Act 1996106 and Section 7 of the Arbitration and Conciliation Act 1996107. These provisions are analogous to Section 2(a) of the old Act 1940108 and Article 7 of UNCITRAL Model law109.The applicability of the Act does not depend upon the dispute being a commercial dispute. Reference to arbitration and arbitrability depends upon the existence of an arbitration agreement and not upon the question whether it is civil dispute or commercial dispute. Therefore significance is attached to the framework of arbitration agreement.

FEATURES OF ARBITRATION AGREEMENT

1. The arbitration agreement must contemplate that the decision of the tribunal will be binding on the parties to the agreement.
2. That the jurisdiction of the tribunals to decide the rights must derive either from the consent of the parties or from an order of the Court or from a statute, the terms of which make it clear that the process is to be an arbitration.
3. The agreement must contemplate that substantive rights of parties will be determined by the agreed tribunal.
4. That the tribunal will determine the rights of the parties in an impartial and judicial manner with the tribunal owing an equal obligation of fairness towards both sides.
5. That the agreement of the parties to refer their disputes to the decision of the tribunal must be intended to be enforceable in law and lastly,
6. The agreement must contemplate that the tribunal will make a decision upon a dispute which is already formulated at the time when a reference is made to the tribunal

Role of the Arbitrator

As arbitration becomes an increasingly attractive alternative way of resolving disputes to lengthy and often expensive court proceedings, arbitrators are ever more in demand and their roles increasingly important. Arbitration is often favoured over formal litigation not only from a cost and time efficiency perspective, but also because it often offers more practical solutions, and as a process is structured specifically to facilitate resolution.

Thus the arbitrator's role is a crucial one, and one that demands a unique combination of experience, knowledge and skill.

What does an Arbitrator do?

Not unlike a judge in a court proceeding, an arbitrator is an independent and impartial third party who carefully considers and analyses the evidence put before him or her, drawing on knowledge of relevant laws and policies in order to weigh up each party's case and make a resulting ruling. However, unlike a judge, an arbitrator is actually chosen by the disputing parties in lieu of formal court proceedings, and may be selected specifically for his or her industry knowledge particularly in complex cases where specialised expertise might be required.

An arbitrator will often encourage collaborative communication between disputing parties in an attempt to reach settlement before official arbitration proceedings begin, and throughout proceedings will act as a referee, facilitating discussion. If a settlement is reached, the arbitrator will then draft a settlement agreement. If settlement cannot be reached and the parties move to formal arbitration proceedings, an arbitrator acts like a judge in reviewing and interpreting all the evidence presented to him or her (this may include witness statements, testimony, documentation and so on), applying the relevant laws and rules to the arbitration, and then making a final decision or 'award' which – like a judge's – is final and binding, and can only be appealed against in certain unique circumstances.

What ethics are Arbitrators bound by?

As well as the multiple and sometimes complex practical responsibilities arbitrators assume, there are also a number of non-binding ethical codes for arbitrators, some of which are set out in the Arbitration Act, while others have been developed by judges and can be found in the common law. Section 33 of The Arbitration Act 1996 states that *"the tribunal shall—(a) act fairly and impartially as between the parties, giving each party a reasonable opportunity of putting his case and dealing with that of his opponent, and (b) adopt procedures suitable to the circumstances of the particular case, avoiding unnecessary delay or expense, so as to provide a fair means for the resolution of the matters falling to be determined."*

Who can become an Arbitrator?

The law does not impose restrictions on who can become an arbitrator, and an arbitrator does not need to have formal legal training. In fact, where disputes revolve around a specific industry, the disputing parties' priority may be to seek to appoint an arbitrator who has experience in that sector and therefore

understands its context and complexities. Either way, becoming a professional arbitrator is a rigorous process, involving substantial training and practical experience. In the UK, the Chartered Institute of Arbitrators trains and accredits practitioners to know and apply all the relevant laws, and to determine awards based on evaluation of all the evidence put before them.

The adjudication process

Adjudication is a procedure for resolving disputes without resorting to lengthy and expensive court procedure. For the purposes of this guide, adjudication is a reference to the procedure introduced in the UK in 1996 by the Housing Grants, Construction and Regeneration Act (Construction Act).
Originally the intention of the Construction Act was that the process would be fairly informal. However, it has developed into a formal process with parties serving detailed submissions, witness statements and often even expert reports.

Commencement

The adjudication process begins when the party referring the dispute to adjudication gives written notice of its intention to do so. The Scheme for Construction Contracts provides that this Notice of Adjudication should briefly set out the following:

1. a description of the nature of the dispute and the parties involved;
2. details of where and when the dispute arose;
3. the nature of the remedy being sought;
4. names and addresses of the parties to the contract, including addresses where documents may be served.

The Notice of Adjudication is the first formal step in the adjudication procedure. Save for the minimum information set out above, there is no particular requirement as to the form of the document.

Appointment of the adjudicator

Following service of the Notice of Adjudication, the next step is to appoint an adjudicator. The appointment of an adjudicator must be secured within seven days from service of the Notice of Adjudication. The parties can agree on an individual to act as the adjudicator or, if agreement cannot be reached, the party who referred the dispute to adjudication may make an application to an Adjudicator Nominating Body (ANB). This is usually done by completing a form and paying the required fee. On receipt of a request to nominate an adjudicator, the ANB should communicate their selection to the party who referred the dispute to adjudication within five days of the request. In the event that an ANB fails to do this the whole process must begin again.

The referral notice

The referral notice must be served within seven days of service of the Notice of Adjudication. This is the document that sets out in detail the case of the party who is referring the dispute to adjudication and it should be accompanied by documentation in support of the claim together with expert reports (if any) and witness statements. It is important to ensure that the referring party is in a position to serve this notice - there have been instances where the ANB has appointed an adjudicator 24 hours before the seven-day period expires, in which case the adjudicator will need the notice within a day. A copy should be sent to the other party at the same time.

Timetable involved

The Construction Act sets out a tight timetable of within 28 days of service of the referral notice for submission of a response and for the adjudicator's ultimate decision. However this may be extended with the consent of the adjudicator. The rationale behind the process was to obtain quick and cost effective results which are of a binding nature unless reviewed by litigation or arbitration. This relies on timescales being tight.

Responding party's response

This is essentially the other party's defence, and is required to be served within seven days of the Referral Notice. Requests for this to be extended to 14 days are usually agreed. The HGCRA does not demand a response or further submissions - the need for one is a matter for the adjudicator.

The decision

The adjudicator is required to reach his decision within 28 days of service of the referral notice. This period can be extended by a further 14 days if the party who referred the dispute in the first place agrees, or can be further extended if both parties agree.

The decision is final and binding, providing it is not challenged by subsequent arbitration or litigation. The parties are obliged to comply with the decision of the adjudicator, even if they intend to pursue court or arbitration proceedings. In the majority of adjudicators' decisions the parties accept the decision, however if they choose to pursue subsequent proceedings the dispute will be heard afresh - not as an 'appeal' of the adjudicator's findings. A party cannot adjudicate the same issue in further adjudication proceedings.

Costs

The Construction Act makes no mention of how costs should be dealt with. However changes to the Act which come into force on 1 October 2011 provide that any contractual provision which attempts to allocate the costs of an adjudication between the parties will be invalid unless it is made after the adjudicator is appointed. This applies to agreements both as to the allocation of the adjudicator's fees and expenses and agreements as to who is to bear the parties' own costs.

This provision seeks to prevent parties agreeing contractual terms which place all the costs risk on one party.

Adjudicator's fees and expenses

The parties will be jointly and severally liable to pay the adjudicator a reasonable amount in respect of fees for work reasonably undertaken and expenses reasonably incurred by him. This means that both parties can be pursued for these fees, or that either party may be pursued for the whole amount. The adjudicator may decide himself what sum is reasonable but, if there is any dispute, an application can be made to the court for determination. This provision applies only to adjudications which contain the required adjudication provisions set out in the Construction Act, not to adjudications which rely on the provisions of the Scheme for Construction Contracts.

The Local Democracy, Economic Development and Construction Act provides that:

1. the parties may agree, in the construction contract, to confer power on the adjudicator to allocate his fees and expenses between them - this agreement must be in writing;
2. if the parties agree, in the construction contract, to allocate liability for their own costs of the adjudication that provision will be ineffective;
3. the parties are free to agree liability for their own costs of the adjudication after the notice of intention to refer has been given - if they do so, this agreement must be in writing.

The Act does not address what will happen if a contract provision allocates liability for both the parties' costs and the adjudicator's fees and expenses. It is arguable that in such a situation the whole clause will be ineffective.

Interest

The adjudicator can only deal with interest on sums awarded if the contract contains a provision dealing with interest, or alternatively if the parties agree.

CODE OF DISCIPLINE

Discipline is very essential for a healthy industrial atmosphere and the achievement of organizational goals. An acceptable performance from subordinates in an organization depends upon their willingness to carry out instructions and the orders of their superiors, to abide by the rules of conduct and maintain satisfactory standards of work. The term 'discipline' can be interpreted. It connotes a state of order in an organization. It also means compliance with the proper appreciation of the hierarchical superior-subordinate relationship. The concept of discipline emerges in a work situation from the interaction of manager and workers in an organization. Formal and informal rules and regulations govern the relationship between a manager and workers, the formal rules and regulations are codified in the company's manual or standing order. Informal rules, on the other hand, are evolved from convention and culture in the organization

The code of discipline defines duties and responsibilities of employers and employees/workers. The objectives of the code of discipline are:

1. To ensure that employers and employees recognize each other's rights and obligations,
2. To promote constructive cooperation between the parties concerned at all levels,
3. To secure settlement of disputes and grievances by negotiation, conciliation, and voluntary arbitration,
4. To eliminate all forms of coercion, intimidation, and violence in industrial relation,
5. To avoid work stoppages,
6. To facilitate the free growth of trade unions, and
7. To maintain discipline in industry.

Code of Discipline

Code of discipline forms the Gandhian approach to industrial relations to bind employees and trade unions to a moral agreement for promoting peace and harmony. It was an outcome of the efforts of Guljari Lal Nanda, the then Union Labour Minister in 1957 to 1958. G.L. Nanda was the true Gandhian. It was at his instance that code was formulated. It was formally adopted at the 16th session of the Indian labour conference (1958). National representatives of both employers and trade unions were parties to it. This code was a unique formulation to voluntarily regulate labour management relations. The main features of this code are:

a. Both employer and employees should recognise the rights and responsibilities of each other and should willingly discharge their respective obligations.
b. There should be no strike or lockout without proper notice and efforts should be made to settle all disputes through existing machinery.

c. A mutual agreed grievance procedure will be setup and both the parties will abide by it without taking arbitrary
d. Both employers and trade unions will educate their member regarding their mutual obligations.
e. Management will not increase workloads without prior agreement or settlement with the workers.
f. Employer will take prompt for the settlement of grievances and for the implementation of all awards and agreements.
g. Management will take immediate action against all officers found guilty of provoking indiscipline among workers
h. Union will avoid demonstrations, rowdyism all form of physical duress and workers will not indulge in union activity during working hours.
i. Union will discourage negligence of duty, damage to property, careless operation, insubordination and other unfair labour practices on the part of workers. Thus, the 'code of discipline' consists of three sets of principles, namely
    1. obligation to be observed by management,
    2. obligations to be observed by trade unions, and
    3. principles binding on both the parties.

Causes of Indiscipline

Basically, indiscipline may arise due to poor management, errors of judgment by employees about their union leaders or a lack of understanding of management policy. This problem could also develop when an individual behaves in indisciplinary manner or as an outcome of the management's ignorance to his grievance. It can occur due to lack of commitment towards the work, by an employee in an organization. Various other factors are also responsible for indiscipline such as: unfair labour practices, victimization by management, wage differentials, wrong work assignment, and defective grievance procedure, payment of very low wages (giving rise to poverty, frustration and indebtedness), poor communication, ineffective leadership, and result in indiscipline. Thus, various socio-economic and cultural factors play a role in creating indiscipline in an organization.

Sign and Symptoms of Misconduct Every act of indiscipline is called misconduct. The main acts of misconduct are given as:

a. Disobedience or wilful insubordination.
b. Theft, fraud or dishonesty in connection with the employers business or property.
c. Wilful damage or loss of employer's goods or property.
d. Taking or giving bribe or any illegal gratification.
e. Habitual absence without leave or absence without leave for more than ten days.
f. Habitual late attendances.
g. Frequent repetition of any act or omission for which fine may be imposed.
h. Habitual negligence or neglect of work.
i. Habitual breach of any law applicable to the establishments.
j. Disorderly behaviour during working hours at the establishment.
k. Striking of work or inciting others to strike in contravention of the provisions of any law.

APPROACHES, PRINCIPLES AND PROCEDURE FOR DISCIPLINARY ACTION

Approaches Basically, there are five approaches regarding to manage indiscipline or misconduct. All these approaches briefly explain here.

1. Judicial Approach: It is commonly followed in India. The present day manager has to handle a variety of disciplinary issues. His right to hire and dismiss is curbed to a great extent, especially where unionized employees are concerned. The complexity is increasing in this arbitrary managerial function due to intervention by the government, by providing legislation for governing terms of employment. In order to secure security of jobs, the govt. has tried to ensure protection to industrial labour from likely misuse of managerial power to hire and fire.

2. The Human Relation Approach: It calls for treating an employee as a human being and considers the totality of his personality and behaviour while correcting faults that contribute to indiscipline. His total personality is considered, as is his interaction with his colleagues, his family background, etc. and then appropriate punishment for misconduct is awarded.

3. The Human Resources Approach: The approach calls for treating every employee as a resource and an asset to the organization before punishing the workers, the cause for indiscipline has to be ascertained. An analysis of the cause is made, to find out whether indiscipline is due to the failure of his training and motivating system or the individual's own failure to meet the requirements, and accordingly corrections are made.

4. The Group Discipline Approach: The management in this approach sets and conveys well established norms and tries to involve the groups of employees. The group as a whole control Indiscipline and awards appropriate punishments. The trade union may also act as a disciplinary agency.

5. The leadership Approach: In this case, every supervisor or manager has to guide, control, train, develop, lead a group and administer the rules for discipline.

Principles for Disciplinary Action Despite, best efforts, acts of indiscipline occur and it becomes necessary to take a disciplinary action. While taking disciplinary action the following principles must be considered.

1. Principles of natural justice: This principle must guide all enquires and actions. This means that no person should be appointed to conducting an enquiry who himself is interested in the outcome – either as an aggrieved party or because he is hostile to the person proceeded against, or for any other reason.
2. Principles of impartiality or consistency: There should be no marked difference in the action taken under identical situations where all the factors associated to situations are alike.
3. Principle of impersonality: The disciplinary authority should not encourage a person who is failing to fulfil his duty. He should be impartial to everyone.
4. Principle of reasonable opportunity to the offender to defend himself. Article 311 of the constitution of India says: No "person employed by the union or a state govt. shall be dismissed or remove until he has been given a reasonable opportunity showing cause against the action proposed to be taken in regard to him."

Procedure for Disciplinary Action

The procedure for taking disciplinary action involves the following steps:

a. Preliminary Investigation: First of all a preliminary enquiry should be held to find out the misconduct behaviour or situation.

b. Issue of a charge sheet: Once a misconduct or indiscipline is identified, the authority should proceed to issue of charge sheet to the employee. Charge sheet is merely a notice of the charge and provides the employee an opportunity to explain his conduct. Therefore, charge sheet generally called as show cause notice. In the charge sheet each charge should be clearly defined and specified.

c. Suspension Pending Enquiry: In case the charge is grave a suspension order may be given to the employee along with the charge sheet. According to the industrial employment (Standing orders) Act, 1946, the suspended worker is to be paid a subsistence allowance equal to one-half of the wages for the first 90 days of suspensions and three-fourths of the wages for the remaining period of suspension if the delay in the completion of disciplinary proceedings are not due to the workers conduct.

d. Notice of Enquiry: In case the worker admits the charge, in his reply to the charge sheet, without any qualification, the employer can go ahead in awarding the punishment without further enquiry. But if the worker does not admit the charge and the charge merits major penalty, the employer must hold enquiry to investigate into the charge. Proper and sufficient advance notice should be given to the worker of the enquiry.

e. Conduct of Inquiry: The inquiry should be conducted by an impartial and responsible officer. He should proceed in a proper manner and examine witnesses. Fair opportunity should be given to the worker to cross- examine the management witnesses.

f. Recording the findings: The enquiry officer must record all the conclusion and findings. As far as possible he should refrain from recommending punishment and leave it to the decision of the appropriate authority.

g. Awarding Punishment: The management should decide the punishment on the basis of finding of an enquiry, past record of worker and gravity of the misconduct.

h. Communicating Punishment: The punishment awarded to the worker should be communicated to him quickly. The letter of communication should contain reference to the charge sheet, the enquiry and the findings. The date from which the punishment is to be effective should also be mentioned.

RED - HOT STOVE RULE

Douglas McGregor has suggested this rule to guide managers in enforcing discipline. The rule is based on an analogy between touching a 'redhot stove' and violating rules of discipline. When a person touches a hot- stove,

1. The burn is immediate
2. He had warning that he knew that he would get burn if he touched it.
3. The effect is consistent everybody who touches red-hot stove would be burned.
4. The effect is impersonal. A person is burned because he touches the hot stove not because of who he is.
5. The effect is commensurate with the gravity of misconduct. A person who repeatedly touches the hot stove is burnt more than one who touched it only once.

The same should be with discipline. The disciplinary process should begin immediately after the violation of rules/regulations is noticed. It must give a clear warning that so many penalties would be imposed for a given offence.

Unit-IV: Grievances and Discipline: Grievances Redressal Machinery – Discipline in Industry _ Measures for dealing with Indiscipline.

The term "grievance" has been defined by different researchers in different ways.

Mondy and Noe defined grievance as "employee's dissatisfaction or feeling of personal injustice relating to his or her employment."

Keith Davis defines grievance as "any real or imagined feeling of personal injustice which an employee has about the employment relationship."

Nature of grievance

A grievance may be submitted by workers, or several workers, in respect of any measure or situation, which directly affects, or is likely to affect, the conditions of the employment of one or several workers in the organization. Where a grievance is transformed into a general claim either by the union or by a large number of workers, it falls outside the grievance procedure and normally comes under to purview of collective bargaining. The following areas were causes of employee grievance:

1. Promotions
2. Amenities,
3. Continuity of Service,
4. Compensation,
5. Disciplinary action,
6. Fines,
7. Increments,
8. Leave,
9. Medical Benefits,
10. Nature of Job,
11. Payment,
12. Acting promotion,
13. Recovery of dues,
14. Safety appliances,
15. Superannuation,
16. Supersession,
17. Transfer Victimization,
18. Condition of work.

The International Labour Organization (ILO) classifies a grievance as a complaint of one or more workers with respect to wages and allowances, condition of work and interpretations of service stipulations, covering such areas as overtime, leave, transfer, promotion, seniority, job assignment and termination of service. Chandra found that policy issues relating to hours of work, incentives, wages, DA, and bonus are beyond the scope of the grievance procedure-they fall under preview of collective bargaining.

CAUSES OF GRIEVANCE

There are several causes, which leads to employee grievance in an organization. Management Practices

1. The behaviour of supervisor, peer's group can cause grievance.
2. The improper division of work among employees lead to employee grievance.
3. The negligence of one's efforts towards the organization.
4. The autocratic organizational environment can cause grievance.
5. The implementation of personnel policies is not intended policies, it well lead to grievance.
6. If task objective is not clearly defined to employee, then also then employee get frustrated and ultimately grievance arises.
7. Matters such as employee compensation, seniority, overtime and assignment of personnel to shifts are illustrations of ambiguities leading to grievance.
8. Poor communication between management and employees is another cause of grievance.

Union Practices

In firms where there are multiplicities of unions, many of whom may have political affiliation; there is constant jostling and lobbying for numerical strength and support. Where unions are not formed on the basis of specialized craft but are general unions, the pressure to survive is great and, hence there is a need to gain the support of workers. Under such circumstances the grievance machinery could be an important vehicle for them to show their undeniable concern for workers welfare. The fact that a union can provide a voice for their grievance is an important factor in motivating employees to join a union. Realizing that members expect action and only active unions can generate membership, unions some time incline to encourage the filing of grievance in order to demonstrate the advantage of union membership. It makes union popular that it is the force to solve out the grievance with the management.

Individual Personality Trait

Sometimes mental tension, caused perhaps by ill health also contributes to grievance. Some are basically predisposed to grumble and find fault with every little matter, seeing and looking out only for faults. On the other hand, there are employees who are willing to overlook minor issues and discomforts and get on with the job.

Management of Grievance

It has been widely recognized that there should be appropriate procedure through which the grievance of workers may be submitted and settled. The main aim to solve out grievance with fairness and justice, so that workers dissatisfaction about various aspects can be properly examined and solved out. For this grievance resolution machinery is an urgent need to manage. Grievance resolution machinery permits employee to express complaints without affecting their job, and encourages and facilitates the settlement of misunderstanding between management and labour. The existence of grievance resolution machinery builds confidence in employees to express their discontent, enhance their morale, and satisfies them and also protects them from the injustice; proper and effective communication between management and

workers facilitates review and correction. Thus, presence of grievance machinery explains the organizational health, projects the shop floor cultures and shows leadership quality.

Steps for Managing grievances

Flippo describes five steps for managing a grievance. These are following as:

1. Receiving and defining the nature of dissatisfaction: The supervisor should receive the grievance in a way which itself is satisfying to the individual. It involves his leadership style. It has been that employee-centred supervisors cause fewer grievances than production –centred supervisors.

2. Getting the facts: Efforts should be made to separate facts from the opinions and impressions. Facts can be obtained easily if proper records are maintained by supervisors regarding specific grievances and individual attendance, rating and suggestions.

3. Analyzing the facts and reaching a decision: The supervisor must analyze the facts carefully to reach a specific decision, so that grievance can be solved out fruitfully.

4. Applying the answer: The supervisor has to effectively communicate the decisions to the individuals even if they are adverse in nature. The answer to the aggrieved individuals must be based on legitimate ground.

5. Follow-up: The following of the grievance should be made to determine as to whether or not clash of interest has been resolved. In situation where follow up indicates that the case is not resolved satisfactorily, the former four steps should be repeated. The frequent errors in processing of grievance break the whole process. The management should attempt to avoid these errors.

Grievance Machinery

Grievance machinery will be required to set up in each under takings to administer the grievance procedure. For the purpose of constituting a fresh grievance machinery, workers in each department (and where a department is too small, in a group of departments) and each shift, shall elect, from amongst themselves and for a period of not less than one year at a time, departmental representatives and forward the list of persons so selected to the management. Where the union in the undertaking is in a position to submit an agreed list of names, recourse to election may not be necessary. Similar is the case, where work committees are functioning satisfactorily, since the work committee member of a particular constituency shall act as the departmental representative correspondingly, the management shall designate the persons for each department who shall be approached at the first stage and the departmental heads for handling grievances at the second stage. In the case of appeals against discharges or dismissal, the management shall designate the authority to which appeals could be made.

Grievance Procedure

While adaptations have to be made to meet special circumstances such as those obtaining in the Defence Undertaking, Railways, Plantations and also small undertakings employing few workmen, the procedure normally envisaged in the handling of grievances should be as follows:

a. Aggrieved employee shall first present his grievance verbally in person to the officers designated by management for this purpose. An answer shall be given within 48 hours of the presentation of complaint.

b. If the worker is not satisfied with the designated officer, he shall, either in person or accompanied by his departmental representatives, present his grievance to the head of the department designated by management for this purpose. The time allotted to reply within 3 days. If the action cannot be taken with in that period, the reason for this delay should be recorded.

c. If the decision by departmental head is unsatisfactory, then the grievant may request the forwarding of his grievance to the grievance committee which shall make its recommendations to the managers within 7 days of the workers request. The management shall implement unanimous recommendations of the Grievance Committee.

Grievance Procedure in India

Till the enactment of Industrial Employment Act, 1946 the settlement of day-to-day grievances of workers in India did not receive much attention. Clause 159 Industrial Employment Act, 1946, emphasized to meet successfully any type of grievance arising out of employment by the management. They must show their moral honesty towards this. Under the factories Act, 1948 state government had framed rules requiring Labour welfare officers to ensure settlement of grievances; but this provision did not prove substantially helpful because of the dual role of these officers. In the past, a detailed grievance procedure worked out by mutual agreement only in a few units. Most of these units did not have any machinery for redressal of grievances. When day-to-day grievances piled- up, the industrial disputes. Davar describes grievance procedure at TELCO and Sandoz (India) Ltd. The TELCO had developed detailed procedure for handling individual and collective grievances since its very inception with the involvement of the recognized union. The union representatives are involved in making decisions at proper stages. The company also has a detailed consultative machinery to resolve problems relating to productivity, safety and welfare activities. There exits an Industrial Relations Board consisting of equal number of top company executives and union leaders to make final decisions regarding different industrial relations issues. The Sandoz (India) limited also recognized since the beginning that even unimportant grievance might cause lack of employee interest and make a individual a problem employee. The company stresses the settlement of grievances at the foreman level. In the case of grievances against any supervisory personnel, a higher official has to elaborate procedure for handling grievances. The procedure has several steps stated with putting the individual at ease, listening with sincere interest, avoiding argument during discussion, getting the story straight, getting all the facts, considering the

individual view point, willingness to admit mistakes, avoiding the "passing the buck", providing the benefits of doubt, avoiding "snap judgment", timing decisions and taking prompt decisions.

Industrial Discipline

This article provides an overview on Industrial Discipline. After reading this article you will learn about: 1. Meaning of Industrial Discipline 2. Maintenance of Industrial Discipline 3. Code of Discipline in Indian Industry.

Meaning of Industrial Discipline:

Industrial discipline refers to orderly working of the employees of an industrial undertaking in accordance with established rules, regulations and conventions. Discipline is a force that prompts an individual to observe rules, regulations and procedures to attain an objective. In the broad sense, discipline means orderliness — the opposite of confusion. In an organization, discipline is the orderly conduct of its members.

Industrial discipline can thus be defined as **"the orderly conduct of affairs by the members of an industrial organization who adhere to its necessary regulations because they desire to co-operate harmoniously in forwarding the end which the group has in view and willingly recognize that to do this, their wishes must be brought into a reasonable union with requirements of the group in action."**

Formerly, discipline meant the kind of regimentation of thought and action that obtains in the army. Discipline is definitely something which is opposite of chaos, irregularity and disorder in human behaviour and action. Mary C. Niles traces the origin of the word discipline to root meaning "to learn". According to her, the purpose of discipline is not to punish the workers but to help them learn proper conduct.

Discipline is essential for any successful activity and, where it refers to industrial discipline, it essentiality gets an added value. In industrial organizations, discipline is a must. The condition of complete peace and harmony as opposed to chaos is a very important factor for the success of an industrial unit.

In an atmosphere of discipline, work environment improves productivity of labour increases, production gears up and the organization, as a whole, attains prosperity and achieves its objectives and goals. Discipline may be self-imposed or enforced. In the case of self-imposed discipline, employees regulate themselves and their conduct but, in enforced discipline, regulation comes from the top.

When the discipline is self-imposed, naturally there is spontaneous work on the part of the employees and no enforcement is necessary; motivation comes from within. It is a more powerful force for the workers to work more. Nevertheless, occasions arise under which managers are compelled to rely on enforced discipline for bringing in recalcitrant employees to task.

Maintenance of Industrial Discipline:

The maintenance of industrial discipline is a difficult and highly complicated task and needs very efficient handling.

Varied are the ways that can be adopted, but a few of them are outlined below:

1) Workers are to be consulted while framing rules and regulations.

2) Rules and regulations should be properly framed.

3) There should not be any communication gap between the management and the workers.

4) New workers should be given proper orientation.

5) Where necessary, charts, graphs and other methods should be used so that the workers may understand them.

6) Penalty for breaking rules should be used only where it is absolutely necessary.

7) Victimization should not be the aim of punishment.

8) Favoritism, nepotism and casteism should be avoided.

9) Managerial staff should never be breakers of law which they themselves have framed for enforcing discipline.

10) Code of conduct or discipline should be framed and followed.

11) A disciplinary committee should be formed.

12) A suitable machinery should be set up to listen to the appeals made by the aggrieved party.

The ways of maintaining discipline are broadly discussed above. Where indiscipline actually takes place, some measures must be taken to enforce discipline.

According to Paul Pigors and Charles A. Myres, the following steps may be taken for disciplinary action:

(a) Preliminary investigation,

(b) An informal, friendly talk,

(c) An oral warning or reprimand,

(d) A written or official warning, and

(e) A graduated series of penalties such as disciplinary lay-off, demotional downgrading or transfer and — as a last resort — discharge.

These are termed 'clinical approach'.

In India, the principles of natural justice are followed in dealing with cases of indiscipline. The accused is to be given opportunity to defend himself and, under no circumstances, a man with sense of partiality should be appointed a judge and punishment should never be disproportionate to offence.

Disciplinary action is taken after domestic enquiry by the appointment of an Enquiry Officer and by framing and issuing a charge-sheet. The offender is given opportunity to submit his explanation, the enquiry notice is given, the proceedings are conducted, findings are made known and the decision is communicated to the proper authority.

The authorities of the firm proceed with utmost caution before any disciplinary action is taken.

Code of Discipline in Indian Industry:

The 15th session of the Indian Labour Conference held in July 1957, discussed the problem of discipline in industry and formulated certain principles for removing employee grievances and settling industrial disputes by mutual negotiation, conciliation and voluntary arbitration.

The Code of Discipline has come into force from June 1958. The Code of Discipline can be described as a truce between organised labour and management.

The following principles were discussed:

1) There should be no lockout or strike without notice.

2) No unilateral action should be taken.

3) No recourse to go-slow tactics.

4) No deliberate damage to plant or property.

5) No acts of violence, intimidation, coercion or instigation.

6) Existing machinery for settlement of disputes should be utilized.

7) Awards and agreements should be speedily implemented.

8) No agreement violating cordial industrial relations should be entered into.

The above principles were accepted and incorporated in the Code of Discipline, in toto. Certain modifications were made to codify them which became a **"Code of Discipline".**

This was ratified by the four central national labour organisations (INTUC UTUC, AITUC, and HMS) on behalf of the workers and by the Employers' Federation of India, the All India Organisation of Industrial Employers and the All India Manufacturers' Organisation on behalf of the employers.

The Code of Discipline however, could not prevent the major strikes in the steel plant at Jamshedpur, in dockyards at important ports, in the plantation industry in Kerala, at Calcutta Tramways, Hindustan Shipyard and Heavy Electricals at Bhopal.

A seminar on the working of the Code of Discipline was held in 1965. Again, in 1967, the working of the Code of Discipline was reviewed at the meeting of the Central Implementation and Evaluation Committee and the proposal to set up a National Arbitration Promotion Board for encouraging voluntary arbitration was finalized.

Unit – V: Collective Bargaining (CB) – CB Practices in India – Participative Management Forms and levels – Schemes of Workers' Participation in Management in India.

The term "Collective Bargaining" was identified by Sydney and Beatrice Webb in 1897. Probably, it means, "to bar the gains (of others), collectively." Collective Bargaining – Contract Negotiation and administration involves the relations between employers operating through their representatives and the organised labour. It can be defined as the process through which representatives of management and union meet to negotiate a labour agreement. This means that both management and labour are required by law to negotiate wages, hours, and terms and conditions of employment "in good faith". Good faith bargaining is a term that means both parties are communicating and negotiating and that are being matched with counter proposals with both parties making every reasonable effort to arrive at agreements. It does not mean that either party is compelled to agree to a proposal.

According to Harbinson, collective bargaining is "a process of accommodation between two institutions which have both common and conflicting interests." The Asian Regional Conference of ILO held in 1953, asserts that collective agreements are usually the best measures for the determination and adjustment of wages and that attempt should be made as early as possible to develop systems of collective negotiations based on free associations of employers and workers.

Scope of Collective Bargaining

The scope of collective bargaining is quite vast because of the delicacy of the employer, employee relationship, changing necessity of the organization and its employees, changes in the business environment and competition within the industry and across industry. According to Monappa, the scope of collective bargaining agreements now covers issues such as wages, bonus, overtime, paid holidays, paid sick leave, safety wear, production norms, hours of work, performance appraisal, workers participation in management, hiring, firing of job evaluation norms and modernization. The scope of collective bargaining varies from organization to organization and industry to industry depending upon existence of strong and matured union and its leadership trust and confidence between union and management, past history and present status of organization with respect to negotiation and their implementation.

Features of Collective Bargaining

Randle observes: "A tree is known by its fruit. Collective bargaining may best be known by its characteristics." The main characteristics of collective bargaining are:

1. It is a group action as opposed to individual action and is initiated through the representatives of workers. On the management side are its delegates at the bargaining table; on the side of workers is their trade union, which may represent local plant, the industry membership or nation-wide membership.

2. It is flexible and mobile, and not fixed or static. It has fluidity and ample scope for a compromise, for a mutual give-and-take before the final agreement is reached or the final settlement is arrived at.

3. It is a bipartite process. The employers and the employees are the only parties involved in the bargaining process. There is no third party intervention. The conditions of employment are regulated by those directly concerned.

4. It is a continuous process which provides a mechanism for continuing and organised relationships between management and trade unions. "The heart of collective bargaining is the process for a continuing joint consideration and adjustment of plant problems."

5. It is industrial democracy at work. Industrial democracy is the governance of labour with the consent of the governed workers. The principle of arbitrary unilateralism has given way to that of self government in industry. Collective bargaining is not a mere signing of an agreement granting seniority, vacations and wage increases. It is not a mere sitting around a table, discussing grievances. Basically, it is democratic: it is a joint formulation of company policy on all matters which directly affect the workers.

6. Collective bargaining is not competitive process but is essentially a complementary process, i.e. each party needs something that the other party has, namely, labour can make a greater productive effort and management has the capacity to pay for the effort and to organize and guide it for achieving its objectives.

Objectives of Collective Bargaining

The objectives of collective bargaining, according to the Guide, include the recognition of union as an authority in the workplace, improvement of workers standards of living and enlargement of their share in the profit of the enterprise, expression of the worker's desire in a concrete form to be treated with due respect and attainment of democratic participation in decision influencing their working conditions, development of orderly practices for sharing in these decisions and settlement of disputes which may stem in the day-to-day working of the enterprises and accomplishment of broad general objectives including defending and promoting the workers interest throughout the country. According to De-Cenzo and Robbins, the objective of collective bargaining is to agree upon an acceptable contract to management, union representative and the union membership. The purpose of collective bargaining is to attain industrial peace not at any price. Rather, it aims at the commonly held goals of a free society. In fact, the major function of collective bargaining is to generate pressures for enhancement of the dignity, worth and freedom of individual workers.

PROCESS OF COLLECTIVE BARGAINING

Collective bargaining has two faces: a) The negotiation state; and b) The stage of contract administration. The process of collective bargaining involves six major steps

1. Preparing for negotiations
2. Identifying bargaining issues.
3. Negotiating
4. Settlement and contract agreement
5. Administration of the agreement.

One bargaining environment is the type of bargaining structure that exists between the union and the company.

The four major types of structures are:

1. One company dealing with a single union,
2. Several companies dealing with single union,
3. Several unions dealing with a single company, and
4. Several companies dealing with several unions.

The bargaining process is comparatively simple and easy if the structure is of first type and becomes difficult and complicated in the remaining.

Negotiation Stage

At the negotiation stage, certain proposals are put forward which explore the possibility of their acceptance and have the way to mutually agreed terms after careful deliberation and consideration. The negotiation stage itself involves three steps namely preparation for negotiation, identifying bargaining issues and negotiating.

1. Preparation for negotiation

Careful advance preparations by employers and employees are necessary because of the complexity of the issue and the broad range of topic to be discussed during negotiations. Effective bargaining means preparing an orderly and factual case to each side. Today, this requires much more skill and sophistication than it did in earlier days, when shouting and expression of strong emotions in smoke filled rooms were frequently the keys to getting one's proposals accepted.

From the management side the negotiations are required to:

1. Prepare specific proposal for changes in the contract language.
2. Determine the general size of the economic package the company proposes to offer.
3. Prepare statistical displays and supportive date for use in negotiations, and Prepare a bargaining book for company negotiations, a compilation of information on issues that will be discussed, giving an analysis on the effect of each case, its use in other companies, and other facts.

From the employee's side:

The union should collect information in at least three areas:

1. The financial position of the company and its ability to pay.
2. The attitude of the management towards various issues in past negotiation or inferred from negotiations in similar companies.
3. The attitudes and desires of the employees. The other arrangements to be made are selecting the negotiators from both sides and identifying a suitable site for negotiation.

2. Identifying Bargaining Issues:

The major issues discussed in collective bargaining fall under the following four categories:

a. Wage related issues:

This includes such topics as how basic wage rates are determined, cost of living adjustments, wage differentials, overtime rates, wage adjustments and the like.

b. Supplementary economic benefits:

These include such issues as pension plans, paid vacations, paid holidays, health insurance plans, retrenchment pay, Unemployment pension, and the like.

c. Institutional issues:

These consist of the rights and duties of employers, employees, unions, employee's stock ownership schemes, and the like.

d. Administrative issues:

These include such issues as seniority, employee discipline and discharge procedures, employee health and safety, technological changes, work rules, job security, and the like. While the last two categories contain important issues, the wage and benefit issues are the ones which receive the greatest amount of attention at the bargaining table.

3. Negotiating:

Preparations have been made and issues being identified, the next logical step in collective bargaining process is negotiation. The negotiating phase begins with each side presenting its initial demands. The negotiation goes on for days until the final agreement is reached. But before the agreement is reached, it is a battle of wits, playing on words, and threats of strikes and lockouts. It is a big relief to everybody when the management representatives and the union finally sign the agreement. The success of negotiation depends on skills and abilities of the negotiators. At times, negotiations may breakdown even through both the labour and the management may sincerely want to arrive at an amicable settlement. In order to get negotiations moving again, there are several measures that are usually adopted by both the parties, which sometimes even includes unethical measures

1. Through third party intervention such as arbitration and adjudication,
2. Unions tactics likes strikes and boycotts, and
3. Management strategies such as lockouts, splitting the union, bribing union leaders and using political influence.

(B) Contract Administration

When the process of negotiation has been completed, it is time to sign the contract, the terms of which must be sincerely observed by both the parties. The progress in collective bargaining is not measured by the more signing of an agreement rather, it is measured by the fundamental human relationships agreement. Once an agreement is signed, both the trade union and the management are required to honour it in letter and spirit. The union officers and company executives should explain the terms and implications of the contract to employees and supervisors with a view to ensuring that the day to day working relationship between workers and management is guided by that contract. It is important that contract must be clear and precise. Any ambiguity leads to grievances or other problems. The whole process of contract administration is identified by two steps, namely settlement and contract agreement i.e. settlement of disputes by collective bargaining and find a solution as an contract agreement between

union and management and administration of agreement i.e. implementation according to the letter and spirit of the provisions of the agreement.

Prerequisites for Collective Bargaining

1. There should be careful selection of negotiation teams and issues. The team should have a mixed composition, including productions finance and IR experts.
2. It is important for the management to recognize the union and to bargain in more good faith, in unionised situations.
3. The negotiating teams should have open minds, to listen and appreciate the other's concern and point of view and also show flexibility in making adjustments to the demands made.
4. The need to study adequately or do 'homework' on the demands presented, i.e. to gather data on wages and welfare benefits in similar industries in the geographical area.
5. Both the management and union should be able to identify grievances, safety and hygiene problems on a routine basis and take appropriate remedial steps.
6. Trade unions should encourage internal union democracy and have periodic consultations with the rank and file members.
7. Trade unions should show their equal concern regarding both quantity of work output as agreed upon and quality of work. They should show their full commitment towards the viability of the firm and its products/services.

Workers' Participation in Management

The concept of workers' participation in management is a broad and complex one. Depending on the socio-political environment and cultural conditions, the scope and content of participation may change. Various terms have come to be used to denote different forms and degree of participation. For example, joint consultation, labour-management cooperation, codetermination, joint decision making, workers' participation in industry and workers' participation in management. These terms or their variants have been interpreted and explained differently. In any case, a common thread running through all interpretations is the idea of associating employees in managerial decision- *making. The International Institute for Labour Studies defined WPM as* "the participation resulting from practices which increase the scope for employee's share of influence in decision making at different tiers of organizational hierarchy with concomitant assumption of responsibility".

In the words of Gosep, Workers' Participation may be viewed as:

1. An instrument for increasing the efficiency of enterprises and establishing harmonious industrial relations;
2. A device for developing social education for promoting solidarity among workers and for tapping human talent;
3. A means for achieving industrial peace and harmony which leads to higher productivity and increased production;
4. A humanitarian act, elevating the status of a worker in the society;
5. An ideological way of developing self-management and promoting industrial democracy.

A clear and more comprehensive definition is

Workers' Participation, may broadly, be taken to cover terms of association of workers and their representatives with decision-making process, ranging from exchange of information, consultation,

decisions and negotiations to more institutionalized forms such as the presence of workers' member on management or supervisory boards or even management by workers themselves.

Objectives and Aims of WPM

It would be more appropriate to classify the objectives of Workers Participation in Management in the following broad categories:

Ethical or Moral Objectives

In an ethical or moral context, participation in decision making is designed to promote individual development or fulfilment in accordance with the conception of human rights and dignity to which the Universal Declaration of Human Rights (1948) probably gives the most widely published expression. The declaration reads-"All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood. Further, everyone, as a member of society… is entitled to realization…of the economic, social and cultural rights indispensable for his dignity and the free development of his personality". The Special Advisory Committee, set up by the Government of Jamaica, defined "Workers' Participation" as "the extension of the individual's human rights at the work place" and stressed that "the procedures, institutions, rules and styles of management should bring the worker's recognition, treatment and attention as a human being rather than as a mere statistical unit of production".

Socio-Political Objectives

Political democracy ceases to have much significance in the absence of democracy in economic life. A citizen cannot be regarded as sufficiently mature for political democracy if he is denied democratic rights in his economic life. The industrial democracy programme adopted by the Swadeshi Trade Union Confederation in 1971 emphasised: "Industrial democracy is part of the effort made by the labour movement to extend democracy throughout society…Life away from the workplace has developed in one way and life at the workplace in another. The difference constantly grows and is at the root of the increasing need which employees feel to exert an influence on conditions of work and on management…If arbitrary situations are allowed to persist in one sector of society, they are an obstacle to the progress of democracy in the other sectors…Industrial democracy should be regarded as part of the general process of democratization." In our own country, the Second Five Year Plan, which was directed to the establishment of a socialist society, stated that a socialist society was based not only on cash incentives but also on the idea of serving the community and its willingness to recognize such service.

So, individual workers must be induced to feel that in their own way they were helping to build a state directed towards progress. Consequently, the introduction of industrial democracy was a prerequisite for the establishment of a socialist society.

Economic Objectives

Economic objectives relate directly or indirectly to increasing the efficiency of the undertaking. By associating the workers with the decisions taken, it is hoped to improve the quantity and quality of output and the utilisation of labour, raw materials, equipment and introduction of new techniques. There is growing awareness of the fact that the knowledge, experience and intelligence of those who actually do the work are not sufficiently used for improving industrial organisation and methods. Through participation, it is also hoped to reduce the areas of conflict of interest between management and labour and to improve labour relations. The implications of workers' participation in management is summarised as follows;

1. Workers have ideas, which can be useful.
2. Effective upward communication facilitates sound decision-making at the top.
3. Workers may accept decisions better if they participate in them.
4. Workers may work harder if they share in decisions that affect them.
5. Workers may work more intelligently if, through participation in decision-making, they are better informed about the reasons for and the intention of decisions.
6. Workers' participation may foster a more cooperative attitude amongst workers and management, thus, raising the efficiency by improving team spirit and reducing the loss of efficiency arising from industrial disputes.
7. Workers' participation may act as a spur to managerial efficiency. Conversely, it has been pointed out that the absence of participation results in misunderstanding, resistance, low morale and suspicion.
8. generate commitment of all employees to the success of the organization;
9. enable the organization better to meet the needs of its customers and adapt to changing market requirements and hence to maximize its future prospects and the prospects of those who work in it;
10. help the organization to improve performance and productivity and adopt new methods of working to match new technology, drawing on the resources of knowledge and practical skills of all its employees;
11. improve the satisfaction the employees get from their work; and
12. provide all employees with the opportunity to influence and be involved in decisions, which are likely to affect their interests.

Forms of Employee Involvement and Participation

Worker participation is a situation where workers are involved in some way with decision-making in a business organization. Worker participation can take many forms. There might be a Consultative Council in the Company, where trade unions and management meet regularly to discuss points of mutual interest. Workers can be organized in quality circles and meet regularly in small groups to discuss ways in which their work could be better organized. Marchington (1995) has identified five forms of employee involvement and participation:

1. Downward communications

Downward communications (team briefing and meetings) take place from managers to employees in order to inform and 'educate' staff so that they accept management plans.

2. Upward problem solving

Upward problem solving is designed to tap into employee knowledge and opinion, either at an individual level or in small groups. The aims are to increase the stock of ideas in an organization, to encourage cooperative relationship at work, and to legitimize change. Attitude surveys, quality circles, suggestion schemes and, total quality management/customer care committees come into this category.

3. Task participation

Task participation and job redesign processes engage employees in extending the range and type of tasks they undertake. Approaches to job design, such as horizontal job redesign (extending the range of tasks undertaken at the same level) job enrichment, vertical role integration (taking greater responsibility for supervisory duties) and team working (where the team organizes its own work so that it becomes 'self managed') may be used.

4. Consultation and representative participation

Consultation and representative participation enables employees take part through their representatives in management decision-making. One of the aims of management in encouraging this form of participation is to use it as a safety valve - an alternative to formal disputes - by means of which more deep-seated employee grievances can be addressed. Joint Consultative Committees and the appointment of worker directors falls into this category.

5. Financial involvement/participation

Financial involvement or participation takes the form of such schemes as profit sharing and employee share ownership. Some companies also use gain sharing as a means of involvement. The general purpose of Financial Participation is to enhance employee commitment to the organization by linking the performance of the firm to that of employee. Employee is more likely to be positively motivated as he or she has a financial stake in the company by having a share of profit or by being a shareholder.

a. Co-ownership

In this scheme, the workers are involved in management by making them shareholders of the Company. Thus, workers share the capital as well as profit. This may be done by inducing them to buy equity shares. The management may promote the scheme by allowing the worker to make payment in instalments. It may also advance loans or even give financial assistance to such workers to enable them to buy equity share. Workers may also be allowed to leave their bonus with the Company as shares (bonus shares). Participation through ownership has the distinct advantage of making the worker committed to the job and to the organization. It also offers recognition of the claim of the dignity of labour as the worker is viewed as partner in the business. This would, in turn, create a sense of belongingness among workers and stimulate them to contribute their best for the continued progress of the Company.

b. Productivity Bargaining

In this scheme workers' wage & benefits are linked to productivity. Information on Company performance is provided to employees as part of the scheme and they are encouraged to discuss with their managers or team leaders the reasons for success or failure and methods of improving performance. A standard productivity index is finalized through negotiations initially. Workers do not have to perform at exceptionally high levels to beat the index. If they are able to exceed the standard productivity norms, they will get substantial benefits. The aim of such schemes is to educate employees and gain their commitment. Without such agreement, workers may not realize the importance of raising productivity for organizational survival and growth.

c. Gain sharing

A form of contingent compensation where owners and employees share in productivity gains, as an incentive for improvement. Gains are determined by agreed-upon measures of organizational performance. Gain sharing typically provides for a long term distribution to manufacturing or similar units of a set percentage of the costs saved through the often substantial revamping of production processes. Gain sharing programs encourage teams within a firm to solve fundamental problems within their specific area of expertise.

Important Govt. Measures for WPM

1. Works Committees

The Industrial Disputes Act, 1947, provides for the setting up of bipartite Works Committees as a scheme of workers participation in management, which consists of representatives of employers and employees. The Act provides for these bodies in every undertaking employing100 or more workmen. The aim of setting up of these bodies is to promote measures for maintaining harmoniums relations in the work place and to sort out differences of opinion in respect of matters of common interest to employers and employee. The Bombay Industrial Relations Act, 1946, also provides for these bodies, but under the provisions of this Act they can be set up only in units that have a recognised union and they are called Joint Committees. The workers directly elect their representatives where there is a union.

Functions

The Works Committees /Joint Committees are consultative bodies. Their functions include:

1. Discussion of conditions of work like lighting, ventilation, temperature, sanitation, etc.,
2. Discussion of amenities like water supply for drinking purposes, provision of canteens, medical services, safe working conditions, administration of welfare funds, educational and recreational activities.
3. Encouragement of thrift and savings.

4. it promote measures for securing and preserving amity and good relations between the employers and workmen and to comment upon matters of their common interest or concern and endeavour to reconcile any material difference of opinion in respect of such matters.

Structure

The Works Committees have, as office bearers, a President, a Vice- President, a Secretary and a Joint Secretary. The President is a nominee of the employer and the Vice-President is the workers' representative. The tenure of these bodies is two years. The total strength of these bodies should not exceed 20. The employees' representatives have to be chosen by the employees.

Joint Management Councils/Committee (JMCs)

The Second Five-year Plan recommended the setting up of Joint Councils of Management consisting of representatives of workers and management. The Government of India deputed a study group (1957) to study the schemes of workers' participation in management in countries like UK, France, Belgium and Yugoslavia. The Indian Labour Conference (ILC) considered the report of the study group in its 15th session in 1957 and it made certain recommendations:

(i) Workers' participation in management schemes should be set up in selected undertakings on a voluntary basis.

(ii) A sub-committee consisting of representatives of employers, workers and government should be set up for considering the details of workers' participation in management schemes. This committee should select the undertakings where workers' participation in management schemes would be introduced on an experimental basis.

Objectives

The objectives of JMCs are as follows:

(i) To increase the association of employers and employee there by promoting cordial industrial relations;

(ii) To improve the operational efficiency of the workers;

(iii) To provide welfare facilities to them;

(iv) To educate workers so that they are well prepared to participate in these schemes; and
(v) To satisfy the psychological needs of workers.

A tripartite sub-committee was set up as per the recommendations of Indian Labour Conference, which laid down certain criteria for selection of enterprises where the JMCs could be introduced. They are:
(i) The unit must have 500 or more employees;
(ii) It should have a fair record of industrial relations;
(iii) It should have a well organise trade union;
(iv) The management and the workers should agree to establish JMCs;
(v) Employers (in case of private sector) should be members of the leading Employers' Organisation; and
(vi) Trade unions should be affiliated to one of the central federations.
It was observed by the sub-committee that if the workers and employers mutually agree they could set up JMCs even if these conditions are not met. The sub-committee also made recommendations regarding their composition, procedure for nominating workers representatives, the membership of JMCs etc. The details of these aspects have to be worked out by the parties themselves. A draft model was drawn up regarding the establishment of JMCs. This sub-committee was later reconstituted as the " Committee on Labour- Management Co-operation" to advise on all matters pertaining to the scheme.

Board Level Participation (1970)

Following the recommendations of Administrative Reforms Commission, the Government has accepted that representatives of workers be taken on the Board of Directors of public sector undertakings. It was introduced in Hindustan Antibiotics Ltd, Hindustan Organic Chemicals Ltd, National Coal Mines Development Corporation, BHEL, National Textile Mills, Newsprint and Paper Mills, etc. The worker Director was supposed to be elected by all the workers of the company through secret ballot. After the nationalization of banks, the government advised all nationalized banks to appoint employee directors to their boards – one representing employees and the other representing officers – having a tenure of 3 years. The scheme required verification of trade union membership, identification of the representative union and the selection of a worker director who is chosen out of a panel of three names furnished to the government by the representative union within a prescribed period. In some of the banks, the scheme could not be introduced smoothly after 1971 owing to difficulties in verifying union membership figures. A study of the scheme in the nationalised banks by the National Labour Institute has indicated that it has failed in promoting cordial relations between labour and management.

Shop and Join Councils

The 1975 scheme has come into existence after the emergency was declared in June 1975. It had envisaged the setting up of Shop Councils at the shop/ departmental level and Joint Councils at the enterprise level. These were to be introduced in manufacturing and mining units employing 500 or more workers – whether in public, private or cooperative sector. The actual number of Shop Councils in an enterprise was to be decided by the employer after consultations with the recognised union/ workers. The chosen workers' representatives must be actually working in the shop or department concerned .The Chairman of the council will be elected by management and the Vice-Chairman by the workers' representatives. The Council shall function for 2 years and will meet regularly to discuss matters relating to safety, discipline, physical working conditions, welfare measures, productivity norms and targets, absenteeism, flow of communication etc. The Joint Council, having tenure of two years, shall be

constituted for the whole enterprise consisting of representatives of both the management and the labour. The chief executive shall be the Chairman of the council and the representatives of workers shall nominate the Vice-President. The Council will meet once in a quarter to discuss matters which remain unsolved by shop councils including: schedules of working hours, holidays, optimum use of materials, productivity standards, training facilities to develop skills of workers, awards to workers for creative suggestions, general health, safety and welfare of workers, etc. Apart from manufacturing and mining units, commercial and service organisations (such as railways, hospitals, P&T, state electricity boards) were also covered in the 1977 scheme. Both the schemes evoked considerable interest and were introduced with a lot of enthusiasm, covering a wide spectrum of public and private sector units. However, after the emergency was lifted, most of the councils became defunct. Several operational problems surfaced from time to time, including:

(a) Inadequate sharing of information,
(b) Absence of a participative culture,
(c) Indifferent attitude of management,
(d) Lack of interest on the part of workers,
(e) Failure to clarify the norms for the nominations of representatives,
(f) Absence of a single union interested in a bipartite consultative process etc.

Adding Article 43A in the Indian Constitution

In view of the growing acceptance of the importance of workers' participation in management for increasing productivity, maintaining industrial peace and accelerating the pace of economic development, Article 43A was inserted in the Indian Constitution under the Directive Principles of the State Policy in 1977. The Article provides that the State shall take steps, by suitable legislation or any other way, to secure the participation of workers in the management of undertakings, establishments or other organisations engaged in any industry.

The New Scheme (1984)

A new scheme of workers' participation in management was prepared and notified in 1984 after reviewing the progress of various schemes in industry. It was applicable to all central public sector enterprises. It was decided that workers would be allowed to participate at the shop level, then plant level and the board level. The mode of representation of workers' representatives was to be determined by consultations with the concerned unions. A wide range of work related issues (personnel, welfare, plant, operations, financial matters, etc.) were brought within the ambit of the councils. The Ministry of Labour constituted a tripartite committee to review the working of the scheme and to suggest corrective measures.

Participation of Workers in Management Bill, 1990

The Participation of workers in Management Bill was introduced in the Rajya Sabha on 30th May 1990. This Bill had been referred to the Parliamentary Standing Committee on Labour and Welfare. This Bill is still under consideration of the Standing Committee. The bill aims at providing participation of workers in management at shop floor level, establishment level and board of management level.

I. Shop floor council (plant level)

Except for industries having one shop floor, all other industries are required to have shop floor council in accordance with the rules. *Functions:* It carries out functions specified in Schedule I of the Bill which include:

(i) Production facilities
(ii) Storage facilities
(iii) Materials economy
(iv) Operational problems
(v) Wastage control
(vi) Hazards and safety problems
(vii) Quality improvement

(viii) Cleanliness
(ix) Monthly targets and production schedule
(x) Cost reduction programme
(xi) Formation & implementation of work systems
(xii) Design group working
(xiii) Welfare measures.

II. Establishment council

Every industry is required to set up an establishment council at establishment level. *Functions:* An establishment council can exercise powers as specified in Schedule II of the Bill, which includes:

(A) Operational Area:
(i) Evolution of productivity schemes
(ii) Planning, implementation, fulfilment and review of monthly targets and schedules
(iii) Material supply & its shortfall
(iv) Storage and inventories
(v) House keeping
(vi) Improvement in productivity
(vii) Encouragement and consideration of suggestion
(viii) Quality of technological improvement
(ix) Machine utilisation, knowledge and development of new product
(x) Operational performance figure, etc.
(B) Economic and Financial Areas:
(i) Profit & loss statement and balance sheet
(ii) Review of operating expenses, financial result and cost of sales
(iii) Plant performance in financial terms.
(C) Personnel Matters:

(i) Absenteeism
(ii) Problems of women workers
(iii) Initiation of supervision of workers' training programme
(iv) Administration of social security schemes.
(D) Welfare Areas:
(i) Operational details
(ii) Implementation of welfare schemes
(iii) Safety measures etc.
(E) Environmental Areas:

(i) Extension activities and community development projects
(ii) Pollution control.

III. Representation of Board of Management

"The representatives of workmen are to constitute 13% and those of other workers 12% of the total strength of the Board of Management." The bill provides for a monitoring committee to advice on matters of administration of the Act and scheme under it.

Hurdles Of Workers Participation In India

The discussions reveal that ever since the independence of the country, Government has been keen on promoting workers' participation in management in the country. The failure of the schemes of workers' participation in management may be attributed to several factors:

Employer-related

Employers, by and large, were not very enthusiastic about schemes of workers' participation in management. They feared dilution of their powers; participation would take away from them their right to manage. Also, they felt that workers might not be able to contribute much in discussions relating to matters where they lack a broad perspective. When employers tried to substitute trade unions with the bipartite bodies, conflicting situations developed, vitiating the atmosphere of give and take.

Worker-related

By and large, workers' representatives were not fully equipped to participate in discussions relating to organisational issues. Factors, such as illiteracy, lack of knowledge, lack of enthusiasm to update their viewpoints, have often come in the way of extending wholehearted support to the schemes of workers' participation in management.

Union-related

Trade union movement in India is largely fragmented, poorly organised, characterized by intense inter union rivalry and coloured by various political ideologies. In such an atmosphere, the union representatives are not expected to act in the best interests of workers and the organisations.

Macro level factors

All the schemes of workers participation in India are non-statutory. The different pieces of labour legislation have complicated matters further. There is no central law on the subject. Some of the forms of participation envisaged by the government like Works Committees, Joint Management's Councils – appear to be similar in scope and function. The multiplicity of such bipartite bodies with loosely defined structure and purpose, not surprisingly have failed to deliver the goods.