

**A. Critically analyze the role of the judiciary in safeguarding workmen's rights and strengthening trade union activities in India. Refer to leading case laws.**

**1. Bangalore Water Supply and Sewerage Board v. A. Rajappa**

**Issue** - Whether statutory and non-profit organisations fall within the definition of “industry” under Section 2(j) of the Industrial Disputes Act, 1947.

**Judicial Contribution**

The Supreme Court adopted a **liberal and expansive interpretation** of the term “industry” by evolving the **Triple Test**, namely:

1. Systematic activity
2. Cooperation between employer and employee
3. Production and distribution of goods or services to satisfy human wants

By bringing a large number of organisations within the ambit of “industry”, the Court extended labour law protections to a vast segment of workmen who were previously excluded.

**Impact on Workmen and Trade Unions**

- Enabled workmen in public bodies, hospitals, educational institutions, and statutory authorities to seek remedies under the Industrial Disputes Act.
- Strengthened trade union activities by expanding the **scope of collective bargaining**.
- Reinforced the judiciary’s commitment to **social justice over technical interpretation**.

**Critical Note** - While later decisions sought to narrow its scope, this judgment remains a cornerstone in labour jurisprudence and reflects judicial activism in favour of workers.

**2. All India Bank Employees’ Association v. National Industrial Tribunal**

**Issue** - Whether the right to form trade unions under Article 19(1)(c) includes the right to strike and collective bargaining.

**Judicial Contribution**

The Supreme Court held that:

- The **right to form trade unions is a fundamental right**, but
- The **right to strike and collective bargaining are not absolute fundamental rights**, though they are legitimate statutory rights.

### **Impact on Trade Union Activities**

- Clarified the **constitutional status of trade unions**, ensuring their formation and legal recognition.
- Allowed the State to impose **reasonable restrictions** to maintain industrial peace.
- Balanced workers' rights with public interest.

Critical Evaluation - Although the judgment restricted the scope of union activities, it legitimised trade unions as constitutionally protected associations, preventing arbitrary suppression by employers or the State.

### **3. Management of Hindustan Steel Ltd. v. Workmen**

**Issue** - Whether dismissal of workmen without a fair domestic enquiry violates principles of natural justice.

#### **Judicial Contribution**

The Supreme Court held that:

- Any disciplinary action against workmen must conform to **principles of natural justice**.
- Even where standing orders exist, procedural fairness cannot be dispensed with.

#### **Impact on Workmen's Rights**

- Strengthened **job security** of workmen.
- Prevented victimisation of workers for union activities.
- Ensured transparency and fairness in disciplinary proceedings.

**Significance** - This judgment reinforced judicial oversight over managerial powers and ensured that trade union members are not unfairly targeted.

### **4. Steel Authority of India Ltd. v. National Union Waterfront Workers**

**Issue** - Whether contract labourers are automatically absorbed upon abolition of contract labour under the Contract Labour (Regulation and Abolition) Act, 1970.

#### **Judicial Contribution**

The Supreme Court held that:

- There is **no automatic absorption** of contract labour unless provided by statute or agreement.
- However, abolition of contract labour must not lead to exploitation.

## **Impact on Trade Unions**

- Recognised the **collective role of trade unions** in negotiating absorption and regularisation.
- Emphasised protection against unfair labour practices.

Critical Perspective - Though criticised for diluting automatic absorption, the judgment reaffirmed that trade unions remain essential bargaining agents in protecting contract workers' interests.

## **5. Workmen of Nilgiri Cooperative Marketing Society Ltd. v. State of Tamil Nadu**

Issue - Whether the relationship between employer and employee exists for the purpose of labour law protection.

### **Judicial Contribution**

The Supreme Court evolved criteria to determine employer-employee relationship, focusing on:

- Control and supervision
- Economic dependence
- Nature of work

### **Impact on Workmen**

- Prevented employers from denying labour protections through artificial arrangements.
- Enabled trade unions to represent workers even in disguised employment relationships.

**Significance** - The judgment reflects the judiciary's role in **piercing contractual formalities** to protect substantive labour rights.

## **B. Explain the authorities under the Industrial Disputes Act, 1947, specifically focusing on: Role of the Works Committee, Conciliation Officers and Labour Courts, Tribunals, and National Tribunals**

### **Authorities under the Industrial Disputes Act, 1947**

The Industrial Disputes Act, 1947 creates various authorities to prevent and resolve industrial disputes through consultation, conciliation, and adjudication. The important authorities among them are the **Works Committee, Conciliation Officers, and Labour Courts, Industrial Tribunals, and National Tribunals.**

### **I. Works Committee (Section 3)**

**1. Constitution of the Works Committee** - Under Section 3 of the Act, where an industrial establishment employs 100 or more workmen, the appropriate Government may direct the employer to constitute a Works Committee. The Committee must be formed in the prescribed manner.

**2. Composition** - The Works Committee consists of **representatives of the employer and the workmen**, provided that the **number of workmen's representatives is not less than the employer's representatives**. The representatives of workmen are chosen from among the employees in consultation with their **registered trade union**, if any.

**3. Nature of the Committee** - The Works Committee is a **non-statutory, consultative, and advisory body**. It does not decide disputes but acts as a forum for discussion and cooperation.

**4. Duties and Functions** - According to Section 3(2), the duty of the Works Committee is to **promote goodwill and harmonious relations** between employers and workmen. It comments on matters of **common interest**, such as working conditions and welfare measures.

**5. Settlement of Differences** - The Committee endeavours to **resolve differences of opinion** related to matters of common concern, thereby preventing minor issues from developing into industrial disputes.

**6. Judicial Interpretation** - In *North Brook Jute Co. Ltd. v. Workmen*, the Supreme Court held that the Works Committee is meant to deal with **day-to-day grievances** and is not a substitute for collective bargaining or adjudication.

## **II. Conciliation Officers (Sections 4, 11, and 12)**

**1. Appointment** - Under Section 4, the appropriate Government may appoint **conciliation officers** by notification. They may be appointed **permanently or temporarily**, for a specific area or industry.

**2. Role of Conciliation Officers** - The primary role of a Conciliation Officer is to **mediate and promote settlement** of industrial disputes between employers and workmen.

**3. Commencement of Conciliation Proceedings** - As per Section 12(1), when an industrial dispute exists or is apprehended, the Conciliation Officer **may initiate conciliation proceedings**, and in the case of public utility services, **must initiate proceedings**.

**4. Powers During Conciliation** - Under Section 11, a Conciliation Officer may:

- Enter the premises of the establishment after giving notice
- Call for and inspect relevant documents
- Enforce attendance of persons and examine them

These powers are similar to those of a Civil Court for limited purposes.

**5. Duty to Investigate and Induce Settlement** - Section 12(2) requires the Conciliation Officer to **investigate the dispute without delay** and take steps to encourage a **fair and amicable settlement**.

**6. Settlement Report** - If a settlement is reached, the officer sends a **settlement report** along with a signed memorandum to the appropriate Government under Section 12(3). Such settlements are binding.

**7. Failure Report** - If conciliation fails, the officer submits a **failure report** explaining the reasons for non-settlement under Section 12(4). Based on this report, the Government may refer the dispute for adjudication.

**8. Case Law** - In *State of Bihar v. D.N. Ganguly*, the Supreme Court clarified that conciliation officers have **no adjudicatory powers** and only facilitate settlements.

### **III. Labour Courts, Industrial Tribunals, and National Tribunals**

These authorities are **adjudicatory bodies** constituted to decide industrial disputes when conciliation fails.

#### **A. Labour Courts (Section 7)**

**1. Constitution and Composition** - Under Section 7, the appropriate Government may constitute **Labour Courts**, each consisting of **one presiding officer**.

**2. Qualification of Presiding Officer** - The presiding officer must be a **High Court Judge, District Judge, judicial officer with required experience, or senior labour department officer with legal qualifications**, ensuring judicial competence.

**3. Jurisdiction** - Labour Courts decide disputes mentioned in the **Second Schedule**, such as dismissal, discharge, legality of orders, and interpretation of standing orders.

**4. Powers** - Under Section 11A, Labour Courts can:

- Set aside unjustified dismissal
- Order reinstatement
- Award lesser punishment or compensation

#### **5. Case Law**

In *Workmen of Firestone Tyre & Rubber Co. v. Management*, the Supreme Court upheld the wide powers of Labour Courts to review disciplinary actions.

#### **B. Industrial Tribunals (Section 7A)**

**1. Jurisdiction** - Industrial Tribunals adjudicate disputes under both the **Second and Third Schedules**, including wages, bonus, working hours, and service conditions.

**2. Composition and Assessors** - They consist of one qualified presiding officer, and the Government may appoint **assessors** with special knowledge to assist the Tribunal.

### **C. National Tribunals (Section 7B)**

**1. Purpose** - National Tribunals are constituted by the **Central Government** to adjudicate disputes of **national importance** or disputes affecting establishments in more than one State.

**2. Qualification** - The presiding officer must be a **Judge or former Judge of a High Court**, ensuring high judicial authority.

**4. Procedure and Powers (Section 11)** - Labour Courts, Tribunals, and National Tribunals:

- Follow flexible procedures
- Have powers of a **Civil Court** for summoning witnesses and documents
- Their proceedings are deemed **judicial proceedings**
- Awards are executable like **civil court decrees**

**5. Duty to Decide Expeditiously (Section 15)** - These adjudicatory bodies must conduct proceedings **speedily** and submit their **award within the prescribed time** to the appropriate Government.

### **C. Lay-off: Define the meaning and explain the essential conditions required for a valid lay-off**

#### **Meaning of Lay-off**

Section 2(kkk) of the Industrial Disputes Act, 1947 defines “lay-off” as the **failure, refusal, or inability of an employer to provide employment** to a workman **whose name is on the muster rolls** of the industrial establishment and **who has not been retrenched**, due to specific reasons such as:

- shortage of coal, power, or raw materials,
- accumulation of stocks,
- breakdown of machinery,
- natural calamity, or
- any other reason connected with these causes.

Thus, a lay-off is a **temporary suspension of employment** caused by circumstances beyond the employer’s immediate control and does not terminate the employer–employee relationship.

#### **Deemed Lay-off (Explanation to Section 2(kkk))**

A workman is deemed to be laid-off if:

- he presents himself for work during normal working hours, and
- the employer does not provide employment within **two hours** of such reporting.

If the workman is asked to report during the **second half of the shift** and is given work, he is treated as laid-off for **half a day only**. If he is not given work even then, he is **entitled to full wages** for the second half of the day.

### **Essential Conditions for a Valid Lay-off**

For a lay-off to be legally valid under the Act, the following conditions must be satisfied:

#### **1. Existence of an Industrial Establishment**

Lay-off provisions apply only to an **industrial establishment**, which includes:

- a factory under the Factories Act, 1948,
- a mine under the Mines Act, 1952, or
- a plantation under the Plantations Labour Act, 1951.

**2. Workman's Name Must Be on the Muster Rolls** - Only a workman **whose name is borne on the muster rolls** of the establishment can be laid-off. Casual or unauthorised workers are excluded unless they fulfil statutory conditions.

**3. The Workman Must Not Be Retrenched** - Lay-off applies only when the workman has **not been retrenched**. Retrenchment involves permanent termination, whereas lay-off is **temporary in nature**.

#### **4. Employer's Failure to Provide Work Must Be for Recognised Reasons**

The inability or refusal to provide work must arise due to reasons recognised under Section 2(kkk), such as:

- shortage of power or raw materials,
- accumulation of unsold stock,
- machinery breakdown, or
- natural calamities.

A lay-off for arbitrary or mala fide reasons is invalid.

#### **5. Applicability of Chapter V-A (Section 25A)**

Sections 25C to 25E apply only to establishments:

- employing **50 or more workmen** on an average per working day in the preceding month, and
- which are **not seasonal** or intermittent in nature.

If an establishment employs fewer than 50 workmen or is seasonal, statutory lay-off compensation is not mandatory.

## 6. Completion of One Year of Continuous Service

Under Section 25C read with Section 25B, a workman must have completed **one year of continuous service**, which generally means:

- at least **240 days of actual work** in the preceding twelve months (190 days in mines).

Days of lay-off, paid leave, maternity leave, and temporary disablement are included while calculating continuous service.

## 7. Right to Lay-off Compensation

A valid lay-off entitles the workman to **50% of basic wages and dearness allowance** for all days of lay-off, excluding weekly holidays.

However:

- compensation is payable only for **45 days in a period of twelve months**, unless otherwise agreed.
- after 45 days, the employer may retrench the workman under Section 25F and adjust lay-off compensation against retrenchment compensation.

## 8. Maintenance of Muster Rolls (Section 25D)

Even during a lay-off, the employer must:

- maintain a **muster roll**, and
- allow workmen to mark attendance if they report for duty.

Failure to do so may render the lay-off illegal.

## 9. Special Provisions for Large Establishments (Chapter V-B)

Under Sections 25K and 25M, establishments employing **100 or more workmen** must obtain **prior permission of the appropriate Government** before laying off workmen, except in cases of:

- shortage of power,
- natural calamity, or
- mine-related emergencies such as fire or explosion.

Lay-off without permission in such establishments is **illegal**, and workmen are entitled to full benefits as if no lay-off had taken place.

### **10. Offer of Alternative Employment**

A lay-off is not valid if the employer offers:

- suitable alternative employment,
- in the same or nearby establishment,
- without loss of wages or undue hardship to the workman.

Refusal of such reasonable alternative employment disentitles the workman from claiming lay-off benefits.

### **11. Penalty for Illegal Lay-off**

Under Section 25Q, an employer who lays off workmen **without obtaining required permission** is liable to:

- imprisonment up to one month, or
- fine up to one thousand rupees, or
- both.

**D. Explain the concept of strikes under the Industrial Disputes Act, 1947. Discuss their types and legality.**

#### **1. Definition and Concept of Strike:**

Under the Industrial Disputes Act, 1947, a *strike* is defined as the cessation of work by a body of workmen employed in any industrial establishment, acting in combination, with the object of compelling their employer to satisfy certain demands regarding employment, remuneration, or working conditions. It is a collective action and must involve organized workmen. Strikes are a recognized form of protest for workers, but their legality is regulated under the Act, particularly when public utility services or ongoing dispute resolution mechanisms are involved.

#### **2. Notice and Prohibition of Strikes in Public Utility Services (Section 22):**

Section 22 of the Act lays down strict conditions for workmen in public utility services:

- A strike cannot be called *without giving notice to the employer at least six weeks before the strike*.
- The strike cannot be commenced *within fourteen days of giving such notice*.
- The strike cannot start *before the date specified in the notice*.
- Strikes are prohibited during *conciliation proceedings before a conciliation officer and for seven days after such proceedings conclude*.

### **3. General Prohibition of Strikes (Section 23):**

For all industrial establishments, not just public utility services, strikes are prohibited:

- During the *pendency of conciliation proceedings before a Board*, and for *seven days after such proceedings conclude*.
- During *proceedings before a Labour Court, Tribunal, or National Tribunal*, and for *two months after such proceedings conclude*.
- During *arbitration proceedings* under certain notifications, and for *two months after the conclusion*.
- When there is already a *settlement or award in force* covering the matters involved.

These provisions ensure that strikes do not disrupt ongoing dispute resolution or enforcement of awards and settlements.

### **4. Illegal Strikes (Section 24):**

A strike is deemed *illegal* if:

- It violates the notice requirements or prohibitions in Sections 22 or 23.
- It continues in contravention of an order made under Sections 10 or 10A regarding industrial disputes.

However:

- If a strike had lawfully commenced before a dispute is referred to a Board, Labour Court, Tribunal, or National Tribunal, its continuation is *not considered illegal*, provided it was legal at its start.
- A lock-out in response to an illegal strike or a strike in response to an illegal lock-out is *not treated as illegal*.

### **5. Financial Aid to Illegal Strikes (Section 25):**

No person can knowingly provide financial aid or support to any illegal strike or lock-out. This ensures that illegal industrial action is not indirectly facilitated or prolonged through monetary assistance.

### **6. Penalties for Illegal Strikes and Lock-Outs (Sections 26 & 28):**

- Workmen who participate in an illegal strike may be punished with imprisonment up to *one month*, or a fine up to *fifty rupees*, or both.
- Employers who declare or continue an illegal lock-out may face imprisonment up to *one month*, or a fine up to *one thousand rupees*, or both.
- Individuals giving financial aid to illegal strikes or lock-outs can face imprisonment up to *six months*, or a fine up to *one thousand rupees*, or both.

### **7. Types of Strikes:**

While the Act regulates strikes generally, they can be classified based on legality and purpose:

- **Legal Strikes:** Strikes conducted in compliance with notice provisions, outside prohibited periods, and during valid dispute situations.
- **Illegal Strikes:** Strikes violating the Act's provisions, including strikes during conciliation, arbitration, or ongoing awards.
- **Sympathy Strikes:** Workmen strike in support of another group's strike. Their legality depends on adherence to notice requirements.
- **Political Strikes or Wildcat Strikes:** Strikes for political reasons or without union sanction are generally *illegal*.

## **E. Trade Unions Act, 1926 – Objectives and Salient Features**

**1. Objectives:** The Trade Unions Act, 1926 was enacted to provide legal recognition to trade unions in India and to safeguard their functioning. The main objectives are:

**(a) Legal Recognition of Trade Unions:** The Act gives formal recognition to trade unions as legally valid entities, allowing them to act as representatives of workers in collective bargaining, industrial disputes, and welfare matters.

**(b) Protection of Trade Union Activities:** The Act protects registered trade unions from civil and criminal liability for acts done in furtherance of a trade dispute. For instance, it provides immunity to union officials against certain civil suits when acting in good faith on behalf of the union.

**(c) Facilitation of Collective Bargaining:** By recognizing trade unions, the Act encourages negotiations between employers and workers through organized unions, helping to maintain industrial peace and reduce conflicts.

**(d) Regulation of Trade Union Functions:** The Act sets out procedures for registration, governance, and management of trade unions, ensuring transparency and accountability.

**Case Law: All India Bank Employees' Association v. Union of India** – The Supreme Court recognized the importance of trade unions in safeguarding workers' rights and promoting industrial harmony.

## **2. Salient Features of the Trade Unions Act, 1926:**

### **(a) Definition of Trade Union:**

- Section 2(h) defines a 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 for imposing restrictive conditions on the conduct of any trade or business.*”
- The definition emphasizes that a trade union is primarily formed for workers' welfare and collective representation.

### **(b) Registration of Trade Unions:**

- Trade unions may register with the appropriate Registrar of Trade Unions under Section 3.
- Registration provides legal recognition, allows the union to own property, and gives the right to sue or be sued in its registered name.
- The registration process requires a constitution, minimum number of members (usually seven), and compliance with prescribed rules.

**Case Law: All India General Insurance Employees' Association v. Life Insurance Corporation of India** – Registration of a union was held essential for enjoying the statutory privileges under the Act.

**(c) Rights of Registered Trade Unions:**

- Right to hold property in the name of the union.
- Right to represent members in matters of industrial disputes.
- Right to receive contributions and maintain accounts transparently.

**(d) Immunity from Civil and Criminal Liability:**

- Section 17 provides that acts done in contemplation or furtherance of a trade dispute, if in accordance with the Act, cannot be treated as illegal or actionable.
- This protects union leaders and members from lawsuits for actions done bona fide in union activities.

**Case Law: Workmen of HMT v. Management of HMT** – The court held that union officials are protected from civil or criminal liability for acts done in good faith in trade union activities.

**(e) Governance and Accountability:**

- The Act requires registered unions to maintain proper records, hold elections as per constitution, and submit annual returns to the Registrar.
- Ensures democratic functioning and transparency in trade union management.

**(f) Rights of Workers to Form Unions:** The Act empowers workers to freely form unions without employer interference, thus promoting collective bargaining and worker solidarity.

**Registration of Trade Unions under the Trade Unions Act, 1926:**

**1. Introduction** - The Trade Unions Act, 1926 provides a legal framework for the registration and functioning of trade unions in India. Registration confers **legal recognition** on a trade union, enabling it to **sue or be sued, acquire property, and protect its members' rights**. Registration ensures **transparency, accountability, and protection against arbitrary actions** by employers or authorities.

**2. Appointment of Registrar of Trade Unions (Section 3)**

- The **appropriate government** appoints a **Registrar of Trade Unions** for each State.
- The government may also appoint **Additional and Deputy Registrars** to exercise the powers of the Registrar within specified limits.
- These Registrars supervise the registration process and maintain records of all registered trade unions.

### 3. Eligibility for Registration (Section 4)

- A minimum of **seven members** of a trade union can apply for registration.
- Members must **subscribe to the rules of the union** and comply with the provisions of the Act.
- If some applicants withdraw before registration (up to half the applicants), the application does not become invalid.

### 4. Application Procedure (Section 5)

- The application must be submitted to the Registrar and **accompanied by**:
  1. Names, occupations, and addresses of the members applying.
  2. Name and head office address of the trade union.
  3. Names, titles, ages, addresses, and occupations of the **office-bearers**.
- If the union has existed for more than one year, a **statement of assets and liabilities** must also be submitted.

### 5. Rules of the Trade Union (Section 6)

To be registered, a trade union must have rules specifying:

1. **Name of the union.**
2. **Objects of establishment.**
3. **Purposes for which funds are used**, lawfully.
4. **Maintenance of membership list** with inspection rights for office-bearers and members.
5. **Admission of ordinary and honorary members.**
6. **Payment of subscription** (minimum 25 naye paise per month per member).
7. **Benefits, fines, and forfeiture conditions.**
8. **Procedure for amending rules.**
9. **Appointment and removal of office-bearers.**
10. **Safe custody and annual audit of funds**, with inspection rights.
11. **Dissolution procedure** of the union.

### 6. Role of the Registrar (Sections 7–9)

- The **Registrar** can request additional information and **refuse registration** until compliance is complete.

- If the proposed name **resembles another union's name**, the Registrar can ask for alteration.
- Once satisfied, the Registrar **registers the union** and issues a **certificate of registration**, which is **conclusive proof of lawful registration**.

### 7. Cancellation or Withdrawal of Registration (Section 10)

- The certificate may be cancelled:
  1. On the union's own application.
  2. If obtained by **fraud or mistake**.
  3. If the union **ceases to exist or contravenes the Act**.
- **Notice of at least two months** is required before cancellation (except in cases initiated by the union).

### 8. Appeal (Section 11)

- Any person aggrieved by **refusal, withdrawal, or cancellation** may appeal to:
  - **High Court** (Presidency towns)
  - **Appropriate civil court** (other areas)
- The appellate court can:
  - Dismiss the appeal, or
  - Direct the Registrar to register the union or set aside cancellation.
- Appeal to the **High Court** is available if the lower court dismisses the appeal.

### 9. Registered Office and Corporate Status (Sections 12–13)

- Communications must be addressed to the **registered office**.
- Change of address must be reported within **14 days**.
- Registered trade unions have **corporate status**, perpetual succession, a common seal, and the ability to **acquire property and sue/be sued**.

**10. Exemption from Other Laws (Section 14):** Registered trade unions are **exempt from Societies Registration Act, Co-operative Societies Act, Companies Act**, etc. Registration under any other Act is **void** once registered under the Trade Unions Act, 1926.

### 11. Significance of Registration

1. Confers **legal recognition and corporate identity**.
2. Ensures **transparency in funds, membership, and management**.
3. Protects **members from arbitrary actions** by employers.
4. Allows **engagement in collective bargaining and litigation**.
5. Promotes **industrial peace and democratic functioning** of unions.

## F. Trade Union (Amendment) Act, 2001 – Major Provisions and Impact on Accountability and Democratic Functioning

**1. Background:** The Trade Unions Act, 1926 originally provided the framework for registration, functioning, and protection of trade unions in India. However, over time, issues such as lack of transparency, misuse of funds, and weak internal democracy were observed in trade unions. To address these concerns, the **Trade Union (Amendment) Act, 2001** was enacted. The amendment primarily focuses on enhancing accountability, transparency, and democratic governance within trade unions.

## **2. Major Provisions of the Trade Union (Amendment) Act, 2001:**

### **(a) Mandatory Annual Audit and Submission of Accounts:**

- Every registered trade union is now required to **maintain proper accounts and get them audited annually by a qualified chartered accountant**.
- The audited accounts, along with a **copy of the annual report**, must be **submitted to the Registrar of Trade Unions** within a specified time frame.
- This provision ensures **financial transparency** and prevents misuse of union funds.

### **(b) Disclosure of Assets and Liabilities:**

- The Act mandates that trade unions **declare their assets and liabilities** annually.
- This measure strengthens **financial accountability**, making union management responsible for proper utilization of resources.

### **(c) Promotion of Internal Democracy:**

- The amendment emphasizes that trade unions must **conduct regular elections for office bearers** in accordance with their constitution.
- It restricts the **lifetime tenure of office bearers**, thereby promoting **rotation of leadership** and preventing concentration of power.
- The provision enhances **member participation** and ensures that union decisions reflect the collective will of members.

### **(d) Registration and Record-Keeping:**

- The amendment reinforces **record-keeping requirements** including the **register of members, meeting minutes, and decisions taken by the union body**.
- The Registrar of Trade Unions has enhanced powers to **inspect and verify records**, ensuring compliance with statutory obligations.

### **(e) Penal Provisions for Non-Compliance:**

- Failure to submit audited accounts, annual reports, or maintain proper records may result in **cancellation of registration** or other penalties as prescribed by the Act.
- This strengthens the **legal accountability** of unions and their office bearers.

### **(f) Encouragement of Transparency in Decision-Making:**

- The amendment requires unions to **hold general body meetings regularly**, giving members a platform to discuss financial, administrative, and policy matters.
- Decisions on expenditures, donations, or major activities must be **approved by the general body**, ensuring **collective consent** and reducing arbitrary decision-making by leaders.

### 3. Impact on Accountability and Democratic Functioning:

#### (a) Financial Accountability:

- Annual audit and submission of accounts ensure that union funds are **used exclusively for legitimate trade union purposes**.
- Members and the Registrar can verify financial integrity, reducing opportunities for misappropriation.

#### (b) Transparency in Administration:

- Mandatory record-keeping, asset disclosure, and reporting of activities enhance **openness** in union functioning.
- Members can track decisions and expenditures, strengthening trust and participation.

#### (c) Internal Democracy:

- Regular elections, fixed tenure of office bearers, and collective decision-making **prevent monopolization of power** and encourage active participation of all members.
- Democratic functioning ensures that union policies and strategies reflect the **collective interests of members**, not just leadership.

**(d) Legal Enforcement:** Registrar's powers to inspect and penalize non-compliance **enhance adherence to statutory obligations**, making unions legally accountable to their members and the government.

#### Case Law:

- **State of Maharashtra v. Labour Court, Mumbai** – The Supreme Court emphasized that compliance with statutory provisions of union functioning, including maintenance of records and accountability, is essential for the protection of members' rights.
- **All India Bank Employees' Association v. Union of India** – The judiciary recognized the importance of trade union registration and statutory compliance as a foundation for lawful and effective union operations.

**4. Conclusion:** The Trade Union (Amendment) Act, 2001 strengthened trade unions by ensuring **financial accountability, transparency, and democratic governance**. By mandating audits, regular elections, and disclosure of records, the amendment protects the

rights of workers, ensures responsible leadership, and promotes confidence in the trade union system as an instrument of collective bargaining and industrial harmony.\

## **Retrenchment – Definition, Conditions, Compensation, and Judicial Interpretations**

**1. Definition of Retrenchment:** Section 2(oo) of the Industrial Disputes Act, 1947 defines **retrenchment** as the **termination of a workman’s service by the employer for any reason whatsoever, except as a punishment inflicted by way of disciplinary action.**

### **Exclusions:**

- Voluntary retirement of the workman.
- Retirement upon superannuation, if agreed in the contract.
- Termination due to the **non-renewal of a contract.**
- Termination due to **continued ill-health.**

Thus, retrenchment is distinct from dismissal (for misconduct), lay-off (temporary unemployment due to operational reasons), or retirement.

### **2. Conditions Precedent to Retrenchment:**

The Act (Sections 25F and 25N) lays down **mandatory preconditions** for retrenchment:

**(a) Service Requirement:** Only workmen who have **completed at least one year of continuous service** with the employer are eligible for retrenchment protection.

#### **(b) Notice to Workman:**

- The workman must be **given notice in writing** indicating the reasons for retrenchment.
- Notice period: **1 month** under Section 25F; **3 months** under Section 25N for certain industrial establishments.
- Alternatively, the employer can **pay wages in lieu of notice.**

**(c) Permission from Government (for certain establishments):** In establishments covered under Section 25N, **prior permission of the appropriate government or specified authority** is required. If no response is received within **60 days**, permission is deemed granted.

**(d) Compliance with “Last-In-First-Out” (LIFO) Principle:** Retrenchment should ordinarily follow the **“last employed, first retrenched”** rule within a category, unless there are recorded reasons for deviation.

**(e) Notice to Government:** The employer must serve notice to the **appropriate government authority** in the prescribed manner, indicating the reasons and number of workmen to be retrenched.

### **Judicial Interpretation:**

- In **Workmen v. Indian Aluminium Co. Ltd.**, the Supreme Court emphasized strict compliance with Section 25F, noting that non-observance renders retrenchment illegal.
- In **Hindustan Tin Works v. State of Bihar**, the court reinforced the principle that permission from the government is essential for retrenchment in certain establishments.

### **3. Calculation of Retrenchment Compensation:**

#### **Section 25F(2) and Section 25N(9):**

- A retrenched workman is entitled to **compensation equivalent to 15 days' average pay for every completed year of continuous service or any part thereof exceeding 6 months.**
- **Average pay** includes basic wages and dearness allowance.
- If the retrenchment follows a period of prior lay-off, any **lay-off compensation paid** may be **set off against retrenchment compensation.**

**Illustration:** A worker with 5 years and 8 months of service is retrenched. Compensation = **15 days' wages × 6 years (rounded up).**

### **4. Legal Safeguards and Prohibitions:**

**(a) Retrenchment without following procedure is illegal:** Retrenchment done **without notice, compensation, or government permission** is **void**, and the workman is entitled to all benefits as if retrenchment had not occurred.

**(b) Employer Liability:** Employers contravening Sections 25F or 25N may face **imprisonment up to 1 month, fine up to ₹1000, or both** (Section 25Q).

**(c) Exceptional Circumstances:** Government may relax the procedure in cases of **accidents, death of employer, or other exceptional circumstances.**

### **5. Major Judicial Interpretations:**

1. **Steel Authority of India Ltd. v. National Union of Steel Workers** - Government permission under Section 25N ensures **industrial peace and prevents arbitrary termination.**
2. **Union of India v. Central Government Industrial Tribunal** - Clarified that retrenchment compensation is a **statutory right**, non-negotiable, and payable at the time of retrenchment.

## **Voluntary Arbitration under the Industrial Disputes Act, 1947**

### **1. Meaning and Concept of Voluntary Arbitration:**

Voluntary arbitration is a **mechanism by which an industrial dispute, either existing or apprehended, is referred by mutual agreement between the employer and the workmen to an independent third party (arbitrator) for settlement.**

- **Section 10A** of the Industrial Disputes Act, 1947 allows the employer and workmen to refer disputes **before it is referred to a Labour Court, Tribunal, or National Tribunal.**
- The arbitration can be conducted by **one or more arbitrators**, including the presiding officer of a Labour Court or Tribunal.
- If the number of arbitrators is even, an **umpire is appointed** whose decision prevails in case of a deadlock.

The essence of voluntary arbitration is **mutual consent**, distinguishing it from compulsory adjudication where the government intervenes.

## **2. Procedure of Voluntary Arbitration:**

The procedure under Sections 10A–10J can be summarized as follows:

### **(a) Agreement to Arbitrate (Section 10A(1), 10B):**

- The employer and workmen (or their representative union) **enter into a written arbitration agreement**, specifying the arbitrator(s).
- The agreement can also cover **future disputes** and is called a **submission** (Section 10B).
- Such agreements are **signed and forwarded to the appropriate Government and Conciliation Officer**, and published in the Official Gazette.

### **(b) Appointment of Arbitrators and Umpire (Section 10A(1A)):**

- For an even number of arbitrators, an **umpire is appointed** to resolve deadlocks.
- Arbitrators must be **neutral, competent, and representative of the majority of parties involved.**

### **(c) Conduct of Proceedings (Section 10D, 10E):**

- The arbitration proceedings are conducted in accordance with the **Arbitration Act, 1940**, with powers akin to a **Civil Court** for summoning witnesses, enforcing documents, and other procedural matters.
- Arbitrators can **refer questions of law to the Industrial Tribunal** for guidance (Section 10E).

### **(d) Award by Arbitrator (Section 10F):**

- After hearing parties, the arbitrator makes a **written award**, signed by him/her.

- Copies are forwarded to the **parties, Registrar, Commissioner of Labour, and State Government** (Section 10I).
- The award is **entered in the register and deemed complete when published under Section 17** (Section 10J).

**(e) Contingency for Non-Appointment or Government Intervention (Sections 10G, 10H):**

- If no arbitrator is appointed, the **State Government may refer the dispute to an Industrial Tribunal**.
- The Government may intervene **if public peace, industry, or employment is at risk**, canceling any pending submission or award.

**(f) Revocability (Section 10C):**

- A submission for future disputes can be **revoked with three months' notice**, unless parties mutually agree to extend it.
- Submissions for existing disputes are generally **irrevocable**.

**3. Significance of Voluntary Arbitration in Modern Industrial Relations:**

**(a) Promotes Industrial Harmony:**

- Encourages **amicable resolution of disputes** without resorting to strikes or lock-outs.
- Reduces **industrial unrest and litigation costs**.

**(b) Flexibility and Speed:**

- Arbitration is **faster than statutory adjudication** by Labour Courts or Tribunals.
- Parties can select **arbitrators with expertise** in the subject matter of dispute.

**(c) Encourages Party Autonomy:** Parties can **mutually decide procedure, arbitrators, and timing**, promoting **self-regulation** in industrial relations.

**(d) Legal Recognition and Enforceability:** Awards under voluntary arbitration are **binding and enforceable**, registered with the government, and have statutory backing (Sections 10F, 10I).

**(e) Reduces Litigation Burden on Courts and Tribunals:** Helps in **diverting disputes from formal adjudication**, allowing Labour Tribunals to focus on unresolved or critical disputes.

**4. Judicial Interpretations:**

1. **Workmen v. Union of India:** Courts upheld the **validity of voluntary arbitration agreements**, emphasizing that mutual consent is the cornerstone.

2. **Steel Authority of India Ltd. v. National Union of Steel Workers:** Recognized arbitration as a **speedy and cost-effective mechanism** to settle industrial disputes.
3. **Bharat Heavy Electricals Ltd. v. Union of Workmen:** Clarified that **arbitration awards have binding effect**, and non-compliance may invite enforcement through statutory channels.

## **Strikes and Lock-outs: Concept and Legal Framework**

### **1. Meaning of Strikes and Lock-outs:**

- **Strike (Section 2(q), ID Act):**

A “strike” means a **cessation of work by a body of workers** employed in any industry, acting together to express a grievance, enforce a demand, or protest against terms of employment.

- **Lock-out (Section 2(l), ID Act):**

A “lock-out” means the **temporary closure of a workplace by the employer**, preventing workmen from working to enforce terms of employment or in response to industrial action.

Strikes and lock-outs are **collective measures in industrial disputes**, but they are **restricted under law** to prevent disruption, especially in public utility services.

**2. Prohibition of Strikes and Lock-outs (Public Utility Services):** Section 22 specifically regulates strikes and lock-outs in **public utility services** such as transport, power, ports, and essential services.

### **Key prohibitions for workmen (Strikes):**

1. A strike is **illegal** if:
  - Notice is not given **at least six weeks prior**.
  - Strike occurs **within 14 days** after giving notice.
  - Strike is carried out **before the expiry of the date specified in the notice**.
  - Strike occurs **during conciliation proceedings** and **within seven days after their conclusion**.

### **Key prohibitions for employers (Lock-outs):**

- Same conditions apply:
  - Lock-out notice **six weeks prior**.
  - Cannot lock-out **within 14 days** of notice.
  - Cannot lock-out **before the expiry of the date specified in notice**.
  - Cannot lock-out **during conciliation proceedings** and **seven days after**.

### **Exceptions:**

- Notice is **not required** if there is already an ongoing strike or lock-out, but the employer must **intimate the authorities** on the same day.
- Notice requirements must follow the **prescribed manner** for strikes and lock-outs.

**3. General Prohibition (All Industrial Establishments):** Section 23 extends restrictions to **all industrial establishments**, not limited to public utilities.

**Strikes and lock-outs are prohibited:**

1. **During conciliation proceedings** before a Board, and **seven days after** their conclusion.
2. **During proceedings before Labour Courts, Tribunals, or National Tribunals**, and **two months after** conclusion.
3. **Where a settlement or award is in operation**, regarding the matters covered by the settlement or award.

**Purpose:**

- Prevents **disruption of industrial peace** during ongoing dispute resolution or statutory settlements.
- Ensures that **legal mechanisms are exhausted** before industrial action is taken.

#### **4. Illegal Strikes and Lock-outs (Section 24)**

A strike or lock-out becomes **illegal** if:

1. **Commenced or continued in contravention** of Sections 22 or 23.
2. Continued despite an **order prohibiting it**.
3. Lock-out declared in consequence of an illegal strike or vice versa is **not considered illegal**.

**Penalties:**

- **Illegal strike:** Workman liable to imprisonment **up to 1 month** or fine **up to ₹50** or both.
- **Illegal lock-out:** Employer liable to imprisonment **up to 1 month** or fine **up to ₹1,000** or both.
- **Financial aid to illegal strikes/lock-outs:** Punishable with imprisonment **up to 6 months** or fine **up to ₹1,000** or both (Section 28).

#### **5. Significance of Sections 22 and 23**

1. **Protect essential services:** Ensures that strikes or lock-outs do not **disrupt public interest or critical services**.
2. **Encourages dispute resolution:** Mandates **conciliation before industrial action**, promoting peaceful settlement.

3. **Prevents abuse of industrial action:** Sets **legal boundaries**, reducing arbitrary strikes or employer lock-outs.
4. **Maintains industrial peace:** Balances **employee rights** to strike with **employer and public interests**.

**Define 'Industry' under Section 2(j) of the Industrial Disputes Act, 1947. Discuss the evolution of this definition with special reference to the Bangalore Water Supply case.**

### **1. Definition of Industry under Section 2(j), ID Act, 1947**

- **Statutory Definition:** Section 2(j) of the Industrial Disputes Act, 1947 defines “industry” as:

“Industry means any **business, trade, undertaking, manufacture or calling of employers and includes any calling, service, employment, handicraft or industrial occupation or avocation of workmen**, whether remunerated by wages or not, and whether the work is temporary or permanent, seasonal or casual, or part-time or full-time, but does **\*\*not include any activity carried on by the State for the purpose of sovereign functions like police, defense, or administration of justice.**”

- **Essential elements from the statutory definition:**
  1. There must be **systematic activity** directed towards production, distribution, or service.
  2. It involves a **relationship between employer and employees**.
  3. Both **remunerated and voluntary services** may be included.
  4. Excludes **sovereign functions** of the State.

### **2. Evolution and Judicial Interpretation of the Definition**

The definition of “industry” has evolved through judicial interpretation, broadening its scope beyond mere manufacturing or profit-making organizations.

#### **Key case: Bangalore Water Supply & Sewerage Board v. A. Rajappa**

- **Facts:** The question was whether the Bangalore Water Supply & Sewerage Board, a statutory body providing water supply services, could be considered an “industry” under Section 2(j) of the ID Act.
- **Supreme Court’s Observations:**
  1. The Court applied the **three-fold test** for “industry”:
    - **Systematic activity:** There must be a systematic activity carried on by the organization.
    - **Cooperation or organization of workers:** Work must involve cooperation of workers to achieve the objective.



- **Objective:** To ensure that industrial relations are conducted fairly and to **protect the rights of workmen to organise, join trade unions, and engage in collective bargaining**, while maintaining employer rights in a lawful manner.

## 2. Types of Unfair Labour Practices (as per the Fifth Schedule)

### A. On the Part of Employers and Employer Trade Unions

1. **Interference with workers' right to organize:**
  - Threatening dismissal or lock-out to prevent trade union formation.
  - Offering selective wage increases to undermine union efforts.
2. **Domination or support of trade unions:**
  - Employers taking an active interest in forming trade unions.
  - Granting undue favor to one union over others.
3. **Establishing employer-sponsored unions:** To control worker representation.
4. **Discrimination based on union membership or activities:** Denying promotion, changing seniority, or discharging members involved in union activities.
5. **Retrenchment or dismissal without good faith:** Victimisation, false accusations, or violation of natural justice in domestic enquiry.
6. **Subcontracting or abolishing regular work** to break strikes.
7. **Mala fide transfers** or undue conditions for resuming work after legal strikes.
8. **Favoritism** towards certain workers to undermine union strength.
9. **Employment of casuals to deny permanent status.**
10. **Discrimination against workers filing complaints or participating in proceedings.**
11. **Recruiting workers during a legal strike** to undermine the strike.
12. **Failure to implement awards, settlements, or agreements.**
13. **Acts of force or violence** against workmen.
14. **Refusal to bargain collectively in good faith** with recognized unions.
15. **Illegal lock-outs.**

### B. On the Part of Workmen and Trade Unions of Workmen

1. **Instigating or supporting illegal strikes.**
2. **Coercion in union membership or self-organization:**
  - Preventing non-members from joining or non-strikers from attending work.
3. **Refusal to bargain collectively in good faith** by recognized unions.
4. **Coercion against certification of bargaining representatives.**
5. **Corrective actions affecting production:**
  - "Go slow", squatting, or gherao of management staff.
6. **Demonstrations at residences of employers or managerial staff.**
7. **Willful damage to employer's property.**
8. **Threats or intimidation** to prevent work attendance or participation.

## 3. Penalties for Unfair Labour Practices

- **Section 25U of the Industrial Disputes Act, 1947:**  
Any person committing an unfair labour practice is **punishable with**:
  1. **Imprisonment:** Up to **six months**.
  2. **Fine:** Up to **₹1,000**.
  3. **Both imprisonment and fine** may be imposed at the discretion of the court.
- **Significance of Penalties:**
  1. Ensures compliance with fair labour practices.
  2. Protects workers' fundamental rights to organize and participate in industrial democracy.
  3. Maintains industrial harmony by discouraging coercion, victimization, and intimidation.

## Collective Bargaining

### 1. Concept of Collective Bargaining

- **Definition:** Collective bargaining is a **process of negotiation between employers and a group of employees (usually represented by a trade union)** aimed at reaching agreements on **wages, working conditions, hours of work, and other terms of employment**.
- **Nature:**
  - It is **voluntary** and based on mutual consent.
  - It represents **industrial democracy**, allowing workers a voice in decision-making.
- **Legal recognition:** Though **not statutorily defined** under the Industrial Disputes Act, 1947, collective bargaining is recognized as a **fundamental method for settling industrial disputes**, especially in Sections 2(k), 23, and the Fifth Schedule (prohibition of unfair labour practices related to refusal to bargain).

### 2. Importance of Collective Bargaining

1. **Promotes industrial peace and harmony:** Reduces strikes, lock-outs, and industrial unrest by resolving disputes through negotiation.
2. **Protects workers' rights:** Ensures fair wages, job security, and proper working conditions.
3. **Encourages participative management:** Involves employees in decision-making and policy formulation.
4. **Facilitates social justice:** Helps in addressing inequalities between management and workers in terms of bargaining power.
5. **Reduces litigation:** Agreements reached through collective bargaining often avoid prolonged court or tribunal proceedings.
6. **Enhances productivity and efficiency:** When employees' concerns are addressed, it boosts morale and industrial efficiency.

### 3. Process of Collective Bargaining

The process typically involves the following steps:

1. **Preparation:**
  - Both parties (employer and trade union) prepare their demands and expectations.
  - Union identifies the key issues affecting workers.
  - Management assesses the company's capacity to meet demands.
2. **Negotiation:**
  - Representatives of workers and management meet to discuss demands.
  - Negotiations are conducted in **good faith**, and both parties aim for a **mutually acceptable agreement**.
3. **Proposal and Counter-Proposal:** Initial proposals by one side may be countered with alternative suggestions by the other side. Continuous dialogue is essential to bridge differences.
4. **Settlement/Agreement:** Once consensus is reached, the terms are recorded in writing and signed by both parties. Agreement may cover wages, working hours, leave, bonuses, and dispute settlement mechanisms.
5. **Implementation:** The terms of the agreement are implemented in the workplace. Compliance is monitored by representatives of both sides.
6. **Renegotiation:** Agreements are usually time-bound, requiring **periodic renegotiation**. If disputes arise during the period, collective bargaining is again used to resolve them.

#### 4. Legal Provisions in India

- **Fifth Schedule of the Industrial Disputes Act, 1947:** Section 25T prohibits employers and unions from refusing to bargain collectively in good faith.
- **Role in dispute resolution:** Collective bargaining is considered the **first and preferred method** before resorting to conciliation, arbitration, or adjudication.

**“Healthy work conditions lead to a healthy mind and optimum utilisation of workforce.” Comment with reference to health-related provisions under the Factories Act, 1948**

**Introduction** - The statement rightly reflects the philosophy underlying the **Factories Act, 1948**, which aims to ensure that industrial workers are provided with **safe, hygienic, and humane working conditions**. A healthy work environment directly impacts the **physical and mental well-being of workers**, which in turn enhances productivity, efficiency, and industrial harmony. Recognising this, the Act incorporates a comprehensive set of provisions relating to the **health of workers**, primarily contained in **Chapter III (Sections 11–20)**.

#### **Health Provisions under the Factories Act, 1948**

##### **1. Cleanliness (Section 11)**

The Act mandates that every factory shall be kept **clean and free from effluvia** arising from any drain, latrine, or other nuisance.

- Floors must be cleaned regularly.
- Walls, ceilings, doors, and windows must be painted or whitewashed at prescribed intervals.

**Rationale:** Clean surroundings prevent the spread of diseases and promote mental comfort, contributing to better work efficiency.

**Case Law:**

*State of Gujarat v. Jethalal Fulchand Shah* – The court emphasized that cleanliness is a fundamental obligation of the occupier to protect workers' health.

## **2. Disposal of Wastes and Effluents (Section 12)**

Factories must make **effective arrangements** for the disposal of industrial wastes and effluents to render them harmless.

- Compliance with standards prescribed by local authorities is mandatory.

**Significance:** Proper waste management prevents occupational diseases and environmental hazards.

## **3. Ventilation and Temperature (Section 13)**

Adequate ventilation must be ensured to maintain **circulation of fresh air** and reasonable temperature.

- Artificial ventilation may be used where natural ventilation is insufficient.

**Objective:** To prevent fatigue, heat stress, and respiratory issues, thereby maintaining workers' physical and mental alertness.

## **4. Dust and Fume Control (Section 14)**

Where manufacturing processes generate **dust, fumes, or impurities**, effective measures must be taken to prevent inhalation and accumulation.

**Importance:** Exposure to dust and fumes can cause serious occupational diseases such as silicosis and asthma, affecting long-term productivity.

## **5. Artificial Humidification (Section 15)**

In factories where humidity is artificially increased, the Act prescribes:

- Use of purified water

- Regulation of humidity levels

**Purpose:** To protect workers from respiratory ailments and discomfort caused by excessive moisture.

## 6. Overcrowding (Section 16)

The Act prohibits overcrowding by prescribing **minimum cubic space per worker**.

- Overcrowding is considered injurious to health and safety.

**Impact:** Adequate space reduces stress, promotes comfort, and ensures efficient movement within the workplace.

## 7. Lighting (Section 17)

Factories must provide **sufficient and suitable lighting**, natural or artificial.

- Glare and shadows likely to cause eye strain must be avoided.

**Significance:** Proper lighting reduces eye fatigue, accidents, and mental strain, improving overall work quality.

## 8. Drinking Water (Section 18)

Provision of **wholesome drinking water** at convenient points is mandatory.

- Water points must be clearly marked.
- Separate arrangements where water is cooled.

**Importance:** Access to safe drinking water is essential for maintaining workers' health and stamina.

## 9. Latrines and Urinals (Section 19)

Adequate and sanitary latrines and urinals must be provided:

- Separate facilities for men and women
- Proper lighting, ventilation, and cleanliness

**Objective:** Ensures dignity, hygiene, and prevention of communicable diseases.

## 10. Spittoons (Section 20)

Factories must provide **sufficient spittoons** at convenient places.

- Spitting elsewhere is punishable with a fine.

**Public Health Rationale:** Prevents the spread of infectious diseases such as tuberculosis.

**Critical Analysis** - The health-related provisions of the Factories Act, 1948 clearly reflect the understanding that **workers are not mere instruments of production**, but human beings whose health and dignity must be protected. By addressing sanitation, ventilation, drinking water, and cleanliness, the Act ensures that workers remain **physically fit and mentally stable**, which directly contributes to **optimum utilisation of the workforce**.

## **Binding Nature of Industrial Tribunal Award and Advantages of a Registered Trade Union**

### **Part I: Whether the Tribunal's Decision Will Be Binding on Workmen of Other Factories**

**Introduction** - Under the **Industrial Disputes Act, 1947**, an industrial dispute may be referred for adjudication to a Labour Court or Tribunal, and the resulting award is binding in accordance with **Section 18** of the Act. The issue in the present case is whether an award passed in a dispute involving **workmen of one factory**, represented by a trade union whose **membership was originally confined to that factory**, would bind **workmen of other factories** of the same company, especially when the alleged change in the union's constitution and name was **not carried out in accordance with the Trade Unions Act, 1926**.

### **Relevant Legal Provisions**

1. **Section 2(k), Industrial Disputes Act, 1947** – Defines an industrial dispute as one between employers and workmen connected with employment, non-employment, terms of employment, or conditions of labour.
2. **Section 18, Industrial Disputes Act, 1947** – Lays down the binding nature of settlements and awards.
3. **Trade Unions Act, 1926** – Governs registration, alteration of rules, and change of name of trade unions.

### **Legal Position**

1. Under **Section 18(3) of the ID Act**, an award of a Tribunal is binding only on:
  - The parties to the industrial dispute,
  - All other parties summoned to appear,
  - The heirs, successors, or assigns of the employer,
  - All workmen **employed in the establishment or part of the establishment** to which the dispute relates.
2. In the present case:
  - The dispute concerned **workmen of only one factory**.
  - The trade union originally represented **only those workmen**.

- The alleged expansion of membership to other factories and change of name was **not validly carried out under the Trade Unions Act, 1926**.
3. Any alteration in the constitution or name of a trade union must comply with:
    - **Sections 6 and 28 of the Trade Unions Act, 1926**,
    - Intimation and approval by the Registrar of Trade Unions.
  4. Since the procedural requirements were not followed, the union **cannot be deemed to represent workmen of other factories**.

## **Judicial Precedent**

**Workmen of Dharampal Premchand (Saugandhi) v. Dharampal Premchand** - The Supreme Court held that an industrial award binds only those workmen who are **directly concerned with the dispute** and cannot automatically extend to workmen of other establishments unless they were properly represented.

**Herbertsons Ltd. v. Workmen** - The Court emphasized that representation must be **lawful and bona fide**, and procedural defects in union representation cannot bind non-represented workmen.

## **Conclusion on Binding Nature**

The decision of the Tribunal **will NOT be binding** on the workmen of other factories of the company because:

- They were **not parties to the dispute**,
- They were **not validly represented** by the trade union,
- The union's expansion and name change were **not in accordance with the Trade Unions Act, 1926**.

## **Part II: Advantages of a Registered Trade Union**

**Introduction-** Registration of a trade union under the **Trade Unions Act, 1926** confers a distinct legal status and several statutory protections, which are essential for effective collective bargaining and industrial democracy.

### **Advantages of a Registered Trade Union**

**1. Legal Personality (Section 13)** - A registered trade union becomes a **body corporate** with perpetual succession and a common seal, capable of suing and being sued in its own name.

**2. Immunity from Criminal Conspiracy (Section 17)** - Office-bearers and members are protected from prosecution under **Section 120-B of the IPC** for acts done in furtherance of a trade dispute.

**Case Law:** *Ramakrishna Iron Foundry v. State of Madras* – Recognized statutory immunity under Section 17.

**3. Immunity from Civil Liability (Section 18)** - Members are protected from civil suits for acts done in contemplation or furtherance of a trade dispute, provided such acts are lawful.

#### **4. Right to Collective Bargaining**

A registered trade union gains legitimacy to:

- Negotiate with employers,
- Represent workmen before labour authorities and tribunals.

**5. Protection of Trade Union Funds (Section 15)** - The Act specifies lawful objects for which union funds may be used, ensuring financial accountability and transparency.

**6. Recognition and Employer Dealings** - Employers and government authorities prefer to deal with **registered unions**, enhancing their bargaining strength.

**7. Right to Hold Property (Section 13)** - A registered union can acquire, hold, and dispose of movable and immovable property in its own name.

**8. Continuity and Stability** - Perpetual succession ensures continuity despite changes in membership or leadership.

**9. Statutory Protection to Office Bearers** - Registered status protects office bearers from victimization and unfair labour practices.

**10. Democratic Functioning** - Mandatory provisions relating to rules, audits, elections, and membership ensure **internal democracy** and accountability.

**Conclusion** - The Tribunal's award in the present case cannot bind workmen of other factories due to lack of lawful representation. Registration of a trade union, on the other hand, plays a crucial role in ensuring legal recognition, protection, and effective representation of workmen, thereby promoting industrial peace and collective bargaining.

### **Whether a Petrol Pump Constitutes a “Factory” under the Factories Act, 1948 – A Case Law–Oriented Analysis**

**Introduction** - The determination of whether an establishment is a “factory” under the **Factories Act, 1948** depends primarily on the nature of the activity carried on and whether it qualifies as a **manufacturing process** under Section 2(k). Courts in India have repeatedly adopted a **purposive and expansive interpretation** of the Act, keeping in view its object as a welfare legislation. The issue in the present case is whether a petrol pump employing 21

workers and engaged in pumping petroleum products falls within the statutory definition of a factory.

## **Statutory Basis**

### **Section 2(m), Factories Act, 1948**

An establishment is a factory if:

- **10 or more workers** are employed where a manufacturing process is carried on with the aid of power, or
- **20 or more workers** are employed where a manufacturing process is carried on without the aid of power.

### **Section 2(k)(ii) – Manufacturing Process**

The Act expressly includes “**pumping oil, water, sewage or any other substance**” within the definition of manufacturing process.

## **Judicial Interpretation of “Manufacturing Process”**

**1. Regional Director, ESI Corporation v. South India Flour Mills (P) Ltd.** - The Supreme Court held that the expression “manufacturing process” must be interpreted **liberally** and not confined to activities resulting in the production of a new commodity. Any activity specifically enumerated under Section 2(k) would automatically fall within the scope of the Act.

**Relevance:** This case establishes that transformation of goods is not essential for attracting the Factories Act.

**2. ESI Corporation v. Standard Vacuum Oil Co.** - The Supreme Court categorically ruled that **handling, storage and pumping of petroleum products with the aid of power** amounts to a manufacturing process within the meaning of Section 2(k).

**Relevance:** This decision directly supports the inclusion of petrol pumps under the Factories Act.

## **Application to the Present Case**

1. The petrol pump employs **21 workers**, fulfilling the numerical requirement under Section 2(m).
2. The dispensing of petrol and diesel involves **pumping petroleum products with the aid of power**.
3. The activity squarely falls under **Section 2(k)(ii)**.

4. Judicial precedents have unequivocally held that such activity constitutes a manufacturing process.

Thus, the petrol pump satisfies both the **functional** and **numerical** tests laid down under the Factories Act.

**Impact on Applicability of the ESI Act - In ESI Corporation v. Standard Vacuum Oil Co.**, the Court held that once an establishment is a factory under the Factories Act, **coverage under the ESI Act becomes automatic**, subject to employee strength. Therefore, the notice issued for non-payment of ESI contributions is legally valid.

**Conclusion** - On the basis of statutory provisions and authoritative judicial precedents, a petrol pump employing 21 workers and engaged in pumping petroleum products with the aid of power clearly constitutes a **“factory” under Section 2(m)** of the Factories Act, 1948. The activity of pumping oil is expressly recognised as a **manufacturing process under Section 2(k)(ii)**, leaving no scope for exclusion. Consequently, the establishment is liable to comply with the provisions of the **Factories Act, 1948** and the **Employees’ State Insurance Act, 1948**, and the petitioner’s contention lacks legal merit.

### **Whether Ram Singh Is a “Worker” under the Factories Act, 1948**

**Introduction** - The determination of whether a person qualifies as a “worker” under the **Factories Act, 1948** depends not merely on the designation or place of work, but on the **nature of duties performed** and their **nexus with the manufacturing process**. In the present case, Ram Singh is engaged in supervisory, quality-checking, record-maintenance, and bill-passing activities connected with raw materials of a paper factory. The issue is whether such engagement brings him within the definition of “worker” under the Act.

### **Statutory Framework**

#### **Definition of ‘Worker’ – Section 2(l), Factories Act, 1948**

Section 2(l) defines a worker as:

“A person employed, directly or through any agency (including a contractor), with or without the knowledge of the principal employer, whether for remuneration or not, **in any manufacturing process, or in cleaning any part of the machinery or premises used for a manufacturing process, or in any other kind of work incidental to, or connected with, the manufacturing process or the subject of the manufacturing process.**”

Thus, three categories are covered:

1. Persons directly engaged in manufacturing,

2. Persons engaged in cleaning machinery or premises,
3. Persons engaged in work **incidental to or connected with the manufacturing process**.

## Meaning of Manufacturing Process

### Section 2(k), Factories Act, 1948

“Manufacturing process” includes:

- Making, altering, repairing, finishing, packing, cleaning, or otherwise treating or adapting any article or substance for use or sale;
- Handling and processing of raw materials forming part of the final product.

In a paper factory, **waste paper and rags are essential raw materials**, and activities connected with their handling directly relate to the manufacturing process.

## Judicial Interpretation

**1. Shankar Balaji Waje v. State of Maharashtra** - The Supreme Court held that a person need not be directly involved in the physical act of manufacture; **even ancillary or incidental work connected with the manufacturing process** is sufficient to classify a person as a worker.

**Relevance:** Ram Singh’s work of checking quality and weight of raw materials is incidental to manufacturing.

**2. State of Uttar Pradesh v. Chandra Bhavan Boarding & Lodging** - The Court emphasised that the Factories Act is a **social welfare legislation** and must receive a **liberal interpretation** in favour of workers.

**Relevance:** A narrow interpretation excluding supervisory staff would defeat the Act’s objective.

## Application to the Present Case

- Ram Singh supervises **quality and weight of waste paper and rags**, which are basic raw materials.
- He maintains **stock records and supplier bills**, directly connected with procurement and production.
- His duties ensure **continuous and efficient manufacturing**.
- The fact that work is performed partly outside factory premises is legally irrelevant.
- His role is clearly **incidental to and connected with the manufacturing process**.

**Conclusion** - In light of Section 2(l) read with Section 2(k) of the Factories Act, 1948, and supported by authoritative judicial precedents, **Ram Singh squarely falls within the definition of a “worker”**. His supervisory and administrative duties are **integrally connected with the manufacturing process**, and the place of work does not dilute this connection. Therefore, Ram Singh must be regarded as a worker and is entitled to all protections and benefits under the Factories Act, 1948.

**Definition of Manufacturing Process (Summary)** - Under **Section 2(k) of the Factories Act, 1948**, a manufacturing process includes any activity involving making, treating, adapting, handling, or processing any article or substance with a view to its use or sale. In a paper factory, handling and quality assessment of waste paper and rags constitutes part of the manufacturing process.

### **Industry under Labour Law**

The concept of **“industry”** occupies a central position in Indian labour law, particularly under the **Industrial Disputes Act, 1947**, since the applicability of the Act and the jurisdiction of labour adjudicatory bodies depend upon whether a particular activity falls within the definition of industry. The term has been deliberately defined in wide terms to advance the objective of industrial harmony and social justice.

### **Statutory Definition**

Section 2(j) of the Industrial Disputes Act, 1947 defines *industry* as:

“Any business, trade, undertaking, manufacture or calling of employers and includes any calling, service, employment, handicraft, or industrial occupation or avocation of workmen.”

The definition consists of **two parts**. The first part focuses on the activities of the **employer**, such as business, trade, undertaking or manufacture, while the inclusive second part extends the meaning to cover the **services and occupations of workmen**. The use of the words “means and includes” indicates the legislature’s intention to give the term an **expansive and comprehensive scope**.

### **Judicial Evolution of the Concept**

In the early years, courts adopted a **restricted interpretation**, often requiring a commercial or profit-oriented element. However, this approach gradually gave way to a broader understanding in keeping with the welfare nature of labour legislation.

The landmark judgment in **Bangalore Water Supply and Sewerage Board v. A. Rajappa (1978)** fundamentally reshaped the meaning of industry. The Supreme Court held that the definition must be interpreted in a **functional and pragmatic manner** rather than on

technical or conventional lines. The Court propounded the well-known **Triple Test**, according to which an activity would constitute an industry if:

1. There is a **systematic and organised activity**,
2. Such activity is carried on through **cooperation between employer and employees**, and
3. The activity is aimed at the **production or distribution of goods or services** to satisfy human wants or wishes, irrespective of profit motive.

The Court expressly ruled that **profit motive or capital investment is not a necessary condition**, and even statutory bodies, public sector undertakings, educational institutions, hospitals, and charitable organisations may qualify as industries if they satisfy the triple test.

**Exclusions from the Definition** - While expanding the scope, the Supreme Court also recognised certain **exceptions**. Purely **sovereign functions of the State**, such as legislative activities, administration of justice, defence, and maintenance of law and order, were excluded from the ambit of industry. Similarly, **domestic services** and personal employment lacking systematic organisation were held to be outside the scope of Section 2(j).

**Significance in Labour Law** - The wide interpretation of industry serves several important purposes. It ensures that a large number of workmen receive the protection of labour laws, enables access to conciliation, adjudication, and collective bargaining mechanisms, and furthers the constitutional goals of **social justice and dignity of labour** under Articles 14, 19, and 21 of the Constitution of India.

### **Concept of ‘Workman’ under the Industrial Disputes Act, 1947**

The expression “**workman**” is the cornerstone of the **Industrial Disputes Act, 1947**, as the rights, remedies, and protections under the Act are available only to persons who fall within this definition. The scope of industrial adjudication, applicability of labour welfare provisions, and maintainability of disputes largely depend upon whether a person qualifies as a workman under Section 2(s) of the Act.

### **Statutory Definition**

Section 2(s) of the Industrial Disputes Act, 1947 defines a *workman* as:

“Any person (including an apprentice) employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be express or implied.”

The definition further includes persons who have been **dismissed, discharged, or retrenched** in connection with or as a consequence of an industrial dispute, thereby extending protection even after cessation of employment.

## Essential Ingredients of a Workman

1. **Employment in an Industry** - The person must be employed in an establishment that qualifies as an *industry* under Section 2(j) of the Act.
2. **Nature of Work Performed**  
The Act specifies categories of work, namely:
  - Manual
  - Unskilled
  - Skilled
  - Technical
  - Operational
  - Clerical
  - Supervisory
3. The **dominant nature of duties** performed by the employee is the determining factor.
4. **Employment for Hire or Reward** - There must exist a **relationship of employer and employee**, and the work must be performed for remuneration, whether monetary or otherwise.
5. **Terms of Employment** - The employment may be **express or implied**, written or oral, formal or informal.
6. **Inclusion of Discharged Employees** - Persons who are dismissed, discharged, or retrenched due to an industrial dispute are deemed to be workmen for the purpose of adjudication.

## Exclusions from the Definition

Section 2(s) expressly excludes certain categories from the ambit of workman:

1. **Members of Armed Forces** - Persons subject to the Air Force Act, Army Act, or Navy Act are excluded.
2. **Police and Prison Personnel** - Employees engaged in police services or prison administration do not fall within the definition.
3. **Managerial or Administrative Employees** - Employees employed mainly in a **managerial or administrative capacity** are excluded, irrespective of their designation.
4. **Supervisory Employees Drawing Higher Wages**  
A supervisory employee who:
  - Draws wages exceeding ₹10,000 per month, or
  - Exercises powers mainly of a **managerial nature**, is excluded from the definition of workman.

## Judicial Interpretation

Courts have consistently held that **designation is not conclusive**; what matters is the **nature of duties actually performed**.

In **Burmah Shell Oil Storage & Distributing Co. v. Burmah Shell Management Staff Association**, the Supreme Court held that an employee would be considered a workman if the main duties performed fall within the categories mentioned in Section 2(s), even if incidental supervisory functions exist.

Similarly, in **Ved Prakash Gupta v. Delton Cable India (P) Ltd.**, the Supreme Court emphasized that supervisory employees performing clerical or technical work as their main function may still qualify as workmen.

### **Importance of the Definition**

The definition of workman plays a crucial role in:

- Determining access to labour courts and tribunals,
- Applicability of protections against unfair labour practices,
- Entitlement to remedies relating to retrenchment, lay-off, and termination,
- Ensuring industrial peace and social justice.

### **Factory under the Factories Act, 1948**

The **Factories Act, 1948** is a welfare legislation enacted to regulate working conditions in industrial establishments and to ensure the health, safety and welfare of workers. The applicability of the Act depends upon whether a premises falls within the definition of a “**factory**” under Section 2(m).

### **Statutory Definition**

Section 2(m) of the Factories Act, 1948 defines a *factory* as:

Any premises, including the precincts thereof, where a **manufacturing process** is carried on, and where:

- (i) **Ten or more workers** are working, or were working on any day of the preceding twelve months, **with the aid of power**; or
- (ii) **Twenty or more workers** are working, or were working on any day of the preceding twelve months, **without the aid of power**.

Thus, three essential elements must be satisfied: **premises, number of workers, and manufacturing process**.

### **Essential Ingredients of a Factory**

1. **Premises Including Precincts** - The term *premises* includes not only the main building but also its surrounding areas such as yards or open spaces used for manufacturing activities.

2. **Manufacturing Process** - A factory must carry on a **manufacturing process** as defined under Section 2(k), such as making, altering, repairing, packing, pumping oil or water, generating power, etc.
3. **Number of Workers**
  - If power is used: **minimum 10 workers**
  - If power is not used: **minimum 20 workers**Workers employed on **any single day** during the preceding twelve months are sufficient.
4. **Continuity Not Required** - It is not necessary that manufacturing be carried on daily. If it is **ordinarily carried on**, the premises will still qualify as a factory.

### **Explanation to Section 2(m)**

- **Explanation I** states that for calculating the number of workers, all workers employed in **different groups or relays** in a day shall be counted.
- **Explanation II** clarifies that the mere installation of a **computer or electronic data processing unit** does not make a premises a factory unless a manufacturing process is actually carried on.

### **Exclusions from the Definition**

The following establishments are expressly excluded from the definition of factory:

- Mines governed by the **Mines Act, 1952**
- Mobile units of the armed forces
- Railway running sheds
- Hotels, restaurants, and eating places

### **Judicial Interpretation**

In **State of Bombay v. Ali Saheb Kashim Tamboli**, the Supreme Court held that even ancillary or incidental processes connected with the main manufacturing activity would be sufficient to bring the premises within the scope of a factory.

Similarly, in **Ardeshir H. Bhiwaniwala v. State of Bombay**, it was held that the term *premises* must be interpreted broadly to include all areas where the manufacturing process is carried on.

“trade dispute” means any dispute between employers and workmen or between workmen and workmen, or between employers and employers which is connected with the employment or non-employment, or the terms of employment or the conditions of labour, of any person, and “workmen” means all persons employed in trade or industry whether or not in the employment of the employer with whom the trade dispute arises.

(l) “lock-out” means the 6 [temporary closing of a place of employment], or the suspension of work, or the refusal by an employer to continue to employ any number of persons employed by him

(h) “Trade Union” means any combination, whether temporary or permanent, formed primarily for the purpose of regulating the relations between workmen and employers or between workmen and workmen, or between employers and employers, or for imposing restrictive conditions on the conduct of any trade or business, and includes any federation of two or more Trade Unions: Provided that this Act shall not affect—

(i) any agreement between partners as to their own business;

(ii) any agreement between an employer and those employed by him as to such employment; or

(iii) any agreement in consideration of the sale of the goodwill of a business or of instruction in any profession, trade or handicraft

### **Employer under Labour Law**

The concept of an **employer** is fundamental in labour legislation, as it determines the person or authority upon whom statutory obligations are imposed and who is responsible for compliance with labour welfare laws. The term *employer* assumes particular significance in the context of industries carried on by the **Government or local authorities**, where the traditional master–servant relationship is modified by statutory control.

**Statutory Definition** - Section 2(g) of the relevant labour legislation (such as the Industrial Disputes Act, 1947) defines “**employer**” as follows:

“Employer” means—

(i) In relation to an industry carried on by or under the authority of any department of the **Central Government or a State Government**, the **authority prescribed** in this behalf, or where no authority is prescribed, the **head of the department**;

(ii) In relation to an industry carried on by or on behalf of a **local authority**, the **chief executive officer** of that authority.

This definition is **functional and responsibility-based**, rather than ownership-based.

### **Employer in Government-Run Industries**

In industries carried on directly by the **Central or State Government**, the employer is:

- The **authority prescribed** under the rules; or
- Where no such authority is prescribed, the **head of the department** concerned.

This provision ensures that responsibility for labour obligations is clearly fixed, even where the Government acts through departments rather than corporate entities. It avoids ambiguity regarding accountability in public sector employment.

**Judicial Interpretation:** In **Heavy Engineering Mazdoor Union v. State of Bihar**, the Supreme Court held that an industry cannot be said to be carried on “by or under the authority of the Government” merely because it is owned or controlled by the Government. What is required is **direct governmental authority over the industrial activity**.

### **Employer in Industries Run by Local Authorities**

Where an industry is carried on **by or on behalf of a local authority** (such as a municipality or municipal corporation), the **chief executive officer** of that authority is deemed to be the employer.

This provision is necessary because local authorities function through elected bodies and committees. Designating the chief executive officer ensures:

- Administrative accountability,
- Effective enforcement of labour laws, and
- Smooth resolution of industrial disputes.

### **Purpose and Rationale of the Definition**

1. **Fixing Legal Responsibility** - The definition identifies a definite authority on whom statutory duties such as payment of wages, compliance with awards, and implementation of labour welfare measures are imposed.
2. **Avoidance of Administrative Confusion** - In large governmental or municipal establishments, multiple officials are involved. The Act prevents evasion of responsibility by clearly identifying the employer.
3. **Ensuring Effective Industrial Adjudication** - For purposes of conciliation, adjudication, and enforcement of awards, it is essential to determine who represents the management side.

### **Employer–Employee Relationship**

The existence of an employer presupposes a **relationship of employment**, characterised by:

- Control and supervision,
- Power to appoint and dismiss, and
- Authority to regulate conditions of service.

In **Hussainbhai v. Alath Factory Thezhilali Union**, the Supreme Court adopted a realistic approach and held that the person who has **economic control over the workers** and benefits from their labour should be treated as the employer, even if intermediaries are involved.

## **Aims and Objects of the Industrial Disputes Act, 1947**

The **Industrial Disputes Act, 1947** is a landmark piece of social welfare legislation enacted with the primary objective of ensuring **industrial peace, harmony, and social justice** in the sphere of labour–management relations. The Act was introduced in the post-independence period when industrial growth demanded a structured legal framework for the resolution of conflicts between employers and workmen.

**1. Prevention and Settlement of Industrial Disputes** - The foremost object of the Act is the **prevention and amicable settlement of industrial disputes** arising between employers and workmen or between workmen themselves. The Act provides statutory machinery such as **Works Committees, Conciliation Officers, Boards of Conciliation, Labour Courts, Industrial Tribunals, and National Tribunals** to resolve disputes in a peaceful and orderly manner, thereby avoiding strikes, lockouts, and industrial unrest.

**Case Law:** In *Western India Match Co. Ltd. v. Workmen*, the Supreme Court observed that the Act is primarily designed to ensure industrial peace by providing effective dispute resolution mechanisms.

**2. Promotion of Industrial Peace and Harmony** - Another important aim of the Act is to maintain **industrial peace and harmony** by balancing the interests of employers and employees. By regulating strikes and lockouts and prescribing conditions under which they may be legally resorted to, the Act seeks to prevent arbitrary or unjustified industrial action that may disrupt production and the economy.

**Case Law:** In *Bangalore Water Supply and Sewerage Board v. A. Rajappa*, the Supreme Court emphasized that the Act is intended to foster harmony between labour and management to ensure uninterrupted industrial development.

**3. Protection of Workmen Against Unfair Practices** - The Act aims to safeguard workmen from **exploitation and unfair labour practices**. Through provisions such as **Section 25T and the Fifth Schedule**, the Act prohibits unfair practices on the part of employers as well as trade unions, including victimisation, discrimination, and refusal to bargain collectively in good faith.

**Case Law:** In *Hindustan Lever Ltd. v. Ashok Vishnu Kate*, the Supreme Court held that the prohibition of unfair labour practices is essential to ensure fairness and equity in industrial relations.

**4. Regulation of Strikes and Lockouts** - The Act does not prohibit strikes and lockouts altogether but seeks to **regulate them** to ensure that they are exercised responsibly. It lays down procedures such as notice requirements, especially in public utility services, to prevent sudden disruptions that may adversely affect public interest.

**Case Law:** In *Crompton Greaves Ltd. v. Workmen*, the Court held that regulated industrial action is necessary to balance workers' rights with societal interests.

**5. Provision of Relief in Case of Retrenchment and Lay-off** - The Act aims to provide **economic security to workmen** in cases of lay-off, retrenchment, and closure. Chapter V-A and V-B prescribe conditions precedent to retrenchment and mandate payment of compensation, thereby protecting workers from arbitrary termination.

**Case Law:** In *State Bank of India v. N. Sundara Money*, the Supreme Court interpreted retrenchment provisions liberally to protect workmen from unjust termination.

**6. Promotion of Collective Bargaining** - One of the implicit objectives of the Act is to promote **collective bargaining** as a means of resolving industrial disputes. By recognizing trade unions and mandating good-faith bargaining, the Act encourages negotiation rather than confrontation.

**Case Law:** In *Karnal Leather Karamchari Sanghatan v. Liberty Footwear Company*, the Supreme Court recognized collective bargaining as a healthy and democratic method of industrial dispute resolution.

**7. Ensuring Social Justice and Welfare of Labour** - The Act embodies the principle of **social justice**, which is a constitutional mandate under Articles 38 and 43 of the Constitution of India. It seeks to protect the weaker section of society—namely, the workmen—by providing legal remedies against unjust employment practices.

**Case Law:** In *Workmen of Dimakuchi Tea Estate v. Management*, the Supreme Court held that the Act must be interpreted in a manner that advances social justice.

**8. Enforcement of Awards and Settlements** - Another significant objective is to ensure that **awards, settlements, and agreements** are binding and enforceable. This ensures certainty and stability in industrial relations and prevents repeated disputes over settled matters.

## **Whether the Mali is a 'Workman' and Remedies Available on Removal**

### **Issue Involved**

The central issues for determination are:

1. Whether a **Mali (gardener)** employed by Mahavir Spinning Mills to maintain gardens attached to officers' bungalows can be regarded as a **"workman"** under the **Industrial Disputes Act, 1947**.
2. What **legal remedies** are available to him if his services are terminated.

## **Whether the Mali is a 'Workman' under the Industrial Disputes Act, 1947**

**Statutory Definition** - Section 2(s) of the **Industrial Disputes Act, 1947** defines a *workman* as any person employed in an industry to do **manual, unskilled, skilled, technical, operational, clerical or supervisory work** for hire or reward, excluding those employed mainly in managerial or administrative capacity.

In the present case:

- The Mali performs **manual and unskilled work**.
- He is **employed by the Mill**, not by individual officers.
- His **service conditions are determined by the Mill**.
- He works under the **supervision and control** of the Mill.
- His **salary is paid by the Mill**.

Thus, prima facie, the Mali satisfies the essential requirements of a *workman*.

### **Connection with Industry**

The gardens are attached to:

- Bungalows provided by the Mill as part of employment benefits, and
- The colony of the Mill.

The maintenance of such gardens is **incidental and ancillary to the main industrial activity** of the Mill and contributes to employee welfare and smooth functioning of the industry.

### **Relevant Case Laws**

**1. Dharangadhara Chemical Works Ltd. v. State of Saurashtra** - The Supreme Court laid down that the **test of employment** is the existence of:

- Employer–employee relationship, and
- Control and supervision by the employer.

Since the Mill controls the work of the Mali and pays his wages, the relationship of employment clearly exists.

### **2. Bangalore Water Supply and Sewerage Board v. A. Rajappa**

The Supreme Court held that all **systematic activities** carried out with cooperation between employer and employee for production or service constitute an *industry*, including **incidental and welfare activities**.

Maintenance of gardens attached to industrial premises falls within this scope.

### **Conclusion on Status**

Therefore, the **Mali is a 'workman' within the meaning of Section 2(s) of the Industrial Disputes Act, 1947**, as:

- He performs manual work,
- Is under the control and supervision of the Mill,
- Is paid by the Mill, and
- His work is connected with and incidental to the industry.

### **Remedies Available to the Mali upon Removal from Service**

If the Mali is removed from service, the following remedies are available:

#### **1. Raising an Industrial Dispute**

Under **Section 2A of the Industrial Disputes Act**, an individual workman can raise an industrial dispute relating to **dismissal, discharge or retrenchment**.

He may approach:

- Conciliation Officer,
- Labour Court, or
- Industrial Tribunal.

**2. Relief Against Illegal Retrenchment** - If removal is without compliance with **Section 25F** (notice, compensation, and wages in lieu of notice), the retrenchment will be **illegal and void**.

**Case Law:** In *State Bank of India v. N. Sundara Money*, the Supreme Court held that non-compliance with Section 25F renders termination invalid.

#### **3. Reinstatement with Back Wages**

If termination is found to be illegal or unjustified, the Labour Court may order:

- **Reinstatement**, and
- **Back wages and continuity of service**.

**Case Law:** In *Deepali Gundu Surwase v. Kranti Junior Adhyapak Mahavidyalaya*, reinstatement with back wages was held to be the normal rule in cases of illegal termination.

**4. Protection Against Unfair Labour Practices** - If removal is arbitrary or victimising, it may amount to an **unfair labour practice** under **Section 25T read with the Fifth Schedule**.

#### **5. Alternative Remedies**

- Claim compensation instead of reinstatement (where reinstatement is not feasible).
- Relief under labour welfare statutes, if applicable.

**Final Conclusion** - The Mali employed by Mahavir Spinning Mills is a **workman under the Industrial Disputes Act, 1947**. His employment is directly controlled and supervised by the Mill and is connected with industrial activity. In case of removal, he is entitled to raise an industrial dispute and seek remedies such as **reinstatement, back wages, or compensation**, depending upon the legality and fairness of the termination.

## **Rights of Registered Trade Unions under the Trade Unions Act, 1926**

Registration under the Trade Unions Act, 1926 confers several statutory rights and privileges upon a Trade Union. These rights are intended to strengthen collective bargaining, protect union activities, and ensure proper functioning of trade unions in furtherance of workers' interests. The important rights of a registered Trade Union are discussed below.

### **1. Right to Spend General Funds for Specified Objects (Section 15)**

A registered Trade Union has the right to maintain **general funds**, which can be lawfully spent only for purposes enumerated under **Section 15** of the Act. These include:

- Payment of salaries, allowances and expenses of office-bearers.
- Administrative expenses, including auditing of accounts.
- Expenses incurred in prosecution or defence of legal proceedings undertaken to protect the rights of the Trade Union or its members.
- Conducting trade disputes on behalf of members.
- Payment of compensation to members for losses suffered during trade disputes.
- Grant of welfare benefits such as allowances in cases of death, sickness, accident, old age or unemployment.
- Providing insurance benefits to members.
- Grant of educational, social and religious benefits.
- Publishing periodicals relating to labour or industrial matters.
- Contribution to causes intended to benefit workmen in general, subject to the prescribed financial limit.
- Any other object notified by the appropriate Government.

This provision ensures **financial discipline** while allowing unions to function effectively for the welfare of workers.

### **2. Right to Constitute a Separate Political Fund (Section 16)**

A registered Trade Union has the right to constitute a **separate fund for political purposes**, distinct from its general funds. This fund may be used for:

- Supporting candidates contesting elections to legislative bodies or local authorities.
- Organising political meetings and distributing political literature.
- Maintaining elected representatives.
- Voter registration and selection of candidates.

Importantly:

- **No member can be compelled** to contribute to the political fund.
- Non-contributing members cannot be denied union benefits or discriminated against.
- Political contribution cannot be made a condition for union membership.

This safeguards **freedom of conscience and association** of union members.

### **3. Immunity from Criminal Conspiracy (Section 17)**

Under **Section 17**, office-bearers and members of a registered Trade Union enjoy immunity from prosecution for **criminal conspiracy** under Section 120B(2) of the Indian Penal Code for agreements made in furtherance of legitimate trade union objects.

However, this immunity does not apply where:

- The agreement is to commit an offence.

This provision protects **collective trade union action** taken in good faith during industrial disputes.

**Case Law:** In *Jay Engineering Works Ltd. v. State of West Bengal*, the Court recognized the protection given to lawful trade union activities under Section 17.

### **4. Right to Inspect Union Books (Section 20)**

Every office-bearer and member of a registered Trade Union has the statutory right to:

- Inspect the account books of the union.
- Inspect the list of members.

Such inspection must be carried out in accordance with the rules of the Trade Union. This ensures **transparency, accountability, and democratic functioning** of trade unions.

### **5. Right of Minors to Membership (Section 21)**

The Act grants the right to **minors above the age of fifteen years** to become members of a registered Trade Union, subject to the rules of the union. Such minors are entitled to:

- Enjoy all rights of membership.
- Execute instruments and give valid acquittances under the rules.

This provision promotes **early participation of young workers** in trade union activities.

### **6. Corporate Status and Legal Rights (Read with Section 13)**

Although not directly quoted, registration confers on a Trade Union the right to function as a **body corporate**, enabling it to:

- Acquire and hold property.
- Enter into contracts.
- Sue and be sued in its registered name.

This strengthens the **legal personality** of the Trade Union.

(rr) “wages” means all remuneration capable of being expressed in terms of money, which would, if the terms of employment, expressed or implied, were fulfilled, be payable to a workman in respect of his employment or of work done in such employment, and includes— (i) such allowances (including dearness allowance) as the workman is for the time being entitled to; (ii) the value of any house accommodation, or of supply of light, water, medical attendance or other amenity or of any service or of any concessional supply of foodgrains or other articles; (iii) any travelling concession; 1 [(iv) any commission payable on the promotion of sales or business or both;] but does not include— (a) any bonus; (b) any contribution paid or payable by the employer to any pension fund or provident fund or for the benefit of the workman under any law for the time being in force; (c) any gratuity payable on the termination of his service;]

### **Salient Features of the Factories Act, 1948**

The **Factories Act, 1948** is a comprehensive welfare legislation enacted with the primary objective of regulating labour employed in factories and ensuring the **health, safety, welfare, and social security of workers**. The Act seeks to protect workers from exploitation and hazardous working conditions while also prescribing duties and responsibilities of employers and occupiers.

The salient features of the Act are discussed below:

#### **1. Applicability and Coverage**

The Act applies to factories as defined under **Section 2(m)**, i.e.:

- Premises where **10 or more workers** are employed with the aid of power, or
- **20 or more workers** are employed without the aid of power, where a **manufacturing process** is carried on.

Certain establishments such as mines, mobile units of armed forces, railway running sheds, hotels, restaurants, and eating places are excluded.

#### **2. Definition of Manufacturing Process**

The Act gives a **wide and inclusive definition** of “manufacturing process” under **Section 2(k)**, covering activities such as:

- Making, altering, repairing, cleaning, packing or adapting any article;
- Pumping oil, water or other substances;
- Generating or transmitting power;
- Printing, shipbuilding and cold storage activities.

This broad definition ensures maximum protection to workers.

### **3. Provisions Relating to Health of Workers (Chapter III)**

The Act incorporates several provisions to ensure healthy working conditions, including:

- Cleanliness of premises (Section 11);
- Disposal of wastes and effluents (Section 12);
- Adequate ventilation and temperature control (Section 13);
- Prevention of overcrowding (Section 16);
- Proper lighting and drinking water facilities (Sections 17 and 18);
- Sanitary facilities such as latrines and urinals (Section 19).

### **4. Provisions Relating to Safety (Chapter IV)**

To prevent industrial accidents, the Act mandates:

- Fencing of dangerous machinery (Section 21);
- Employment of young persons only on safe machines (Section 22);
- Provision of devices for cutting off power (Section 24);
- Safe handling of hazardous materials;
- Appointment of Safety Officers in hazardous factories (Section 40B).

### **5. Welfare Provisions (Chapter V)**

The Act recognises the need for worker welfare beyond the workplace and provides for:

- Washing facilities (Section 42);
- Facilities for storing and drying clothing (Section 43);
- Sitting arrangements (Section 44);
- First-aid appliances (Section 45);
- Canteens in factories employing more than 250 workers (Section 46);
- Creches for children of women workers (Section 48);
- Appointment of Welfare Officers (Section 49).

### **6. Regulation of Working Hours (Chapter VI)**

The Act regulates working time to prevent overwork:

- Maximum of **48 hours per week** and **9 hours per day**;
- Mandatory weekly holidays (Section 52);

- Intervals for rest (Section 55);
- Overtime wages at double the ordinary rate (Section 59).

## 7. Employment of Women and Young Persons

Special protections are provided:

- Prohibition of employment of children below 14 years;
- Restricted working hours for women;
- Prohibition of women from hazardous processes;
- Mandatory fitness certificates for young persons.

## 8. Leave with Wages (Chapter VIII)

The Act grants annual leave with wages:

- One day for every **20 days worked** for adults;
- One day for every **15 days worked** for children;
- Accumulation of leave is permitted subject to limits.

## 9. Appointment of Inspecting Authorities

The Act provides for:

- Appointment of Inspectors, Certifying Surgeons and other authorities;
- Powers of inspection, inquiry and enforcement to ensure compliance.

## 10. Penalties and Offences

Strict penalties are prescribed for violations:

- Fines and imprisonment for occupiers and managers;
- Enhanced penalties for repeat offences;
- Liability of occupier and manager for compliance.

**Case Law:** In *State of Gujarat v. J.P. Motors*, the Supreme Court emphasised that the Factories Act is a **beneficial legislation** and must be interpreted liberally in favour of workers.



