

## Q1.Labour policy in India

After independence it was largely felt that the labour policy must emphasise upon self-reliance on the part of the workers. Since independence till 1954, the period when V.V Giri was the labour Minister, all official pronouncements emphasised that labour should become self-reliant. An equally forceful view had happen to prefer reliance upon the Government. This cross-current of approach to the labour policy gave place to a new approach known as “ Tripartism”. Thus “Tripartism” became the central theme in the so-called “Nanda-period” that began in 1957. During this period the government paid reliance on three party approach, namely the trade union representing the workers, the employers, and the government. In this kind of approach the representatives do not decide anything but their role is mainly advisory. They meet together, discuss anything but their role is mainly advisory. They meet together, discuss the points in dispute and strive to reach a consensus and if they agree they make recommendations. Out of the three, the role of the government is more important. Annual labour conference and the permanent standing labour committees served as the chief instrument of Tripartism. These conferences advocated amongst many things; worker’s participation in management workers education works committees, and minimum wage legislations. At the sixteenth conference held in 1958 a momentous advancements was made by adopting a Code of Discipline in industry. The code pledged the

parties to avoid strikes and lock-outs without notice, and to eschew unilateral actions, and to rely on settlement of disputes by discussion by voluntary arbitration or by adopting to such measures as the law may provide. It also pledged them to avoid coercion and victimization, to avoid partial strikes and lock-outs, and to follow grievance procedure.

Tripartism is an approach which lays stress on the identity of interests between labour and capital i.e., they are the partners in the maintenance of production and the building up of the national economy. The labour policy has proceeded on a realization that the community as a whole, as well as individual employers are under an obligation to protect the welfare of workers and to secure to them their due share in the gains of economic development. This led to enacting of the payment of Bonus Act, 1965 which aimed at providing for the payment of bonus on the basis of profits or on the basis of production or productivity.

The main postulates of labour policy may be summed up as follow

1. Recognition of the State as the custodian of the interests of the community, as the catalyst of “ change” and welfare programmes.
2. Recognition of the right of workers to peaceful direct action if justice is denied to them.

3. Encouragement to mutual settlements, collective bargaining and voluntary arbitration.
4. Intervention by the state in favour of the weaker party to ensure fair treatment to all concerned.
5. Primary to maintenance of individual peace.
6. Evolving partnership between the employer and employees in a constructive endeavor to promote the satisfaction of the economic needs of the country in the best possible manner.
7. Ensuring fair wage standards and provisions of social security.
8. Co-operation for augmenting production and increasing productivity
9. Adequate enforcement of legislation
10. Enhancing the status of the workers in industry.
11. Tripartite consultation.

Q2. The origin and growth of trade union movement in India

### Introduction

Trade Union movement of India is of recent origin as compared to other European countries which had undergone industrial revolution at a comparatively early stage in their economic development. The history of economic development is, therefore,

somewhat different in the sense that, at no stage did the country undergo an industrial revolution in the true sense of the term.

Agriculture remains the main occupation of the vast majority of the population and the industrial workers constitute a microscope minority. Even those who joined the rank and file of the industrial workers in the initial stags had their roots in village and village economy. It is no wonder that these rural migrants were “pushed” not “pulled” to the city due to economic factors such as widespread famines. They therefore lacked social coherency to organise themselves in an orderly manner to fight against the evils of the system in which they found themselves entrapped not of their own choosing but because of the compelling forces of the time.

The trade Union movement has thus emerged as a result of growing complexities of economic structure, growth of class consciousness and attainment of common objectives among the working class. To define the concept of Trade Union is bound to fail because Trade Union is a complete institution which has may aspects-economic, psychological, sociological and political. The above characteristics differ from country to country and therefore, a systematic study requires adaptability depending on the nature and extent of economic development of a country coupled with educational background of the working classes. The Trade Union is essentially a bargaining agent by collective actions by mutual insurance

and therefore collective bargaining, the employer owing to his admittedly superior bargaining power, can take advantage of the weaker positions of an individual worker as a result of ignorance and need. The objective of the Trade Unions, according to Webbs, is to take labour out of the competitive process. Under free competition consumers sovereignty may result in a competitive reduction of wages. Trade Unions ward off such unhealthy competition. Even in a proletariat society the purpose of a Trade Union is to satisfy the economic and cultural requirements of its member.

The Indian Trade Unions Act, 1926, section 2(h) defines Trade Union as, “ any combination whether, temporary or permanent, formed primarily for the purpose of regulating the relations between workmen and employers or between workmen and workmen or between employers, or for imposing restrictive conditions on the conduct of any trade or business and includes any federation of two or more trade unions.

The credit for organized labour movement in India goes to N.M Lokhande who was a factory worker himself and who in 1884 organised an agitation in Bombay and called a conference of workers to make representations to the Factory Commission appointed by the Government to study the conditions of working classes employed in factories. A memorandum prepared under his stewardship and presented to the commission demanded limitation of working hours, a weekly rest

day, noon-time recess and compensation for injuries. In response to these demands a weekly holiday was actually granted by the mill owners of Bombay.

In 1890, the Bombay Mill hand's Association was organised with Lokhande as chairmen and workers newspaper Deenabandhu was started. Other associations which were established during this period were Amalgamated society of Railway servants of India and Burma (1897), Printers Union (1904), The Bombay postal Union (1907), The Kamgar Hitwardhak Sabha (1910) and the Press Employees Union. Although all the above organisations were not Trade Unions in the real sense of the term but the establishment of the above organisations germinated the seed of consciousness among the working class to fight for their legitimate rights by constitutional methods and the leaders were either philanthropists or intellectuals. However it was not until the close of World War I that the modern Trade Union movement really took root in india. The period (1918-21) was an epoch-making period in the history of Indian labour movement. It was during this period that the working class really awakened to the reality of grim struggle for existence in the face of rising prices, long working hours and absence of statutory protection and consequently Trade Unions were formed for achieving the objections of fighting against the above evils.

India's first Trade Union, the Madras Labour Union (1918) was founded by P.P Wadia who was induced to join the labour movement by his sympathy for the

working classes against the European officers who treated harshly the Indians in the mills.

The union was the first systematic attempt of Trade Union organization with regular membership dues and relief fund. So far the movement was confined to the three principal cities of Bombay, Ahmedabad and Madras where the textile industry had been established. Trade unionism after 1919 spread to centres other than these and the unions were formed in the Railways, Iron and Steel industry besides Textiles.

By the year 1920 the Trade Union had emerged on the Indian scene in almost all the sectors to protect the legitimate interests of the working classes. It was also in this year that India's first central organization of labour, namely, All India Trade Union Congress was formed to co-ordinate the activities of all labour organisations and generally to further the significance. The Indian labour movement since the establishment of AITUC remained very close to the national movement led by Indian National Congress. Well known personalities who were in the mainstream of the national movement, namely C.R. Das, Pt. Moti Lal Nehru, Pt. Jawahar Lal Nehru and Subhash Chandra Bose had presided over the AITUC at one time or the other. The Workmen Compensation Act (the first of its kind) and finally the Trade Unions Act, 1926 for regulating the affairs of a Trade Union and

which afforded certain protection to the union leaders for legitimate Trade Union activities.

The year of 1929 was again significant in the sense that a Royal Commission on Labour in India was appointed to study and report on the Indian labour conditions.

During the period 1937-39 the Indian National Congress which formed ministries in 7 out of 11 Provinces on the basis of elections held under the Government of India Act, 1935, played a prominent role in bringing about the unity within the framework of AITUC Constitution. The congress ministries resigned in the provinces as a protest against the unilateral action taken by the Governor General in declaring war on behalf of India without consulting the national leaders. The national leaders were arrested and the leadership of AITUC passed into the hands of communists who were more militant to fight for the cause of labour. As a matter of fact, the internal factions and groupism became very strong and various groups separated from the AITUC and under the influence of various political parties formed separate central organisations. The Indian National Trade Union Congress (INTUC) was formed in 1946, which was dominated by congress leaders who formed this union, the Hind Mazdoor Sabha (HMS) came into existence in 1948 ostensibly with a view to keeping trade unions free from domination by government employers and political parties and the United Trade



Union Congress (UTUC) in 1949. The group which established this party claimed to conduct union activities on the basis of Trade Unions free from sectarian party politics.

The progress of the trade unionism in india in pre-independence days has not been very coherent and systematized movement in the real sense of the term but the post- independence era has witnessed a tremendous growth of the unions in every sphere of industrial activity.

The Post Independence era and the labour Movement in the Interim Government established as a result of the efforts of the British Government to give independence to the Indians in the near-future. The outlook was gloomy, despite the prospects of freedom because of industrial and economic difficulties, the natural gifts of a war shattered economy. Immediately after assuming the control of the government, the national government got enacted the Industrial Disputes Act 1947 embodying many of the restrictive features of war time Defence of India Rule 81 (a). The Trade Unions Act, 1926 was also amended in 1947 and the amended act provided for compulsory recognition of unions.

It was clear that even the statutory provision of the Industrial Disputes Act, 1947 for setting up works Committees and Industrial Courts prove inadequate to arrest the problem of strikes and falling production. It was realized that the

problem needed a more positive step of promoting better relations between employers and employees.

The growing union consciousness amongst the working classes engaged in various vocations, particularly government servants, and engaged in different crafts and pursuing various professions has increased to a great extent on the national level, the All India Railway men Federation, the National Federation of Posts and Telegraphs Employees, the all India Defence Employees covering almost all the sections of the departments of the Government of India had been extremely active to fight for the cause of employees who had been hard hit due to continuous rise in the prices and consequently cost of living index rising higher and higher in the last few years.

Similarly, employees of the Banking Industry, Insurance, Electricity, working journalists, dock workers, teachers, and Airlines employees have shown greater awareness to form unions and to fight collectively for their demands with the employers concerning conditions of service and on the issue of bonus, etc.

The compulsory adjudication system is the cornerstone of labour dispute settlement procedure in India in recent years due to the responsibility imposed upon the state in directive principles of the state policy of the constitution of India to usher in an era of the welfare state in India. Compulsory adjudication has come to

stay, and is indeed necessary for protecting weaker unions which are not strong enough to bargain with the employers. However, collective bargaining has also simultaneously emerged. Several voluntary agreements have also been arrived at jointly between representatives of labour management and the government. The labour policy of the government has undergone a radical change in the recent years and there has been a consistent endeavor on the part of the government to accord encouragement to tripartite Indian economy.

There has been tremendous increase in the number of Trade Unions and their membership in the recent years but the size of the Trade Unions in India has been decreasing. One of the reason for this tendency is that as trade unionism is spreading among workers, Trade Unions are being established in smaller plants. The result is that while the number of unions and unions membership is increasing, average membership of individual unions is declining. Secondly, inter-union rivalry and the influence of outsiders among the leaders and the central organization have resulted in the multiplicity of unions and consequently hampered rather than encouraged the growth of trade union movement on healthy and democratic lines. The national commission on labour has not favoured the idea of legal ban on outsiders in Trade Union but has advocated the view, that the “outsiders in Trade Unions should be made redundant by forces within rather than by a legal ban. It has suggested limiting the number of outsiders in a Trade Union

in order to discourage the practice of inducting the outsiders in the Trade Unions in India.

Q3. Definition of Trade Union:- Trade Union means any combination whether temporary or permanent, formed primarily for the purpose of

- a) Regulating the relations between
- b) Workmen and employers; or
- c) Employers and employers; or

For imposing restrictive conditions on the conduct of any trade or business and includes any federation of two or more unions.

According to Chambers Encyclopedia a trade Union is an association of wage earners, formed primarily for the purpose of collective action for the forwarding or defence of its professional interest. Any association of wage earners, therefore which is formed with the object of catering to the demands of its members by collective action would be a Trade Union under the above definition.

Similarly an association of which the primary object was to acquire patent rights though also empowered to regulate output and price was held not to be a Trade Union. Therefore, the definition contemplates the regulation of relationship in regard to the conditions of service employees which postulated the existence of an employer who is engaged in business, trade or industry.

Whatever may be the combination, whether permanent or temporary, if it is formed for one or the other of the statutory objects, it is a Trade Union within the meaning of the present Act. It may be an association of non-manual or manual workers.

Thus an association of persons which required registration should be an association of workmen. In other words, the member of a Trade Union must be Workmen of the employer engaged in the conduct of any trade or business in a commercial undertaking. The term 'workmen' includes persons employed in trade or industry with whom the trade dispute arises. The expression workman as defined in the Trade Unions Act has a wider import than the definition of workman in the Industrial Disputes Act. The main nature of work must be clerical or non supervisory of a workman under Industrial Disputes Act whereas the only requirement under the Trade Unions Act is that a person must be employed in trade or industry and it makes no distinction between persons holding supervisory and non supervisory or officer and clerical position.

The Trade Union of Employees of Employees State Insurance corporation can get registration under the act as employees were held as workmen within the definition of the act.

A Trade Union registered under the Trade Unions Act, is neither an instrumentality nor an agency of the state discharging public functions or public duties and thus, not amenable to the Jurisdiction of the writ under Article 226 of the Constitution.

A question arose whether the persons employed in T.T. Devasthanam, public religious institution, administrated under the Andhra Pradesh Charitable and Hindu Religious Institution and Endowment Act of 1966, can register themselves into a Trade Union under the Act? It was held that through the essential character of Institution is religious, it has to maintain several departments such as Electricity and Water Department to cater to the needs of the pilgrims. Such department being industry and the workers working therein “workmen” therefore such workers are entitled to register themselves as a Trade Union.

The management of the central Machine Tools Institute, Banglore questioned the legality of the registration of their employees association as a Trade Union by the registrar under the Trade Unions Act, 1926 on the ground that the institute was purely a research and development organization without any profit motive. Upholding the legality of registration of the Association by the Registrar it was held in view of the Superme Court’s decision in Banglore water supply and sewerage Board’s case the management can no longer contend that it is not an industry and as such registration is valid and legal.

#### Q4.IMMUNITY OF MEMBERS OF TRADE UNION FROM CIVIL AND CRIMINAL LIABILITY

The Trade Unions Act, 1926 was enacted to afford certain immunities to trade union leaders to carry out the legitimate Trade Union activities without fear of civil or criminal action in the court of law. Invariably a Trade Union wilfully interferes with the business of the employer, as for example, by resorting to strikes or other forms of protest causing financial injury to an employer. Such interference was held actionable in England up to 1906 and up to 1926 in India. In the *Quinn* and *TaffVale* cases in England and in the *Buckingham and Carnatic Mills* case in India, the unions were held liable for illegal conspiracies and the employers were awarded damages. Dissatisfaction in England with the decision of *Toff Vale* decision led to the passage of the Trade Disputes Act, 1906 which nullified the case and afforded protection to Trade Unions in matters concerned with legitimate trade union activities and the decision of the *Buckingham and Carnatic Mills* was nullified by the Trade Unions Act, 1926. Sections 17, 18 and 19 of the Act deal with the immunities available to the Trade Unions with regard to criminal and civil proceedings including immunities in the law of Torts for acts committed by them connected with union activities. The Trade Unions Act of 1926 is based to a great extent on the English Act which immunizes registered Trade Unions, officers and members thereof from liability for acts done in furtherance of dispute inducing a

breach of contract of employment. It also immunizes a registered Trade Union from the consequences of criminal conspiracies tortuous acts to a registered Trade Union, its office bearers and members, of the offence of deliberately bringing about a breach of contract. *Similarly*, a union is protected from being" sued for the offence of inducing a person for *breachof* contract of employment or interfering with the trade, business or employment of some other person provided such inducement is in contemplation or in furtherance of a trade dispute. But inducement, procurement or interference must be by lawful means and not by means which would be illegal or wrongful by other provisions of law. It is to be noted that the protection does not extend to inducements to break contracts other than contract of employment, *e.g.*, contract for sale or purchase of goods nor does it give protection against libel actions.

Section 18, sub-clause (1) states,"No suit or other legal proceeding shall be maintainable in any civil court against any registered Trade Union or any office bearer or member thereof in respect of any act done in contemplation or furtherance of a trade dispute to which a member of the Trade Union is a party on the ground only that such act induces some other person to break a contract of employment, or that it is an interference with the trade, business or employment of some other person or with the right of some other person to dispose of his capital or his labour as he wills."



It is clear from the above provision that if the inducement to break a contract of employment is without threat or violence then this is not actionable provided it was done in contemplation or furtherance of a trade dispute. Similarly, if there be no threat or violence and no breach of contract and yet there is an interference with the trade, business or employment of some other person or with the right of some other person to dispose of his capital or his labour as he wills, it will not be actionable provided that it was done in contemplation or furtherance of trade dispute. In such cases there is no question whether there was sufficient justification or not..

The immunity from civil action has been extended to the Trade Unions for acts done by office bearers and members of a registered trade union only if done in contemplation or in furtherance of a trade dispute in the general interest of the working class who are permitted legally to organize themselves into Trade Unions.

A concerted movement by workmen by gathering together either outside the industrial establishment or inside within working hours is permissible and no liability accrues, when it is peaceful and does not violate the provisions of the law.

B when such a gathering is unlawful or commits an offence, the exemption is lost.<sup>3</sup>

Therefore, inducement or procurement of breaches of contract of employment or interference with business must be by lawful means.

In *Rama Vilas Service Ltd. v. Simpson and Group Companies Workers Union*,<sup>4</sup> the scope of Section 18 of the Act and the scope of interference in permitting the management or its customers to remove the manufactured goods, without the aid of labour, during strike period was the point in issue. The Counsel for the Union gave an assurance that the Union and its members would not prevent the management, their managerial staff and officers and any person or persons desirous of entering or leaving the concerns of the plaintiffs' companies and that they would not hold out threats.

Intimidation or indulging in *gherao* or wrongful confinement of the officers or the managerial staff or other members of the public in premises of the plaintiff companies would not be resorted to by the Union.

In view of the above assurance it was held that immunity under section 18 can be claimed for other acts also by the Union. Sub-section (2) further provides :

"A registered Trade Union shall not be liable in any suit or other legal proceeding in any civil court in respect of any *tortuous act done* in contemplation or furtherance of a trade dispute by an agent of the Trade Union if it is proved that such person acted without the knowledge of, or contrary to express instructions given by the executive of the Trade Union.

This provision extends protection to an agent of the Trade Union from tortious liability if the acts are done by him in contemplation or in furtherance of trade dispute of procuring a breach of contract. The breach must be a contract of employment. There must be no unlawful act like defamation, physical violence, etc. In the case of *Rohtas Industries Staff Union v. State of Bihar* the question before the Patna High Court was whether the employers have any right to claim damages against the employees participating in an illegal strike and thereby causing loss of production and business? It was held that even though strike may be illegal under section 14 of the Industrial Dispute Act, 1947 still workers are entitled to the immunity under Section 18 of the Trade Unions Act, 1926. Legality or illegality of the strike has no bearing on the question of immunity furnished under this section. Similarly, it was held in *Reserve Bank of India v. Ashis Kusum*,<sup>3</sup> that in order to secure immunity from civil liability under Section 18, inducement or procurement of breach of contract of employment in furtherance of a trade dispute must be by lawful means and not by means which would be illegal or wrong by other provisions of the law.

An interesting case of its own type arose in the case of *Western India Cine Employees v. Filmalaya (P) Ltd.*, where the question for consideration of the High Court was whether collective action taken by the workers to abstain from work at the call of the Union causing loss to the employer is protected under Section 18 (2)

of the Act? The brief facts in this case were that the Union made various demands on behalf of 19 workers alleging that these workers were in the employment of the Filmalaya Pvt. Ltd., and they were shown as temporary employees of other sister concerns. The Federation issued a letter to various bodies and associations of the cine artists, technicians and workers requiring them to issue directions to their members not to report for shooting work at the studio of the plaintiff, viz. Filmalaya Pvt. Ltd., which resulted in the stand-still of their work. The plaintiffs applied, amongst other reliefs, for the grant of injunction restraining the Trade Union from carrying out such activities. The High Court on appeal held that the trial was wrong in coming to the conclusion that no trade dispute existed.

Further, the Court observed "...the Union by issuing directions to its own members not to co-operate with the employer, no intimidation or coercion is caused which will result in denying them freedom of choice by any unlawful and violent means the acts of the Trade Union causing abusive language towards employers, their staff and their visitors are subject to other laws of the land. A Trade Union is entitled to carry out its legitimate trade union activities peacefully and, therefore, *per se* slogan shouting or demonstrations cannot be termed as unlawful and blanket injunction cannot be granted."

It can be said that what actions are covered by section 18 (2) of the Act depend upon the facts and situations in each case.

**Enforceability of Agreements.**—Under the provisions of Section 27 of the Indian Contract Act an agreement in restraint of trade is void because it is opposed to and in violation of public policy. The public have an interest in every person carrying on his trade or business freely. Therefore, all restraints on individuals to trade are declared void on the ground of public policy. Section 19 of the Trade Unions Act has provided immunity to Trade Unions from the above provisions of the Indian Contract Act by preventing civil courts from entertaining any legal proceedings against the Trade Union for enforcing any agreement or recovering damages for breach of any agreement between members of Trade Union concerning the conditions on which any member of a Trade Union shall or shall not sell their goods, transact business, work, employ or be employed. The proviso to the section , mentions expressly the bar on civil courts to entertain suit for enforcing a contract or claiming damages for a breach. Therefore, what the section has protected is the right to recover damages for breach of an agreement only. The courts can judge the validity without enforcing an agreement or give a declaration without consequential relief. These provisions relate to registered Trade Unions only. Agreements made between members of an unregistered lawful Trade Union are enforceable so long as they conform to the general principles of the law of contract.

### **Immunity from Criminal liability**

The Trade Unions a Duties and powers of Certifying Officer.—The Certifying Officer as well as the appellate authority is vested with the power to see that the Draft Standing Orders prepared by the employer are certifiable. The compulsion of the statute is that the Standing Orders shall make provision for such of the matters as set out in the Schedule with the additional matters prescribed by the Government as are applicable to the industrial establishment in question. If any of the matters set out in the Schedule are applicable to the industrial establishment in question, the employer is bound to make provision for them. The appropriate government is also given the discretion, having regard to the special conditions of the industries within its jurisdiction to add further matters to the list contained in the Schedule. The amended section 4 has entrusted the authorities with duty to adjudicate upon fairness and reasonableness of Standing Orders. Enquiry when such Standing Orders are submitted for certification is now two-fold ; (i) Whether Standing Orders are in conformity with Model Standing Orders; and (ii) Whether they are fair and reasonable.<sup>2</sup> The Certifying Officer, therefore, has to see before certifying the Draft Standing Orders that the conditions of section 4 are satisfied.<sup>3</sup>

The question as to fairness and reasonableness of the modification has been left by legislature to the authorities under the Act and the Supreme Court would not be justified in interfering with the conclusion of authorities under the Act unless an important principle of industrial law requiring elucidations is involved. The right

vests in the certifying and appellate authority to adjudicate upon the fairness or reasonableness of the provisions of the Standing Orders submitted for certification under the amendment made in Section 4 and Section 10 in the year 1955. This means that the jurisdiction of the appropriate authorities functioning under the Act has now been widened and they are required to consider whether the Standing Orders submitted to them for certification are fair and reasonable. Where modification of Standing Orders requires giving of reasons, in case of discharge of workman simpliciter was made, the modification was considered fair and reasonable and the Supreme Court refused to interfere under Article 136 of the Constitution.

Besides, testifying reasonableness the certifying and appellate authority are required to insist upon that the Standing Orders conform to the Model Standing Orders, unless the employer can satisfy them that it is not practicable for him to do so. It does not mean that the Draft Standing, 1926 gives immunity to registered Trade Union certain circumstances, from prosecution for criminal conspiracy. Under the existing criminal law an agreement to do an illegal act is itself a criminal offence. Illegal act includes all acts which provide grounds for civil actions. Thus, for example, two men who agree to persuade workmen to break their contracts with their employers are guilty of criminal conspiracy. Section 17 of the Act protects trade unionists from criminal conspiracy where the agreement into which

they have entered is not an agreement to commit an offence. It is provided in the Act that no officer or member of a registered Trade Union is liable to be punished for criminal conspiracy in respect of any agreement made between the members for the furtherance of any object on which the general funds of a Trade Union can be spent. The Act confers immunity from liability in case of criminal conspiracy under section 120-B of the IPC committed by an office bearer or member of registered Trade Union. The Trade Union has a right to declare and to do certain acts in furtherance of trade disputes. They are not liable criminally for such acts or civilly for conspiracy in furtherance of such acts as Section 17 permits such acts to be done but there is nothing in the Act which apart from immunity from criminal conspiracy allows immunity from criminal offences. The immunity does not extend to an agreement to commit an offence or intimidation, molestation, or violence amounting to an offence. Peaceful strike or gathering is permitted. But when it resorts to unlawful confinement of person, criminal trespass or there is indulgence in criminal force or criminal assault or mischief to person or property, there is no exemption from liability.<sup>1</sup> Neither of the sections, namely, 17 and 18 of Trade Unions Act, 1926 gives immunity to office bearers and members to commit an offence or for deliberate trespass. C.J. Sinha in *Jay Engineering Works v. Staff*,<sup>2</sup> while dealing with the scope of Sections 17 and 18 observed :



Sections 17 and 18 of the Indian Trade Unions Act grant certain exemptions to members of a Trade Union, but there is no exemption against either an agreement to commit an offence or intimidation, molestation or violence, where they amount to an offence. Members of a Trade Union may resort to peaceful strike, that is to say, cessation of work with the common object of enforcing their claims. Such strikes must be peaceful and not violent and there is no exemption when an offence is committed. Therefore, a concerted movement by workmen by gathering together either outside the industrial establishment or inside, within the working hours is permissible when it is peaceful and does not violate the provisions of law. But when such a gathering is unlawful or commits an offence then the exemption is lost. Thus, where it resorts to confinement of persons, criminal trespass or where it becomes violent and indulges in criminal force or criminal assault or mischief to person or property or molestation or intimidation, the exemption can no longer be claimed. "The offence under Section 7 of the Criminal Law (Amendment) Act, 1932 which prohibits obstructing and use of violence or intimidations and loitering and persistently following and other acts mentioned therein, if done with intent to cause any person to abstain from doing, or to do any act which such person has a right to do or abstain from doing, is an offence mentioned in Section 17 of the Act. There is no immunity if the act falls within the scope of the above Section of the Act of 1932.

Duties and powers of Certifying Officer.—The Certifying Officer as well as the appellate authority is vested with the power to see that the Draft Standing Orders prepared by the employer are certifiable. The compulsion of the statute is that the Standing Orders shall make provision for such of the matters as set out in the Schedule with the additional matters prescribed by the Government as are applicable to the industrial establishment in question. If any of the matters set out in the Schedule are applicable to the industrial establishment in question, the employer is bound to make provision for them. The appropriate government is also given the discretion, having regard to the special conditions of the industries within its jurisdiction to add further matters to the list contained in the Schedule. The amended section 4 has entrusted the authorities with duty to adjudicate upon fairness and reasonableness of Standing Orders. Enquiry when such Standing Orders are submitted for certification is now two-fold ; (i) Whether Standing Orders are in conformity with Model Standing Orders; and (ii) Whether they are fair and reasonable. The Certifying Officer, therefore, has to see before certifying the Draft Standing Orders that the conditions of section 4 are satisfied.

said that draft is in conformity with the provision of the Model Standing Orders.<sup>1</sup>

Departure in this respect should be well reasoned and satisfying to the Certifying Officer. If no Model Standing Orders have been set by the appropriate government, in that case, the Certifying Officer has to see that Draft Standing Order contains

provisions for every matter set in the Schedule applicable to industrial establishment. The Act does not prohibit inclusion of matters not mentioned in the Act. What the Act requires is the minimum to be provided for in a Standing Order framed in accordance with the Act and if such a minimum has been provided for and if found reasonable then the Certifying Officer is bound to certify them.

But where the topics to be included in the Standing Orders of a company do not fall under any of the items of the Schedule to the Act, the extension of the orders to such topics would be entirely without jurisdiction. Such Standing Orders, therefore, cannot be framed.

With regard to the powers of the Certifying Officer to modify the Draft Standing Orders submitted for certification, the Supreme Court held in *Associated Cement Co. v. P.D. Vyas* that the Certifying Officer has to be satisfied that the Draft Standing Orders deal with every matter set out in the Schedule and are otherwise in conformity with the provisions of the Act. In the case of *Rohtak and Hissar Districts Electric Supply Co. Ltd. v. state of U.P.*, the Supreme Court held that the employer cannot insist upon tiding a condition to the Standing Order which relates to the matter which is not included in the Schedule. The power is given to the Certifying Officer to certify the draft Standing Orders with or without modifications. It is none of his functions to suggest how the parties will govern their relations outside the ambit of the Standing Orders that he has certified. The

main purpose of framing Standing Orders as provided in the Act is to bring about uniformity with regard to conditions of service of the workmen working in industrial establishment covered under the provisions of the Act. Matters like suspension and dismissal are necessarily to be provided in the Standing orders.

Most of the disputes in the industrial establishment arise out of the vagueness of the terms and conditions according to which the workmen are employed. The Standing Orders form part of the contract between the management and everyone of its employees. It is because of this that Standing Orders after certification bind all employees presently employed as well as those employed thereafter. The object of the Act is to have uniform Standing Orders providing for the matters in the Schedule, it was not intended that there should be different conditions of service for those who are employed before and those employed after the Standing Orders came into force. Therefore, the Standing Orders of an establishment when certified by the Certifying Officer become the terms and conditions of service between the employer and his employees. The mere fact that the Certifying Officer has been authorised to amend and modify them does not render them non-statutory for the provision and procedure for their amendment it is laid down in the Act itself. Further, the same industrial establishment is not allowed to have two sets of Standing Orders certified; one relating to persons already in employment of the establishment and other applying to future entrants in service.

Certification of Standing Orders.—The procedure which a Certifying Officer has to follow before certifying the Draft Standing Orders is laid down in Section 5 of the Act. When the Draft Standing Orders are received by the Certifying Officers from the employer, he shall forward a copy of the said Draft to the Trade Union and if there is no Trade Union existing, then to the workmen concerned in such manner as may be prescribed by the rules framed under the Act. The Certifying Officer shall also send the copy of the Draft together with a notice to the Trade Union or the workmen concerned, requiring them to file objections if any to the Draft Standing Orders. The Trade Union or the workmen are required to file the objections before the Certifying Officer, within 15 days from the receipt of notice. Before deciding whether or not any modification or additions are to be made to the Draft Standing Orders, the Certifying Officer shall give the employer, the Trade Union or the representatives of the workmen an opportunity of being heard. After giving the opportunity of hearing the parties concerned, he shall decide whether or not any modification or addition to the Draft is necessary to render the draft certifiable under the Act and shall make an order in writing to that effect.

The emphasis is laid down in the Act to conform to the procedure for certification of Draft Standing Orders submitted for certification to the Certifying Officer. The manner in which the Standing Orders are framed and certified suggests, that the Standing Orders when certified will be binding on the employees presently

employed as well as employed thereafter. Therefore, in deciding whether the Draft Standing Orders submitted by the employer are certifiable under the Act, the duty of the certifying authority and of the appellate authority is not to substitute the Model Standing Orders for the draft but to see whether they are in conformity with the Model Standing Orders.