PART-B

THE INDUSTRIAL RELATIONS ORDINANCE, 1969

Chapter I

INDUSTRIAL RELAIONS ORDINANCE: SCOPE AND OBJECTS

Summery of the Ordinance

a. Regulations of Trade Unions, Collective Bargaining and Unfair Labour Practices

   (i) Trade unionism;

   (ii) Recognition and Registration of Trade union;

   (iii) Collective Bargaining and its Election;

   (iv) Unfair Labour Practice and Victimisation.

b. Regulation of Industrial Disputes

   (i) Industrial dispute and individual dispute;

   (ii) Authorities under the Ordinance;

   (iii) Non-adjudicatory and adjudicatory process of settlement of industrial disputes

   (iv) Penalties and procedure

Objects of the Ordinance: Three Aspects

The objects of the Industrial Relations Ordinance have been set out in the preamble of the Ordinance. It states:

> "Whereas it is expedient to amend and consolidate the law relating to the formation of trade unions, the regulation of relations between employers and workmen and the avoidance and settlement of any differences or disputes arising between them or matters connected therewith and ancillary thereto....."

Thus the preamble makes it clear that there are three aspects or objects of the Ordinance:

first, to consolidate law relating to formation of trade unions;
second, the regulation of relations between employers and workmen; and
third, to resolve and settle industrial disputes.

Labour and Industrial law has two main objects: primary or immediate objects and ultimate or remote objects. The ultimate or remote object of

industrial law is to fasten together both the labour and capital in order to create an atmosphere that they are indivisible whole in production. The relationship between labour and management is based on mutual adjustment on interests and goals. The major issues involved in the industrial relations process are first, terms of employment which include (i) wages, allowances, bonus, fringe benefits; (ii) working conditions like, leaves, working hours, health, safety and welfare; (iii) non-employment matters such as job security, discipline, promotional opportunities etc. On the other hand, the immediate object of industrial law is to maintain industrial peace and security. It seems that the IRO has been enacted with the primary objects of the industrial law. However, a closer perusal will reveal the idea that the IRO actually covers both the objects. This is because of the fact that the Ordinance provides for three types of machineries for the settlement of industrial disputes:

(i) Voluntary settlement machinery (e.g. CBA, Conciliation etc);
(ii) Quasi-judicial Machinery (arbitration); and
(iii) Judicial Machinery (Labour Court and Labour Appellate Tribunal along with the Supreme Court).

Judicial machinery has been kept as a last resort to solve industrial disputes. This is based on the idea that as the economic development of a nation depends on industrial growth and prosperity, the harmonious relationship between workmen and employers which fasten and strengthen the economic development, can be achieved more mutually by voluntary settlement than by judicial machinery.

Another point is that the labour courts have been separated from ordinary courts. This is because ordinary courts are to follow the strict rules of law but industrial disputes as they relates inevitably to the national economy should not be resolved by applying less strict rules of law. So the labour courts to deal with fair relations between master and employees, exercises wide range of social justice.

Again, if labour disputes are adjudicable by ordinary courts then re-employment of workers becomes impossible but re-employment of workers for the sake of economic development is needed. This is why labour courts have been given jurisdiction to order re-instatement of discharged or dismissed employee. If the court refuses to interfere with cases of discharge then all labour disputes would be throttled to death. This is why the doctrine

of *res judicata* is not applicable in the labour courts. Also strict rules of evidence are not mandatory for labour court.

Scope and Application

The Ordinance applies to whole of Bangladesh.

It shall apply to establishments, employers, workers, organisations etc as defined and described by the Ordinance. However, the Ordinance shall not apply to:

(i) any person employed in the police;

(ii) any of the Defence Services of Bangladesh;

(iii) any services or installations connected with or incidental to the Armed Forces of Bangladesh, including an ordnance factory maintained by the Government;

(iv) any person employed in the administration of the State other than those employed as workmen by the Railways, Posts, Telegraph and Telephone Departments;

(v) any person employed in the Security Printing Corporation Bangladesh Ltd.

History of the Industrial Relations Ordinance, 1969

For this topic please see the next chapter.

Chapter II

TRADE UNIONS

Historical Development of Trade Unionism

The history of trade unionism and trade union legislation show that the trade union movement had to wage a long and bitter struggle to secure recognition for the workers' right to organise themselves into unions and to exercise their right of collective bargaining, if necessary, by the use of weapon of strikes. Before the beginning of the nineteenth century associations of workmen in defence of their interests had little in common with the modern trade union. It was the industrial revolution in the late 19th century which brought about revolutionary and sweeping changes in the western world. Notable inventions and breakthrough in the production methods, transportation, navigation and developments in the shipping industry, introduced corresponding changes in the social set as well. These scientific and technological changes culminated in the emergence of two classes: the entrepreneur class and the wage earning class. It is from the frequent clashes and conflicts of these classes of the society that many a labour and welfare law began to spring up.

Problem of Industrialisation: Even though the industrial revolution resulted in the maximisation of production and that the national income and so the per capita income went to high pitch, paradoxically the fate of the vast multitude, namely the wage earning class did not improve. Rather their conditions became more deplorable both inside and outside the factories.

Factory Problems: The problems cropping up inside the factory were also not negligible. Question of wages, working conditions, working hours etc assumed vital importance. The socio-legal set up prevailed as one of strengthening the hands of the entrepreneur class. The *laissez faire* philosophy which was at the bottom of the industrial revolution gave a free hand to the entrepreneur class. Under the freedom of contract theory the employer was the dominating party to the contract. Wages and working hours were fixed according to his will and pleasure. Working conditions were at the mercy of the employer. It was a clear case of 'take this or go out'. There was no security of job. The right 'to hire and fire' was literally practised in those days.

Safety arrangements were nil and workers were compelled to undergo all imaginable hazards and risks if they wanted to get or continue the job. Hence, *laissez faire* philosophy even though paved way to industrial revolutions, it produced may repercussions as well. As a result, workers felt they had to unite together and muster bargaining strength to improve their conditions. This gradually culminated in the factory movements and formation of many trade union organisations. Trade unionism was finally recognised under the law. Privileges and immunities in the trade union movement were statutorily assured. The freedom of contract theory had to give way to the social welfare principle. This marked the beginning of the collective bargaining as an effective means and weapon among the working class to muster strength and thus equalise with that of the employer which enables to reach at just settlements in industrial disputes.

With this change the British parliament was also constraint to deviate from the *laissez faire* principles while enacting labour legislation in 19th century. Thus social welfare legislation bedded on the principle of collectivism as opposed to individualism came to play the role in settling industrial dispute.

Till the passing of the Trade Union Act, 1926 trade union was not at all recognised. Much troubles, terbulations and sacrifices had to undergo for many years before the government was constraint to give legal recognition to this. It was highly risky to organise the workers till the 1926 Act was passed. Such unions were construed to be illegal combinations, often interfering with the business of the employer through strike or otherwise. Hence, the union and organisers thereof were held liable for tortious conspiracy and were compelled to pay compensation for the financial loss sustained by the employer. In *Quinn* (1901) AC 495 and *Toffvale* (1901) AC 426 cases in England and in the *Buckingham Carnatic Mill* cases in India the unions were held to be illegal conspiracies and employers were awarded damages. Severe criticisms were mounted against the decisions of the English Courts reflecting the outmoded 'freedom of contract theory' stemmed on *'laissez faire'* pilosophy. Discontent and dissatisfaction culminating in agitations compelled the British Parliament to pass the Trade Disputes Act, 1906 which, *inter alia*, nullified the above decisions and gave legal recognition to trade unions and activities thereof.

Along the path of this trend the establishment of the ILO in 1919 at the international level further gave a morale boost to the workers organisaiton. However, for India it took 20 years to procure such recognition to workers' union when in 1926 the Indian Government was compelled to enact the Indian Trade Union Act with parallel provision of the Trade Disputes Act, 1906 of England. Before the passing of the Trade Union Act, 1926 trade union activities were looked upon as illegal and not immune from civil and criminal liabilities. The year 1920 was of crucial importance in the history of trade union movement in India as it saw the birth of the All India Trade Union Congress. Subsequently trade union leaders and politicians started pressing the Government for trade union legislation which would protect trade unionists against civil and criminal liability for acts genuinely done in furtherance of a trade dispute. Consequent on the partition of India in 1947, Pakistan got its heritage of labour laws from undivided India, as adapted by the Adaptation Laws Order, 1947. At the time of promulgation of the Industrial Relations Ordinance there were three East Pakistan enactments: (i) the East Pakistan Trade Union Act 1965 regulating the relations between employees and employers and providing for the formation and functioning of Trade Unions as organisations of workers; (ii) the East Pakistan Labour Dispute Act, 1965 providing for investigation and settlement of labour disputes; and (iii) the East Pakistan Employment of Labour (Standing Orders) Act, 1965 providing for regulating the conditions of service of workers employed in shops and commercial establishment. The Industrial Relations Ordinance has repealed the above first two legislations. Now therefore both the law of trade union and labour dispute are dealt with in the same IRO, 1969.

Freedom of Association and Right to Trade Union

The freedom of association has been the corner-stone of society. The general claim to freedom of association for political purposes and the specific claim of freedom of association for trade union purposes represent more recent developments. The right to 'form associations and unions' is treated as a separate right, with the same status as freedom of speech, assembly and the like. There are four aspects of the freedom of association:

First, the right necessarily connotes the right to enter into an agreement for the purpose of creating an association;

Second, this right may be for any purpose whatsoever with regard to the right of association, so long as the purpose is not contrary to law;

Third, like freedom of speech, the freedom of association cannot be made subject to previous authorisation, as such authorisation would mean an infringement of the right;

Fourth, freedom of association implies the right to do any lawful act in furtherance of the purpose of the association (Khan, Hamiduddin, 197-198).

From another point of view, the right of association has three characteristics: this right implies the power of doing a particular act which is the first important characteristic of this right. The second important characteristic of this right is that men act in combination. Men acting in combination will command greater power and resources and will exert greater pull and pressure in the spheres of social and economic life than men acting individually. The third characteristic of this right is the exercise of power. When a man acts individually, he does not exercise power; acting in combination means the exercise of power.

Article 23(4) of the Universal Declaration of Human Rights, 1948 states that everyone has the right to form and to join trade unions for the protection of his interests.

The preamble of the Constitution of the International Labour Organisation declares 'recognition of the principle of freedom of association' to be a means of improving conditions of labour and of establishing peace. Apart from the Constitution of the ILO the Convention No. 87 of the ratified ILO Convention defines and describes the right of freedom of association, i.e. the right to form trade unions. These are as follows:

(i) Workers and employers, without distinction whatsoever, shall have the right to establish and, subject only to the rules of the organisation concerned, to join organisations of their own choosing without previous authorisation (Article 2);

(ii) Workers' and employers' organisation shall have the right to draw up their own constitutions and rules, to elect their representatives in full freedom, to organise their administration and activities and to formulate their programmes (Article 3);

(iii) The public authorities shall refrain from any interference which would restrict this right or impose the lawful exercise thereof (Article 3);

(iv) Workers' and employers' organisations shall not be liable to be dissolved or suspended by administrative authority (Article 4);

(v) Workers' and employers' organisations shall have right to establish and join federations and confederations and any such organisation, federation or confederation shall have the right to affiliate with international organisations of workers and employers (Article 5);

(vi) The law of the land shall not be such as to impair nor shall it be so applied as to impair the guarantees provided for in the Convention (Article 8);

(vii) Member States of the ILO undertakes to take all necessary and appropriate measures to ensure that workers and employers may exercise freely the right to organise (Article 11).

* Convention No. 98 stipulates the following protection with regard to the Application of the Principles of the Right to Organise and to Bargain Collectively:

(i) Workers shall enjoy adequate protection against acts of anti-union discrimination in respect of their employment (Art. 1);

(ii) Workers' and employers' organisations shall enjoy adequate protection against any acts of interference by each other or each other's agents or members in their establishment, functioning or administration (Article 2);

(iii) Machinery appropriate to national conditions shall be established, where necessary, for the purpose of ensuring respect for the right to organise (Article 3).

Right to Form Trade Union under the IRO

All the above international protection of right to trade union and freedom of association have been ratified by Bangladesh. Apart from international view point, the right to trade union and association is a fundamental right guaranteed by Article 38 of our Constitution which stipulates that every citizen shall have the right to form associations or unions, subject to any reasonable restrictions imposed by law in the interests of morality or public order. In line with this guarantee and also in accordance with the protection provided for in Convention 87 of the ILO Convention, section 3 of the Industrial Relations Ordinance, 1969 lays down the right to trade unions and freedom of association. Workers and employers have been given the full right to establish and join associations of their choice without permission from any authority to draw up their constitution, to elect their representatives in full freedom, to organise their programmes, to establish their federations, confederations and international organisation of workers and employees. The rights of trade unions and freedom of association as stipulated in section 3 are as follow :

(i) Workers, without distinction whatsoever, shall have the right to establish and, subject only to the rules of the organisation concerned, to join associations of their own choosing without previous authorization;

(ii) Employers, without distinction whatsoever, shall have the right to establish and, subject only to rules of the organisation concerned, to join associations of their own choosing without previous authorisation;

(iii) Trade unions and employers' associations shall have the right to draw up their constitutions and rules, to elect their representatives in full freedom, to organise their administration and activities and to formulate their programmes;

(iv) Workers' and employers' organisations shall have the right to establish and join federations and confederations and any such organisation, federation or confederation shall have the right to

affiliate with international organisations and confederations of workers' and employers' organisations.

(v) Workers and employers and their respective organisations, in exercising their rights like other persons or organised collectivities, shall respect the law of the land.

Trade Unions: Workers' Forum and Employers' Forum

Workers' associations or societies are by no means newer institutions. Their historical origins are older than the Industrial Revolution in Europe. But these were, in a sense, friendly societies or welfare associations (often with membership of both employers and employees) rather than trade unions proper. Generally trade union means an association of workers in one or more occupations to protect and advance the economic interest of the union members. The legal definition of trade union, though embraces associations of employers as well of employees, is usually disregarded by laymen in this context. And modern legislation is increasingly prone to differentiate between labour unions, on the one hand, and employers' and trade associations, on the other (Cole, G,D.H: *An Introduction to Trade Unions*, pp. 13-15).

In traditional and in the sense of a layman's point of view it is therefore true that 'trade unions must be of the workers, for the workers, by the workers'. However, as far as legal definition of a trade union is concerned, this is not true as the legal definition covers both the workers' union and employers' union.

Trade union usually comes into existence when workers feel that individually they are helpless to do anything for their betterment, for the interest of the industry in which they are employed or even for the nation. Leadership then may operate fruitfully. Recourse to collective efforts follows and generally results in some form of union organisation.

Who can form Trade Union?

As per definition in section 2(xxvi) both employer and workers have been given right to form trade unions under the IRO. There are no essential formalities or requirements in forming and organising a trade association. It is only when a trade union desires to be registered as a trade union that certain

requirements must be complied with. However, there are some post-formation conditions for a trade union which are as follows:

(i) A trade union must be registered if it is to work as a trade union. Section 11A states that no trade union which is unregistered or whose registration has been cancelled shall function as a trade union. This requirement of section 11A seems contradictory to the provision of section 5 which allows registration of a trade union on a voluntary basis;

(ii) The objective or activities of any trade union must not go against any law of the land. In other words, the activities and programmes of a trade union must not be illegal in the context of other laws in the country (section 4);

(iii) A trade union must comply with the conditions of registration which have been set out in section 7 of the IRO;

(iv) No worker shall be entitled to enroll himself as, or to continue to be, a member of more than one trade union at the same time (Section 11B).

Disqualifications for being a member of a Trade Union

Section 7A lays down that a person shall not be entitled to be-

(i) elected as an officer of a trade union if he has been convicted of an offence involving morel turpitude or an offence under clause (d) of sub-section (1) of section 16 or section 61; and

(ii) a member or officer of a trade union formed in any establishment or group of establishments if he is not, or was never, employed or engaged in that establishment or group of establishments or *if he was dismissed from any such establishment;* (this shall not apply to any federation of trade unions).

(iii) No worker shall be entitled to enroll himself as, or to continue to be, a member of more than one trade union at the same time (Section 11B).

Penalty for dual membership of Trade Unions

Whoever enrolls himself as, or continues to be, a member of more than one trade union at the same time shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to five hundred Taka, or with both (Section 61B).

One Employer, one Establishment

The Industrial Relations Ordinance, 1969 was amended in 1990. Two provisos were added to section 7. The amended legislation aims to put an end to the concept of 'as many trade unions as establishments' and introduce a scheme for 'one employer one establishment'. In line with this requirement the High Court Division held in *Naogaon Chitrabani Ltd & others v Naogaon Cinema Hall Sramajibi Union and another* (43 DLR (1991) 392) that workers of 'group of establishments' owned by separate owners cannot be considered to be workers of one group of establishments. They cannot, therefore, form one trade union. The formation of one registered trade union by workers of the three cinema halls owned by different owners is illegal and as such the same is liable to be cancelled. In 1993 there was another writ petition in the High Court Division with regard to almost the same matter which is discussed below.

Secretary of Aircraft Engineers of Bangladesh & Another vs Registrar of Trade Unions and Others 45 DLR (AD) 122

Facts:

Under the Bangladesh Biman there were seven registered trade unions. The Industrial Relations Ordinance, 1969 was amended in 1990 and by this amendment two provisios were added to section 7(2). To put this amended provisions into operation the Registrar, under the authority of the Amendment Act, 1990, issued order to all seven trade unions stating therein that in pursuance of an enquiry made under the Amendment Act, 1990 it had been found that none of the seven existing trade unions was constituted in

accordance with the newly-introduced provisos to sub-section 2 of section 7. The Registrar asked all seven trade unions to submit their documents to his office for obtaining proper registration certificate. The Registrar then caused a Notification to be published in the Gazette on 17.5.90 under section 5(1) of the Amendment Act, 1990 listing the names of existing seven registered trade unions of the Biman, whose registration were to be cancelled. Five of these trade unions filed writ petition in the High Court Division against such order of the Registrar.

Appellant's Argument:

(i) The right to form an association or union, guaranteed by Article 38 of the Constitution, includes the right to its continuance which is now being denied by the impugned legislation. The threatened cancellation of registration is tantamount to negating the effective existence of the fundamental right and as such it is violative of the constitutional guarantee which cannot be extinguished by law and on which reasonable restriction may be imposed only in the interest of public order or morality.

Judgment:

(i) Under the Trade Unions Act, 1926 which is the predecessor of the present Ordinance, 1969 any seven or more persons actually engaged or employed in an 'industry' could form a trade union and apply for registration. It is not difficult to see that in the organisational structure of trade unions under the Trade Unions Act, 1926 trade unions formed by the specialised professionals of an industry perfectly fitted in with the statutory pattern, which is not the case in their application to the Ordinance, 1969. Under the present Ordinance a trade union's registration is contingent upon its constitution 'establishment- wise'.

(ii) Trade Unions have to be organised "establishment-wise". Establishment means any office, firm, industrial unit, undertaking, shop or premises in which workmen are employed for the purpose of carrying on any business. If a trade union, thus constituted establishment-wise, seeks registration, then it is not entitled to registration unless it has a minimum of membership of thirty percent of the total number workers

employed in the establishment or group of establishments. To put in plain language, section 7(2) implies that there cannot be at any given point of time, more than three registered trade unions in an establishment. The whole purpose of the legislative exercise is not to restrict the right to form associations or unions, but to give the trade unions a shape and to chart out a well-ordered territory for their operation.

(iii) The original organisational scheme of the Ordinance, 1969 was that there could be at least three registered trade unions in each establishments of an industry. If an employer had more than one establishment under the unamended Ordinance, the workers, without any distinction whatsoever, had the right to form trade unions in each establishment, however, inconvenient it may have been for the employers.

(iv) The new legislation contains no restriction upon the worker's right to form a trade union. The workers of more than one establishment under the same employer are free to form trade unions as before. No doubt the existing trade unions lose their registration in the process and are unable to continue in their old form but the organisational structure of trade union is a legitimate domain of legislative exercise and no worker has a fundamental right to a particular form of organisational set-up. To hold otherwise will be tantamount to holding that once trade unions are formed along a particular pattern and registration given, there can be no further changes in their set-up and that the trade union structure will remain frozen as long fundamental rights exist.

(v) The basic right involved in the present case is not so much a right of registration, but a right to particular form of organisational set-up of trade unions.

(vi) What has been sought to be achieved by amended legislation (sec. 7(2)) is that it aims to put an end to the concept of "as many trade unions as establishments" and introduces a scheme

of "one employer one establishment". The erstwhile registered trade unions can claim a fundamental right to their continuance only if they can establish that they have a fundamental right to the continuation of the old concept of organisational set up.

One Establishment: Not more than three Trade Unions

Abul Hossain vs. Bangladesh 2 BLC (1997) 632

Fact: In the establishment of the Dhaka Electric Supply Authority there were 5 registered trade unions. The Registrar of the trade unions, Dhaka Division instituted legal proceedings against two of the trade unions on the ground that their membership had fallen short of 30%. During pendency of the aforesaid legal proceedings Registrar of Trade Union, Dhaka Division sent letters to all 5 trade unions asking them to inform if they wish to participate in an election for collective bargaining agent. The petitioner (one of the trade unions) filed the writ petition against this action of the Registrar on the following grounds:

(i) To allow simultaneously 5 trade unions to retain and carry on trade union activities is contrary to the scheme of the Ordinance for ensuring maintenance of industrial peace and avoiding multiple trade unions;

(ii) In the scheme of the Ordinance not more than 3 trade unions can function and retain registration in an establishment. Since a trade union must have minimum of 30% of the total employees in an establishment, it is not possible to have more than 3 trade unions in one establishment at the same time.

Judgment:

Sub-section (2) of section 7 requires that a trade union of workers shall be entitled to registration only if it has membership of 30% of the total number of workers. Section 10 provides for cancellation of registration where the membership of the trade union has fallen short of 30% of the workers. Sub-section (1) and (2) of section 22 also refers to registered trade union having not less than one third of the workers as their membership. These provisions of the Industrial Relations Ordinance, in our view go to show that the Ordinance

intended to have no more than 3 trade unions in an establishment or a group of establishments. The proviso of section 22 also says that no trade union shall be declared to be the collective bargaining agent for an establishment or group of establishment unless the number of votes received by it is not less than one third of the total number of workmen employed in such establishment or group.

Apart from the judgment of the High Court Division as mentioned above, the condition of section 11B which puts restriction on dual membership also substantiates the fact that it is not legally permissible to form more than three trade unions in one establishment.

Definition of Trade Union

The term 'trade union' has been defined in section 2(xxvi) as any combination of workmen or employers formed primarily for the purpose of -

(a) regulating their relations between:
  (i) workmen and employers; or
  (ii) workmen and workmen; and
  (iii) employers and employers; or

(b) of imposing restrictive conditions on the conduct of any trade or business.

(c) A trade Union also includes any federation of two or more unions.

This definition is based on the definition of the British Trade Unions Act with a material difference that the IRO uses the word 'combination' whereas the word used in the British Act is 'association'. The word 'combination' instead of 'association' has wider impact. In ordinary or narrower sense trade union means a combination of workmen. However, in broader sense it includes combination of employers as well and also federation of two or more any such combinations. Therefore, it is a device to enable a group or class in a trade or industry to bargain with any other group or class. Whatever may be the combination or association, whether permanent or temporary, if it is formed for one or the other of the statutory objectives, it is trade union within the meaning of the Ordinance.

As per the definition given in section 2 of the Act a trade union may be formed with an object of imposing restrictive conditions on the conduct of any trade or business. This, however, does not mean any agreement in restraint of trade or business which is void in the eye of law. There is a difference between an agreement in restraint of trade and an agreement imposing restrictive conditions on the conduct of any trade or business.

Purpose or Object of a Trade Union

Trade Unions are voluntary organisations of workers formed to promote and protect their interests by collective action. Their membership is never compulsory. Any worker may or may not join the association. Since the membership is voluntary, the trade union must possess definite aims and objects so that workers may join the union after full consideration of the aims and objects for which it has been formed.

You must remember that the primary purposes of a trade union as specified in section 2(xxvi) are firstly, to regulate the relations between:

(i) workmen and employers; or

(ii) workmen and workmen; and

(iii) employers and employers; and

Secondly, for imposing restrictive conditions on the conduct of any trade or business.

However, the use of the word 'primary' in the Ordinance suggests that the trade unions can have other objectives as well which may be termed as secondary or anciliary objects. It is understandable that those secondary or anciliary objectives whatever they are cannot be opposed to any law or opposed to public policy.

Some of the important objectives of a trade union are as follows:

(i) The fundamental task of a trade union is of advancing the social and economic well-being of workers. Collective bargaining is the natural outcome of a Trade Union action in order to augment the welfare of its members and trade it represents. In individual bargaining the employer owing to his admittedly superior

bargaining power, can take advantage of the weaker position of an individual worker. The objective of trade union, according to Sidney and Webb, is to take labour out of the competitive process;

(ii) To secure speedy improvement of conditions of work, life and status of the workers in industry and society;

(iii) To obtain for the workers various measures of social security including adequate provision in respect of accidents, maternity, sickness, old age and unemployment;

(iv) To secure living wages with progressive improvement in the standard of life and to regulate hours and other conditions of work in keeping with the requirements of the workers in the matter of health, recreation and cultural development;

(v) To secure suitable legislative enactments for ameliorating the condition of workers and to ensure proper enforcement of legislation for the protection and uplift of labour;

(vi) The promotion of employees' economic interests is not the only goal of modern unions. Unions in developing countries have taken up educational, social and political activities to promote the cultural interests of the members and even of the nation, so that the new trade unions have generally minimised the problems of Government, employers and union themselves.

(vii) Trade Unions provide a meaningful bridge between labour and capital. Labour is the wealth of the country; it should not be wasted at all in strikes and lock outs. There should be mutual adjustment between the labour and capital and this has been easier as a result of trade unions. The power-driven mills and the business houses of today offer employment to a large body of workers, who work under the same management and often under similar terms and conditions of employment. Under the

present system of mass production, the relationship between employers and employees has become indirect and impersonal, and the employers are hardly in a position to know the problems of each of their employees. This impersonal nature of work relationship and the similarity of working conditions for a large body of workers have largely contributed to the growth of trade unions whose main purpose is to negotiate with the employers to regulate the conditions of employment of the workers.

(viii) The growth of trade unionism has contributed to the awakening among wage earners of an awareness of their own dignity and importance. There is wider argument in favour of the workers having some share in the management and control of the industries in which they are employed as well as in the determination of their wages and working conditions.

Recognition and Registration of Trade Union

Recognition:

Recognition and registration are not the same thing. Though the IRO provides for registration of trade union complying with certain specified requirements, it imposed no obligation on employers to recognise and deal with such trade unions. The predecessor of this Ordinance, the trade Unions Act, 1926 contained no provision for determination of collective bargaining agent as in the Ordinance. After registration, there was a further need of recognition by the employer. And the employer was to follow the concept of "same or allied industries, one trade union". Now the system of selecting CBA has replaced the earlier system of recognition. It is only when a trade union was recognised by an employer that it acquired the right to negotiate with the employer in respect of trade union matters, a right given to collective bargaining agents under section 22(12) of the Ordinance.

Voluntary System of Registration: Under the Industrial Relations Ordinance, 1969 registration of unions is not compulsory though it always expected to have a Trade Union registered. The object of introducing a system of registration for trade unions is to encourage the establishment of permanent and stable bodies having adequate written constitutions and

regular audited accounts. An unregistered trade union is not unlawful but registration gives certain benefits and immunity to its officers and members against civil and criminal proceedings in certain circumstances.

No trade union to function without registration: Section 11A states that no trade union which is unregistered or whose registration has been cancelled shall function as a trade union. Thus the requirement of section 11A seems contradictory to the provision of section 5 which allows for voluntary registration of a trade union.

61A. Penalty for activities of unregistered trade union.- Whoever takes part in or instigates or incites others to take part in the activities of an unregistered trade union whose registration has been cancelled or collects subscription except enrollment fee, for the fund of any such trade union, shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to five hundred Taka, or with both.

Procedure of Registration

Step 1: Application for Registration: Any trade union may, under the signature of its President and the Secretary, apply for registration of the trade union to the Registrar (Section 5)

Conditions for application for Registration of Trade Union: Section 6 lays down the following requirements for application for registration of a trade union:

Every application for registration of a trade union shall be made to the Registrar and shall be accompanied by--

(a) a statement showing--

(i) the name of the trade union and the address of its Head Office;

(ii) date of formation of the Union;

(iii) the titles, names, ages, addresses and occupations of the officers of the trade union;

(iv) statement of total paid membership;

(v) in case of a federation of trade unions, the names, addresses and registration number of member unions;

(vi) in case of a trade union of transport vehicle workmen, total number of transport vehicles, the name and addresses of their owners, the route permit number of the vehicles and the number of workers in such vehicles;

(b) three copies of the constitution of the trade union together with a copy of the resolution by the members of the trade union adopting such constitution bearing the signature of the Chairman of the meeting;

(c) a copy of the resolution by the members of the trade union authorising its President and the Secretary to apply for its registration; and

(d) in case of a federation of trade unions, a copy of the resolution from each of the constituent unions agreeing to become a member of the federation.

Substantive Conditions for Registration: To be entitled to registration a trade union must fulfill the following conditions (section 7):

1. The constitution of a trade union must provide the following matters:

(a) the name and address of the trade union;

(b) the objects for which the trade union has been formed ;

(c) the manner in which a worker may become a member of the trade union specifying therein that no worker shall be enrolled as its member unless he applies in the form set out in the constitution declaring that he is not a member of any other trade union:

(cc) The sources of the fund of the trade union and the purposes of which such fund shall be applicable;

(e) the conditions under which a member shall be entitled to any benefit assured by the constitution of the trade union and under which any fine or forfeiture may be imposed on him;

(f) the maintenance of a list of the members of the trade union and of adequate facilities for the inspection thereof by the officers and members of the trade union;

(g) the manner in which the constitution shall be amended, varied or rescinded;

(h) the safe custody of the funds of trade union, its annual audit, the manner of audit and adequate facilities for inspection of the account books by the officers and members of trade union;

(i) the manner in which the trade union may be dissolved;

(j) the manner of election of officers by the general body of the trade union and the term, not exceeding two years, for which an officer may hold office upon his election or re-election;

(k) the procedure for expressing want of confidence in any officer of the trade union; and

(l) the meetings of the executive and of the general body of the trade union, so that the executive shall meet at least once in every three months and the general body at least once every year.

2. A trade union must have a minimum membership of thirty per cent of the total umber of workers employed in the establishment or group of establishments in which it is formed;

(i) Provided that more than one establishment are under the same employer, which are allied to and connected with one another for the purpose of carrying on the same industry irrespective of their place of situation, shall be deemed to be one establishment for the purpose of this sub-section

(ii) Provided further that where any doubt or dispute arises as to whether any two or more establishments are under the same employer or whether they are allied to or connected with one another for the purpose of carrying on the same industry, the decision of the Registrar shall be final.

Step 2: Duties of the Registrar on submission of an Application:

(1) The Registrar, on being satisfied that the trade union has complied with all the requirements of this Ordinance, shall register the trade union in a prescribed register and issue a registration certificate in

the prescribed form within a period of sixty days from the date of receipt of the application (Sec. 8(1)).

(2) In case the application is found by the Registrar to be deficient in a material respect or respects he shall communicate in writing his objection to the trade union within a period of 15 days from the receipt of the application and the trade union shall reply thereto within a period of fifteen days from the receipt of the objections (Sec. 8(1)).

(3) When the objection raised by the Registrar has been satisfactorily met, the Registrar shall register the trade union and issue a registration certificate. In case the objections are not satisfactorily met, the Registrar may reject the application (Sec. 8(2)).

Step 3: Issuing the Certificate of registration:

The Registrar, on registering a trade union under section 8, shall issue a certificate of registration in the prescribed form which shall be conclusive evidence that the trade unions has been duly registered under this Ordinance (section 9).

Appeal against the Decision of the Registrar:

In case the application has been rejected or the Registrar has, after settlement of the objections delayed disposal of the application beyond the period of sixty days, the trade union may appeal to the Labour Court who for reasons to be stated in their judgment may pass an order directing the Registrar to register the trade union and to issue a certificate of registration or may dismiss the appeal (Sec. 8(3)).

Cancellation of Registration and Appeal

As a registration certificate is issued by the Registrar of Trade Unions, it may also be cancelled by the Registrar under the provisions of the IRO, 1969. In Indian Trade Unions Act, 1926 there was a provision of withdrawal of registration which is absent in the Industrial Relations Ordinance, 1969. The condition precedent to the issue of certificate of registration is the satisfaction of the Registrar that the provisions of this Act in regard to registration have

been fully complied with, but if after the issue of the certificate, the Registrar finds that his satisfaction was based on wrong assessment of the facts supplied by the Trade Union, he many cancel the certificate of registration.

A close scrutiny of section 10 of the IRO will reveal that cancellation of registration of a trade union will take three steps:

A. Fulfillment of the Grounds of Cancellation
B. Taking permission from the Labour Court; and
C. Cancellation

A. Fulfillment of the Grounds of Cancellation:

According to section 10 of the IRO a certificate of registration of a Trade Union may be cancelled by the Registrar on any of the following ten grounds:

(i) If the trade union has applied for such cancellation; or
(ii) If the trade union has ceased to exist; or
(iii) If the trade union has obtained registration by fraud or by misrepresentation of facts; or
(iv) If the trade union has contravened any provisions of its constitution; or
(v) If the it has committed any unfair labour practice; or
(vi) If it has made in its constitution any provision which is inconsistent with the Ordinance or the Rules; or
(vii) If the membership of the union falls short of 30% of the workers of the establishment or group of establishments for which it was formed; or
(viii) If it has failed to submit its annual report to the Registrar as required under the Ordinance; or
(ix) If it has elected its officer a person who is disqualified under section 7A from being elected as, or from being, such officer; or
(x) If it has contravened any of the provisions of this Ordinance or the Rules.

It is also clear that cancellation process may be set in motion by three channels: (i) on the application by the trade union; (ii) the Registrar may initiate the process on his own; or (iii) by application of any person.

B. Taking permission from the Labour Court:

If the Registrar is of the opinion that the registration of a trade union is to be cancelled, he shall submit the application to the Labour Court praying for permission to cancel such registration (section 10(2)).

C. Cancellation

The Registrar shall cancel the registration of a trade union within seven days from the date of receipt of permission from the Labour Court. Thus unlike earlier the Registrar has no choice. In case the Labour Court grants permission for cancellation it is mandatory for the Registrar to cancel the registration within seven days. If the Labour Court does not give permission he cannot cancel registration.

Appeal against cancellation

A trade union aggrieved by the order of cancellation of its registration under section 10 may, within sixty days from the date of the order, appeal to the Labour Appellate Tribunal which may uphold or reject the order (section 11).

Legal Character and Advantages of a Registered Trade Union

Section 14 stipulates that a registered trade union shall be a body corporate by the name under which it is registered. It shall have perpetual succession and a common seal and the power to contract and to acquire, hold and dispose of property, both movable and immovable, and shall by the said name, sue or be sued. Thus by virtue of its legal entity certain rights are accorded; duties are imposed and certain powers are conferred which may be called advantages of registration. Following are the advantages of registration of a trade union:

(i) Every registered trade union becomes a body corporate by the name under which it is registered. It means that the Trade Union, after registration under this Act, becomes artificial legal person having its separate existence from its members of which it is composed;

(ii) An incorporated trade union never dies. It becomes an entity with perpetual succession. The members of the trade union change but the trade union remains unchanged. The retirements, withdrawal or expulsion and death of individual members does not affect the corporate existence of the trade union;

(iii) The trade union shall have a common seal after its registration;

(iv) The trade union is empowered to acquire and hold both movable and immovable property in its own name;

(v) By virtue of its legal personality, the trade union acquires power to contract in its own name;

(vi) The trade union, being a body corporate, can sue and be sued in its own name;

(vii) The registered trade union is granted immunity from criminal and civil liability in certain cases singled out under provisions of the IRO (section 17 and 18).

Chapter III

TRADE UNIONISM IN EPZ INDUSTRIES

Export Processing Zones (EPZ)

To assist establishment of export-oriented industries in furtherance of economic development, Export Processing Zones have been created under the Bangladesh Export Processing Zones Authority Act, 1980 where necessary infrastructural facilities including communication and utility connection have been provided. The Bangladesh Export Processing Zones Authority (BEPZA) approves all projects to be located in the EPZs. BEPZA (i) sanctions projects generally within one week; (ii) issues import/export permits; (iii) provides work permits for foreign nationals; (iv) provides required infrastructural facilities,; (v) provides utility services; (vi) offers one window same day service to the investors in the EPZs. BEPZA is vested with the responsibility to administer labour matters for all enterprises in EPZs. Law was initially made to forbid formation of any trade union in EPZs and strike by workers in EPZs was illegal.

Industries in the EPZs enjoy (i) tax holiday for 10 years; (ii) exemptions from income tax on interest on borrowed capital; (iii) relief from double taxation subject to bilateral agreement; (iv) complete exemptions from dividend tax for tax holiday period for foreign national; (v) duty free import of machinery, equipment, raw materials, materials for construction of factory building and (vi) duty free export of goods produced in the zones.

Industries in the zones also enjoy (i) freedom from national import policy restrictions, (ii) import of raw materials allowed on Documentary Acceptance (DA) basis; (iii) advantages of opening back to back L/C for certain types of industries for import of raw materials; (iv) import of goods from the Domestic Tariff Area (DTA) permissible; (v) enterprises can sell 100% of their product to the DTA on payment of duties and taxes under certain conditions.

Trade Unionism in EPZ areas

Section 11A of the Export Processing Zones Act, 1980 which was inserted in 1984 provides for power to exempt such zones from operation of certain laws. It states that the Government may, by notification exempt a zone from the operation of all or any of the provisions of some enactments. Under the authority of this section the Government exempted the operation of the Industrial Relations Ordinance, 1969 which is the law dealing with forming and operating trade unions and Collective Bargaining Agents. As a result, it is not legal to organize a labor union in the EPZ factories or establishments. However, the U.S. labor organization AFL-CIO petitioned the United States Trades Representative (USTR) to cancel the GSP (General System of Preferences) for Bangladesh on the grounds that the right to form a labor union (freedom of association) is denied to the workers in the EPZ in violation of the legal acceptance by Bangladesh of the right of workers to organize and bargain collectivity. As a result, Bangladesh Government has been under pressure to allow trade unionism in EPZ areas. There are arguments both for and against of trade unionism for workers in EPZ areas. First, at present there are 1,30,000 worker as labour force in EPZ areas. A recent survey of EPZ workers reveals the idea that workers in many establishments do not want trade unions[1]. Second, also the fact is that workers in the Zones are better paid and receive more benefits, than do workers in the domestic tariff area. This difference is estimated at about 25%. Third, the EPZs have been proved to be a great success for Bangladesh economy. Over the past several years export growth from the domestic tariff area has been 6.5% per annum while export growth from the EPZs has been growing at 23.8%.[2] There is a continuing significant inflow of foreign investment into the zones. The prospect for continued growth of exports from and foreign investment in the zone is very bright. Fourth, since most of the workers in the zones are not in favour of trade unionism, it is argued that application of trade unionism in zones would be a forced element into labour capital relationship in the zones. Fifth, two of the main reasons for trade unionism are (i) to bargain to establish wages, benefits, and working conditions for workers; and (ii) to insure that workers are treated fairly by the employers. To this end BEPZA has done two things: First it has specified the

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[1] Forest Cookson, *Trade Unionism in EPZs.*

[2] Ibid.

wages, working condition, and benefits i.e. taken up the first reason for a labor union. These rules are very favorable to the workers. Indeed they capture some of the surplus for the workers. Second, through its Industrial Relations Officers and more recently through Worker Welfare Committees (WWCs) it has provided a forum for resolution of disputes. The second activity is still developing but has made considerable progress[3]. Thus it is argued that there is little necessity for introduction of trade unionism in EPZ areas. There is wider public opinion against trade unionism in EPZ areas given the bitter and destructive experience of this culture in most government sectors.

However, the Government in line with the USTR demand issued a Gazette notification in 2001 which stated that the prohibitions on freedom of association would end at the start of 2004. Accordingly in 2004 the EPZ Workers Associations and Industrial Relations Act, 2004 has been passed by the Parliament of Bangladesh. The Act seems to have been a compromise between a competing interest for and against of trade unionism in EPZ industries. This is because of the following features of the Act:

(a) **Formation of Workers Association:** Every employer registered as a company with a separate certificate of incorporating and operating as such in a Zone shall have one Workers Association under it in that Zone. However, two or more industrial units in a Zone under an employer registered as a company shall be deemed to be one industrial unit for the purpose of this section (sec. 13(2)). Thus there is no scope for two trade unions in one establishment.

(b) **Requisition for formation of Association (sec. 14):**

(i) If the workers in an industrial unit situated within the territorial limits of a Zone intend to form an association, not less than 30% (thirty percent) of the eligible workers of the industrial unit shall apply in a prescribed form to the Executive Chairman demanding formation of a workers association.

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[3] Ibid.

(ii) Upon receipt of such application the Executive Chairman shall verify and ascertain that not less than 30% (thirty percent) of the eligible workers have subscribed to the application by signature or thumb impression.

(c) **Referendum to ascertain support for Association: (sec. 15)**

(i) If the Executive Chairman is satisfied that not less than 30% of the eligible workers have applied in prescribed forms demanding formation of association, he shall arrange to hold a referendum of the eligible workers of the industrial unit within the Zone, within a period not later than five days from the date of receipt of such application under sub-section (1) of section 14 to ascertain the support of the eligible workers in favour of formation of workers association.

(ii) If more than 50% (fifty percent) of the eligible workers do not cast votes, the referendum under this section shall be ineffective. Thus without the support of at least 50% workers no trade union can be formed. This condition is much improved compared to the condition of 30% under the Industrial Relations Ordinance, 1969.

(iii) If more than 50% (fifty percent) of the workers cast votes, and more than 50% (fifty percent) of the votes cast are in favour of formation of workers association, the workers in the said industrial unit shall, thereby, acquire the legitimate right to form an association under this Act; and the Executive Chairman shall be required to accord registration to that association within 25 (twenty five) working days of the date of the referendum.

(iv) The referendum shall be held through secret ballots and the Executive Chairman shall determine the necessary procedure in respect of holding of the referendum, if not, in the meantime, prescribed by regulations.

(d) **No further referendum in one year (sec. 16):** If in a referendum held under section 15, mandate cannot be obtained for formation of workers association, no further referendum shall be held for the same industrial unit until the expiry of one year since thereafter.

(e) **Registration of Association (sec. 22):** The Executive Chairman, on being satisfied that the workers association has complied with all the requirements of this Act and has been formed within the framework of the approved constitution, shall register the workers association in a prescribed register within a period of 10 days from the date of receipt of the application under section 20.

(f) **Restriction in respect of number of association (sec. 22)** There shall not be more than one workers association in an industrial unit in a Zone.

(g) **Collective Bargaining Agent (sec. 45):** The workers association registered under this Act in an industrial unit shall be the Collective Bargaining Agent (CBA) for that industrial unit.

Thus the Act has ensured the principle of one establishment, one trade union and one collective bargaining agent. The contents of the Act have been appended to the end of this book.

Chapter IV

COLLECTIVE BARGAINING

Beatrice Webb is said to have coined and used the term 'collective bargain' for the first time[1]. There is, in the expression 'collective bargaining', the idea of the workmen acting collectively. If an individual workman seeks employment, he must accept any terms upon which it is available, for he has not reserves at all and he will always a make a poor deal. However, the position is different if the same worker is one of a large group who are all united among themselves. Under such circumstances, workers will have prospect of better wages and greater security; it will govern all questions of conditions of work, hours of work, allowances, wages, work-load, retrenchment, holidays, health and hygiene etc. On the other hand, employers are also protected against unfair competition with each other in the matter of wages and other conditions of employment. Thus trade unionism or collective bargaining as opposed to freedom of contract theory helps both the employers and employees in developing industrial peace. It involves organised group relationships on both sides of the bargaining table rather than individual dealing. It is thus an institutionalised representative process.

The basic idea underlying the provisions of the Industrial Relations Ordinance, 1969 is to settle industrial disputes and to promote industrial peace and to establish a harmonious and cordial relationship between labour and capital by means of conciliation, mediation and adjudication. With this end in view different authorities under this Ordinance have been set out to resolve an industrial dispute. One of these authorities is Collective Bargaining Agent.

Definition:

The term 'collective bargaining' is normally means a method of fixing the terms and conditions of employment by means of bargaining between representatives of an organised body of employees and an association of employers. Collective bargaining agent therefore seems to be analogous to a trade union. However, as the expression has been used in the Ordinance, all trade unions are not CBA. The Encyclopedia Britannica defines 'collective

[1] *The Co-operative Movement in Great Britain* (1891).

bargaining' as 'negotiation between an employer or group of employers and a group of workpeople to reach agreement on working conditions. Thus collective bargaining implies community interest.

Section 2(v) of the Ordinance defines that collective bargaining agent in relation to an establishment or industry, means the trade union of workmen which, under section 22, is the agent of the workmen in the establishment or, as the case may be, industry in the matter of collective bargaining.

However, the Indian Supreme Court held in *Bank Employees Association v National Industrial Tribunal* (AIR 1962 SC 171) that although the object with which a trade union is formed may be collective bargaining, the right of collective bargaining is not included in the fundamental right to form an association or union, which is guaranteed as a fundamental right under Article 19(1)(c) of the Constitution.

This decision of the Indian Supreme Court has come under severe attacks. It is widely held view that collective bargaining is the object with which a trade union or association may be formed by workmen or employers, just as an association may be formed with a religious, cultural or educational object. In such cases to say that the right to achieve that object is not included in the freedom of association guaranteed by the constitution would be to render hollow and unmeaning the fundamental right guaranteed thereby.

The original section 2(iii) of the Ordinance provided for a definition of the term 'collective bargaining agreement' in the form of an agreement in writing relating to the terms of employment and conditions of work of workmen employed in an establishment or industry, which is arrived at between the employer of such workmen and a collective bargaining agent. However, this clause has been deleted by Ordinance No. xix of 1970.

Aspects of Collective Bargaining

There are three aspects of collective bargaining: (i) parties to collective bargaining; (ii) subject matter of collective bargaining; and (iii) objects of collective bargaining.

Parties: Collective bargaining involves two parties, namely, management represented either by alone or through Employers' Association or Federation of Employers on the one hand and workers represented either through a union or worker's federation, on the other hand. The latter one, where provisions exist under law are known as bargaining agent. These two parties

are directly involved in the process of collective bargaining. It has, however, been debated time and again that a representation of the public should also be included to represent the interest of public at bargaining table, but has not yet been used much.

Subject matter: The ILO has divided the subject matter of collective bargaining into two categories:

(a) Those which set standards of employment which are directly applicable to relations between an individual employer and worker; and

(b) Those which regulate the relations between the parties to the agreement themselves and have no bearing on individual relations between employers and workers[2].

The first category includes subjects like wages, working hours (including overtime), holidays with pay etc. The second category includes eight rights: (i) provisions for enforcement of collective bargaining; (ii) methods of settling individual disputes; (iii) collective disputes including grievance procedure and reference to conciliation and arbitration; (iv) recognition of a union as bargaining agent for workers; (v) giving of preference in recruitment to union members seeking employment; (vi) duration of the agreement; and (vii) procedures for negotiation of new agreement.

Objects: The International Confederation of Free Trade Union called collective bargaining as 'A Worker's Bill of Rights". It enumerated the following objects of the Union in collective bargaining:

(i) To establish and build up union recognition as an authority in the work place;

(ii) To raise worker's standard of living and win a better share in the work place;

(iii) To express in practical terms the workers' desire to be treated with due respect and to achieve democratic participation in decision affecting their working conditions;

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[2] International Labour Office, Collective Bargaining (a Worker's Education Manual), Geneva (1960), p.3.

(iv) To establish orderly practices for sharing in these decisions and to settle disputes which may arise in day-to-day life of the company;

(v) To achieve broad general objectives such as defending and promoting the worker's interests through out the country.

The ILO states the following with regard to objectives of a collective bargaining:

"In collective bargaining the object is to reach agreement on wages and other conditions of employment about which the parties begin with divergent viewpoints but try to reach a compromise. When a bargain is reached the terms of the agreement are put into effect."[3]

Origin of Collective Bargaining

The concept of collective bargaining is the off shoot of trade union activities. In the era of laissez faire, where employers (enjoyed unfettered right to hire and fire) had vastly superior bargaining power and were in a position to dominate over workmen in every conceivable way. Thus before the advent of collective bargaining era in the labour market, the labour was at a great disadvantage in obtaining reasonable terms for contract of service from his employer. Early history of collective bargaining and its continuing extension shows that it was met with opposition from employers due to two basic fears: the fear of encroachment upon prerogative of management and the inability of management of the long run costs and implications of the growth of collective bargaining[4]. But with the growth of Unionism and consciousness of the working class the trade agreements on collective basis have become a rule rather than exception.

The principle of collective bargaining has been recognised by the ILO. The Industrial Labour Conference held in 1951 adopted a resolution recommending collective agreements which provided that-

(i) Machinery appropriate to the conditions existing in each industry should be established by means of agreement or laws or regulations as may be appropriate under national conditions, to negotiate, conclude, revise and review collective agreements, or

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[3] International Labour Office, Collective Bargaining (a Worker's Education Manual), Geneva (1960), p.5.

[4] C. Wilson, Randle, Collective Bargaining: Principles and Practice, 8.

to be available to assist the parties in the negotiations, conclusions, revisions and renewal of collective agreements.

(ii) The organisation, method of operation and functions of such machinery should be established and functions of such machinery should be determined by agreements between the parties or by national laws, or regulations as may be appropriate under national conditions.

Purposes served by Collective Bargaining

The object of collective bargaining is invariably to harmonise labour relations, to promote industrial peace by creating conditions whereby labour and capital are put on equal footing, while negotiating with the employer.

Two important purposes are achieved generally by collective bargaining agreements. The parties undertake towards one another certain obligations and create a code for the trade. Whether the collective bargaining agreement expresses this or not, the trade union and employer or employer's association by signing the agreement undertake to keep the peace and not to resort to strikes or lock-outs for changing the agreed terms during the currency of the agreement. There is also implied undertaking to do their best to see that the terms agreed are applied by the employers and employees concerned. Thus, they act as parties to an agreement imposing natural obligations upon each other.

Secondly, collective bargaining has the effect of imposing a limit on the freedom of the employers to run their business as they think fit. These limits even though would be achieved by legislation are different, since they operate as voluntarily negotiated agreements. Collective bargaining is highlighted as 'self protection' to workers from two angles; first, it eliminates the competition which would otherwise exist among them to offer their services at a lower price than their fellow workers for getting employment; secondly, it enables workers in favourable conditions to compel their employers to consider wage improvements and other emoluments and finally collective bargaining protects labour against victimisation and favouritism of employers. Hence, it is something like a 'rule of law' in industrial relations.

Advantages and Disadvantages of Collective Bargaining

Collective bargaining has been preferred over compulsory adjudicatory system for its following advantages:

(i) It is system based on bipartite agreements, and as such, superior to any arrangement involving third party intervention in matters which essentially concern employer and employees[5].

(ii) Collective bargaining has merits in that it avoids unnecessary litigation, that parties themselves resolve their dispute and so it is more democratic. Hence, it results harmonious relationship between employer and workers, benefiting both. Collective bargaining is quick and it is efficient. It does not involve bitterness between the parties, unnecessary expenditure, unlike in the case of adjudication.

(iii) It gives workmen greater strength to providing means for the expert presentation of demands by skilled officials not dependent on the employer for their jobs.

(iv) A union has funds and means of obtaining information from outside and can secure for the support of their members.

Disadvantages:

(i) There are situations in which a serious strike and a prolonged strike simply cannot be tolerated[6].

(ii) There is a lack of representation of the public interest at the bargaining table. Consumers who are invariably affected by collective bargaining agreement are kept out of the bargaining table. Wage increase or other better amenities will add to the cost of production which will reflect upon the price of the commodity. Therefore, ultimately the consumers are the victims of many of collective bargaining agreements.

Enforcement of Collective Bargaining:

In England, collective bargaining agreement is treated as gentlemen's agreement. This means that the enforcement of the agreement depends on the good will of the parties. However, the Industrial Relations Ordinance, 1969 provides for enforcement of the agreement through labour courts and

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[5] International Labour Office, Collective Bargaining (a Worker's Education Manual), Geneva (1960), p.3.

[6] Bertram F. Willcox, *"A Sketch of the Federal Law of Labour in the United States,* Aligarh Law Journal, (1965) p. 39

labour appellate tribuanls. Thus unlike in the USA and UK, in Bangladesh and India collective bargaining agreements are forced to compulsory adjudication which is not in tune with industrial democracy. The IRO, in settling industrial disputes gives more emphasis on compulsory adjudication. This process saps the foundation of self-reliance of labour.

Immunities to Collective Bargaining Agent:

The IRO gives immunities a registered trade union or collective bargaining agent from civil and criminal liabilities for any act done in furtherance of a trade dispute. Section 17 of the Ordinance provides immunity to officers and members of a registered trade union or a collective bargaining agent from punishment under section 120B of the Penal Code, 1860 provided the agreement between the members is made in furtherance of the object specified in its constitution and such agreement is not an agreement to commit an offence or violate any law other than this Ordinance. Section 18 protects them from civil suits or other proceedings of a civil nature in respect of certain acts done in furtherance of industrial disputes.

Determination and Election of CBA

Section 22 of the IRO lays down two methods of determination or election of a CBA which are as follows:

A. Determination by operation of Law (Where there is only one registered Trade Union):

If there is only one registered trade union in an establishment or a group of establishments, that trade union shall be deemed to be collective bargaining agent for such establishment or group. However, the condition is that that trade union must have as its members not less than one-third of the total number of workmen employed in such establishment or group of establishments (Section 22(1)).

B. Determination by Registrar in Secret Ballot (Where there is more than one registered Trade Union):

Where there are more registered trade unions than one in an establishment or a group of establishments, the following procedure has to be followed:

(i) Any such trade union can make application to the Registrar;

(ii) The trade union must have as its members not less than one-third of the total number of workmen employed in such establishment or group of establishments;

(iii) The Registrar shall hold a secret ballot to determine as to which one of such trade unions shall be the collective bargaining agent for the establishment or group;

(iv) A trade union to be elected as a CBA for an establishment or group of establishments must receive votes not less than one-third of the total number of workmen employed in such establishment or group.

Registrar's Duties with regard to determination of CBA:

(i) Upon receipt of an application under sub-section (2) of section 22, the Registrar shall, by notice in writing, call upon every registered trade union in the establishment or group of establishments to which the application relates to indicate, within the time specified in the notice, whether it desires to be a contestant in the secret ballot to be held for determining the collective bargaining agent in relation to the establishment or group of establishments;

(ii) If a trade union fails to indicate, within the time specified in the notice, its desire to be a contestant in the secret ballot, it shall be presumed that it shall not be a contestant in such ballot;

(iii) On receipt of the list of workers from the employer, the Registrar shall send a copy of the list to each of the contesting trade unions and shall also affix a copy thereof in a conspicuous part of his office and another copy of the list in a conspicuous part of the establishment concerned, together with a notice inviting objections, if any, to be submitted to him within such time as may be specified by him;

(iv) The objection if any, received by the Registrar within the specified time shall be disposed of by him after such enquiry as he deems necessary;

(v) The Registrar shall make such amendments, alterations or modifications in the list of workers submitted by the employer as may be required by any decision given by him on objections under sub-section (6A);

(vi) After amendments, alterations or modifications, if any, made under sub-section (6B), or where no objections are received by the Registrar within the specified time, the Registrar shall prepare a list of workers employed in the establishment concerned and send copies thereof to the employer and each of the contesting trade unions at least four days prior to the date fixed for the poll;

(vii) The list of workers prepared under sub-section (6C) shall be deemed to be the list of voters, and every worker whose name appears in that list shall be entitled to vote in the poll to determine the collective bargaining agent;

(viii) For the purpose of holding secret ballot to determine the collective bargaining agent, the Registrar shall-

(a) fix the date for the poll and intimate the same to each to the contesting trade unions and also to every employer;

(b) on the date fixed for the poll to place in the polling station set up for the purpose the ballot boxes which shall be sealed in the presence of the representatives of the contesting trade unions as to receive the ballot papers;

(c) conduct the poll at the polling stations at which the representatives of the contesting trade unions shall have the right to be present;

(d) after the conclusion of the poll and in the presence of such of the representatives of the contesting trade unions as may be present, open the ballot boxes and count the votes; and

(e) After the conclusion of the count, declare the trade union which has received the highest number of votes to be the collective bargaining agent.

Employer's Duties with regard to determination of CBA:

Section 22(5) specifies that every employer shall-

(i) on being so required by the Registrar, submit to the Registrar a list of all workers employed in the establishment, excluding those whose period of employment in the establishment is less than three months or who are casual or *badli* workers, showing in

respect of each worker his parentage, age, the section or department and the place in which he is employed, his ticket number and the date of his employment, in the establishment, and also as many copies of such list as may be demanded by the Registrar;

(ii) provide such facilities for verification of the list submitted by him as the Registrar may require;

(iii) Every employer shall provide all such facilities in his establishment as may be required by the Registrar for the conduct of the poll but shall not interfere with or in any way, influence, the voting.

Trade Unions' Duties:

(i) To co-operate the Registrar in all manners as mentioned in paragraph C above.

(ii) No person shall canvas for vote within a radius of fifty yards of the polling stations.

C. Collective Bargaining Agent for institutions with more than one Establishment: Section 22A provides the following rules with regard to collective bargaining agent for institutions with more than one establishment. Any registered trade union by fulfilling the following conditions can be elected as the CBA for all the establishments of the same employer:

(i) Applications must be made to the Registrar for being declared as CBA for all the establishments of the industry;

(ii) The applicant trade union must have as its members not less than one-third of the total member of workmen employed in each establishment of the industry;

(iii) The application must be signed by the President and the Secretary of the Trade Union;

(iv) The Registrar shall reject the application if it is found on enquiry that the registered trade union has got its members less than one-third of the total number of workmen in any of the establishments of the industry for which the application is made for the determination of CBA;

(v) The Registrar shall upon secret ballot determine the CBA for al the establishments;

(vi) The procedure of election shall be same as mentioned in section 22 above;

(vii) The votes received by the CBA must not be less than one-third of the number of workmen employed in such establishment or group of establishments;

(viii) Where CBA has been determined under section 22A, no other trade union declared as CBA under section 22 in individual establishment of the same employer is competent to undertake collective bargaining in any such establishment, i.e, it ceases to be the CBA.

Rights, Position, Powers and Functions of a Collective Bargaining Agent

1. A collective bargaining agent may, without prejudice to its own position, implead as a party to any proceedings under this Ordinance to which it is itself a party any federation of trade unions of which it is a member (Section 22(11)).

2. A registered trade union is determined as collective bargaining agent for an establishment or group of establishment for a period of two years from the date of such declaration.

3. The collective bargaining agent in relation to an establishment or group of establishments shall be entitled to-

(a) undertake collective bargaining with the employer or employers on matters connected with employment, non-employment, the term of employment or the conditions of work;

(b) represent all or any of the workmen in any proceedings;

(c) give notice of, and declare, a strike in accordance with the provisions of this Ordinance; and

(d) nominate representatives of workmen on the Board of Trustees of Participation Fund established under the Companies Profits (Workers' Participation) Act, 1968 (XII of 1968) (Section 22(12)).

4. Under section 43 industrial disputes can only be raised by the CBA on behalf of workers.

5. Immunity from criminal and civil suit in certain circumstances; As mentioned above.

Check-off

Check-off is a system whereby an employer deducts union membership fees from an employee's wages during the calculation of those wages and pays them to over to the union. Rules relating to check-off are detailed in section 23 of the IRO which are as follows:

(1) If a collective bargaining agent so requests, the employer of the workmen who are members of a trade union shall deduct from the wages of the workmen such amounts towards their subscription to the funds of the trade union as may be specified, with the approval of each individual workman named in the demand statement furnished by the trade union.

(2) An employer making any deduction from the wages under sub-section (1) shall, within 15 days of the end of the period form the wages for which the deductions have been made deposit the entire amount so deducted by him in the account of the trade union on whose behalf he has made the deductions.

(3) The employer shall provide facilities to the collective bargaining agent for ascertaining whether deductions from the wages of its members are being made under sub-section (1) .

Judicial Response to Check-off:

Judicial policy to strengthen the hands of trade unions by allowing union subscription to be deducted by employer is evident from the judgment in *Balmer Lawrie Worker's Union v Balmer Lowery & Co. Ltd* (1985) Lab. IC 242). The Supreme Court examined the validity of a clause of settlement between employer and a representative union which authorised employer to deduct 15 percent of gross arrears payable to workmen towards union fund. Upholding the validity of the clause the court observed:

> "It is well known that no deduction could be made from the wages and salary payable to a workman governed by the Payment of Wages Act unless authorised by that Act. A settlement arrived at on consent of parties can however be permitted as it is the outcome of understanding between the parties even though such deduction may not be authorised or legally permissible under the Payment of Wages Act.....Such deductions can neither be said to be compulsory exaction nor tax. Therefore such a provisions of deduction at a certain rate as agreed between the parties for payment to the union, the same being with the consent and as part of overall settlement would neither be improper nor impossible nor illegal."

The court also rejected the contention that by permitting deductions towards union fund of one union the management discriminated between union and union, and between members of the union and non-members and thereby violated Article 14 of the Indian Constitution.

Unfair Labour Practice

The expression 'unfair labour practice' has not been exhaustively defined in the Act. It has also not been defined in any of the Indian legislation. In the absence of any enforced statutory definition the courts have tried to fill this gap. The judicial interpretation of the expression 'unfair labour practice' has given rise to two main views, namely, the narrow and the extensive. In narrower sense the expression 'unfair labour practice' is confined to trade union activity. The problem of this narrower interpretation is that this interpretation limits the scope of Tribunal's jurisdiction to intervene only in cases where the management has dismissed or discharged workmen for the trade union activities. According to extensive or wider view, unfair labour practice means more than mere trade union activities. The court held that unfair labour practice means any order made in bad faith with an ulterior motive arbitrarily or with harshness (*Alexandra Jute Mills Ltd v Their Workmen* (1950)1 LLJ 1261). Thus all sorts of victimisation would be covered within the definition of unfair labour practice.

Unfair Labour Practice under the IRO

The IRO has divided the expression 'unfair labour practice' into two classes: unfair labour practice on the part of the employees and unfair labour practice on the part of the employers.

Unfair Labour Practices on the part of Employers

Section 15 of the IRO lists the activities which would be considered unfair labour practice on the part of the employees. These are as follows:

(1) No employer or trade union of employers and no person acting on behalf of either shall–

(a) impose any condition in a contract of employment seeking to restrain the right of a person who is a party to such contract to join a trade union or continue his membership of a trade union; or

(b) refuse to employ or refuse to continue to employ any person on the ground that such person is, or is not, member or officer of a trade union; or

(c) discriminate against any person in regard to any employment, promotion, condition of employment or working condition on the ground that such person is, or is not, a member or officer of a trade union; or

(d) dismiss, discharge, remove from employment or threaten to dismiss, discharge or remove from employment a workman or a injure or threaten to injure him in respect of his employment by reason that the workman-

(i) is or proposes to become, or seeks to persuade any other person to become, a member or officer of a trade union; or

(ii) participates in the promotion, formation or activities of a trade union;

(e) induce any person to refrain from becoming, or to cease to be a member or officer of a trade union, by conferring or offering to confer any advantage on, or by procuring or offering to procure any advantage for such person or any other person;

(f) compel any officer of the collective bargaining agent to sign a memorandum of settlement by using intimidation, coercion, pressure, threat, confinement to a place physical injury, disconnection of water, power and telephone facilities and such other methods;

(g) interfere with, or in any way influence the balloting provided for in section 22; or

(h) recruit any new workman during the period of strike under section 28 or during the currency of a strike which is not illegal except where the conciliator has, being satisfied that complete cessation of work is likely to cause serious damage to the machinery or installation, permitted temporary employment of a limited number of workmen in the section the damage is likely to occur.

(2) Nothing in sub-section (1) shall be deemed to preclude an employer, from requiring that a person upon his appointment or promotion to managerial position shall cease to be, and shall be disqualified from being, a member or officer of a trade union of workmen.

Unfair Labour Practices on the part of Workmen

Section 16 lays down activities which are regarded as unfair labour practice on the part of the employees. These are as follows:

(1) No workman or trade union of workmen and no person acting on behalf of such trade union shall-

(a) persuade a workman to join or refrain from joining a trade union during working hours; or

(b) intimidate any person to become, or refrain from becoming, or to continue to be, or to cease to be a member or officer of a trade union; or

(c) induce any person to refrain from becoming, or cease to be a member or officer of a trade union, by conferring or offering to

confer any advantage on, or by procuring or offering to procure any advantage for, such person or any other person; or

(d) compel or attempt to compel the employer to sign a memorandum of settlement by using intimidation, coercion, pressure, threat, confinement to a place, physical injury, disconnection of telephone, water and power facilities and such other methods; or

(e) compel or attempt to compel any workman to pay, or refrain from paying, any subscription towards the fund of any trade union by using intimidation, coercion, pressure, threat, confinement to a place, physical injury, disconnection of telephone, water and power facilities and such other methods.

(2) It shall be an unfair practice for a trade union to interfere with a ballot held under section 22 by the exercise of undue influence, intimidation, impersonation or bribery through its executive or through any person acting on its behalf.

Penalty for Unfair Labour Practices

The substantive provisions of unfair labour practice have been detailed in section 15. However, penal provisions of the same have been detailed in section 53 which are as follows:

(1) Whoever contravenes the provisions of section 15 shall be punishable with imprisonment which may extend to one year, or with fine which may extend to five thousand Taka or with both.

(2) Any workman who contravenes the provisions of section 16, shall be punishable with imprisonment which may extend to six months, or with fine which may extend to two hundred Taka, or with both.

(3) A trade union or person other than a workman which or who contravenes the provisions of section 16 shall be punishable with

imprisonment which may extend to one year, or with fine which may extend to two thousand Taka, or with both.

Victimisation and Unfair Labour Practice

Victimisation and unfair labour practice are like "twins who cling together". Some hold the view that unfair labour practice may stand by itself but victimisation must always keep company with unfair labour practice. The dividing line between victimisation and unfair labour practice is very thin and what is unfair labour practice may also be victimisation and *vice versa (Everyda Flassh Light Co. v Labour Court* (1962) 2 LLJ 204).

Like the term 'unfair labour practice' the word 'victimisation' has not been defined anywhere in the Ordinance. However, the court has had occasions to define the term. In *Bharat Iron Works v Bhagubhai* (AIR 1976 SC 98) the Indian Supreme Court held that a person is victimised if he is subjected to persecution, prosecution or punishment for no real fault or guilt of his own, in the manner, as it were sacrificial victim. The Supreme Court also held that victimisation may partake various types. For example, pressurising an employee to leave the union or union activities; treating an employee unequally or in an obviously discriminatory manner for the sole reason of his connection with union or his particular union activity; inflicting a grossly monstrous punishment which no rational person impose upon an employee and the like. In *Hind Construction and Engineering Co. Ltd. v Their Workmen* (1965) I LLJ 462 (SC) the Indian Supreme Court held that "when the punishment is shockingly disproportionate, regard being had to the particular conduct and the past record or is such that no reasonable employer would ever impose it in like circumstances, the tribunal may treat the imposition of such punishment as itself showing victimisation or unfair labour practice.

Chapter V

STRIKES AND LOCK-OUTS

Strikes and lock-outs are two powerful weapons in the hands of the workers and employers respectively to settle industrial disputes. When workers fail to secure a redressal of their grievances and fulfillment of their demands by peaceful negotiations with the employer, they try to force the employer to come to a settlement by temporarily withdrawing their services in the form of a strike. Thus strike is a cessation or refusal to work as a concerted action for the purpose of enforcing an industrial demand by the workers (*Tata Iron and Steel Co. v Its Workmen* (1967) 1 LLJ 38). There can be no strike if there is no cessation of work. The duration of cessation is immaterial. Cessation even for half an hour amounts to a strike. Mere absence from work is not enough but there must be concerted refusal to work to constitute a strike.

Definition of Strike under the IRO:

'Strike' has been defined in section 2(xxv). It means any of the following act:

(i) a cessation of work by a body or persons employed in any establishment acting in combination;

(ii) a concerted refusal of any number of persons who are or have been so employed to continue to work or to accept employment;

(iii) a refusal under a common understanding of any number of such person to continue to work or to accept employment.

From the above definition it is clear that certain factors must exist in a strike. First, there must be absence from work by the workmen either in a body or in a group. Alternatively, the workmen may refuse to work when they are demanded to work which they are under legal or contractual obligation to discharge for the employer. Secondly, this cessation or refusal of work is voiced either in concerted form of all workmen or in a group of workmen.

Mere absence from work on personal ground does not amount to cessation or refusal. There must be a minimum premeditation or plan to cease or refuse to work in a body or group of workmen.

Strike is a powerful and effective weapon in the armory of workmen which is used as a last resort in the warfare with the employers to concede to their demands. But law provides fetters on application of this weapon recklessly to jeopardise the economic, social and political interests of the country. Strike, therefore, may be of both legal and illegal.

Is Strike a Fundamental Right?

The Indian Supreme Court held in *Kameswar Prasad v State of Bihar* (AIR 1962 SC 1166) that there is no fundamental right to strike. The Bihar Government Service Conduct Rules prohibiting strikes and demonstrations were challenged on the ground of infringement of the rights guaranteed under Article 19(1)(a)(b) snd (c). The Court held that even though the right to demonstration is guaranteed, the rules prohibiting strike cannot be attacked under Article 19. Though strike is not a fundamental right, yet it is recognised as an ordinary right of social importance to the working class to ventilate their grievances and thereby resolve industrial disputes.

Types of Strikes:

There are mainly four kinds of strikes which can be classified as under:

(i) General Strikes;

(ii) Stay-in, sit-in, tool down, or pen down strikes;

(iii) Go slow strike; and

(iv) Sympathetic strike.

General Strikes: A general strike is one where the workmen join together for a common cause and stay away from work as a mark of protest, thus depriving the employer of their labour to run the industry. In such form of strike the collective action is taken by the workmen to negotiate the settlement of dispute. The common forms of such strikes are organised by central unions like *hartal, bundhs* etc.

Stay-in, Sit-in, Tool down, or Pen down Strikes: These are some forms of strikes resorted to by the workmen under different circumstances. Here the workmen enter the place of work but do not do any work. They simply occupy their place or work and either stay in or sit down. The employer is not allowed to carry on his business. Similarly, when workers

refuse to work with their tools it is known as tool down strike; if clerical workers then it is known as pen down strike.

Go-slow Strike: Go-slow strike occurs when workers attend to their work but do it slowly with a view to lowering down the production and thereby causing loss to the employer. This may cause heavy loss to the employer. Go-slow is a form of strike recognised under the USA law but this is not covered by the definition under the IRO. This is because there is no cessation of work by the workers. It has been held in *V.G.M Rao v Gujrat Works Limited* ((1956) II LLJ 731 (Lat)) that a go-slow strike amounts to a serious misconduct as it causes financial injury to the employer. The Supreme Court in *Bharat Sugar Mills Ltd v Jain Singh* ((1961) II LLJ 644 (SC)) held that go-slow is a serious type of misconduct.

Sympathetic Strike: A sympathetic strike is called for the purpose of indirectly aiding others. The striking employees having no demand or grievance of their own and the strike having no direct relation to the advancement of the interests of the strikers. Such strike is unjustifiable intereference on the right of the employers and therefore unlawful. In *Kambalingam v India Metal and Mettallurgical Corporation, Madras* ((1964) I LLJ 81) the Indian Supreme Court held that when the workers in concert absent themselves out of sympathy to some cause wholly unrelated to their employment or even in regard to condition of employment of other workers in service under other management, such absence could not be held to be strike, as the essential element of the intention to use it against the management is absent. The management would be entitled to take disciplinary proceeding against the workmen for their absence on the ground of breach of condition of service.

Lock-Out

The commonest and the widely recognised weapon of the employer in his economic struggle with labour is 'lock out'. It is a temporary closure of the place of business by the employer to bring pressure on his workmen to accept his terms. 'Lock-out' has been defined in section 2(xvi) of the Industrial Relations Ordinance, 1969. It means-

(i) closing of a place of employment or part of such place; or

(ii) suspension, wholly or partly, of work by an employer; or

(iii) refusal, absolute or conditional, by an employer to continue to employ any number of workmen employed by him..

However, such closure, suspension or refusal must occur in connection with an industrial dispute or is intended for the purpose of compelling workmen employed to accept certain terms and conditions of or affecting employment.

Thus it is clear that lock-out must be in connection with an industrial dispute or intended to compel the employees to accept certain terms and conditions of employment. If it is in some other connection such as lack of raw materials it is not lock-out.

Lock-out is a crude device adopted by an employer. This weapon is used from the armory of the employer when it cannot accept the demands of workmen or when an amicable settlement between the employer and the workman fails on a crucial issue.

A lock-out is generally intended to put pressure on the workers so that they may agree to the terms of work of the employer. However, that does not mean that lock-out is always a torture on the worker. It is sometimes a legal measure.

A lock-out therefore can be of two types: legal lock-out and illegal lock-out. A lock-out is legal when it is authorised under the law. And it is illegal when it is declared, commenced or continued otherwise than in accordance with the provisions of the IRO.

Distinction between Lock-out and Closure:

Closure and lock-out have some features which so resemble that both concepts are confused. However, the following are the distinguishing features:

(i) In closure there is severance of employment relationship while in lock-out there is no severance of such relationship but there is only suspension.;

(ii) In closure the employer closes down or winds up his business permanently and irrevocably. But in lock-out the place of business alone is closed while the business continues. Lock-out occurs in a continuing business;

(iii) Lock-out is a weapon in the hands of the employer to compel the employees to accept his proposals, whereas closure is a

matter of policy of the employer as to whether he should run or not the business;

(iv) Lock-out is caused by the existence or apprehension of an industrial dispute. A closure need not be in consequence of an industrial dispute;

(v) A lock-out which is legal and justified does not involve payment of wages or compensation. But a closure of the business entitles the workers with closure compensation in some cases.

When strike or lock-out, as the case may be, can be declared legally:

(i) In case of an apprehended dispute it is obligatory to arrange a meeting within 10 days on receipt of views of the employer or the CBA under section 26.

(ii) If the parties fail to reach a settlement by negotiation under section 26 any of them can report it to the conciliator under section 27A.

(iii) If the conciliator fails to settle the dispute within 10 days, the CBA or the employers may serve on the other party to the dispute 21 days notice of strike or lock-out as the case may be. However, the condition is that no CBA shall serve any notice of strike unless ¾ of its members have given their consent to it through a secret ballot held for the purpose.

(iv) Even after a notice of strike or lock-out has been served, the conciliation proceeding will go on. If conciliation within the period of notice fails, an arbitrator can be appointed by mutual consent of the parties (section 3[illegible]).

(v) If the conciliation proceeding fails and the party does not agree to refer to an arbitrator the workmen under section 32 may go on strike or as the case may be, the employer may declare lock-out on the expiry of the period of notice (section 32).

(vi) If the strike or lock-out lasts for more than 30 days, the Government may, by order in writing prohibit the strike or lock-out (section 32).

(vii) Again, the Government may by order in writing prohibit strike or lock-out at anytime before the expiry of 30 days if it is

satisfied that the continuance of such strike or lock-out is causing serious hardship to the community or is prejudicial to the community or is prejudicial to the national interest. However, in such a case of prohibition the Government must refer the matter to the Labour Court.

Strike or Lock-out in Public Utility Services:

Under section 33 in the case of any of the public utility services, the Government may by order in writing, prohibit a strike or lock-out at any time before or after the commencement of the strike or lock-out. However, when this is done, the dispute has to be referred to Labour Court simultaneously for an award.

Prohibition on serving notice of strike or lock-out while proceedings pending: Section 44 prescribes that no notice of strike or lock-out shall be served by any party to an industrial dispute while any conciliation proceeding or proceedings under sub-section (3) of section 38 are or is pending in respect of any matter constituting such industrial dispute.

Power of labour Court and Tribunal to prohibit strike, etc: Section 45 postulates the following rules as to prohibition of strike by the Labour Court or Tribuanl:

(1) When strike or lock-out in pursuance of an industrial dispute has already commenced and is in existence at the time when, in respect of such industrial dispute, there is made to or is pending before, a Labour Court an application under section 34, the Labour Court may, by an order in writing, prohibit continuance of the strike or lock-out.

(2) When an appeal in respect of any matter arising out of an industrial dispute is preferred to a Tribunal under section 38, the Tribunal may, by an order in writing prohibit continuance of any strike or lock-out in pursuance of such industrial dispute which had already commenced and was in existence on the date on which the appeal was preferred.

Illegal strikes and lock-out

Section 2(xi) defines that "illegal lock-out" means a lock-out declared, commenced or continued otherwise than in accordance with the provisions of this Ordinance. On the other hand, Section 2(xii) provides that "illegal

strike" means a strike declared, commenced or continued otherwise than in accordance with the provisions of this Ordinance.

When a Strike or Lock-out shall be Illegal:

All strikes or lock-out are not illegal. A strike or lock-out will be illegal only if it contravenes the mandatory provisions of section 46 which provides rules for illegal strikes and lock-out. These are as follows:

(1) A strike or lock-out shall be illegal if--

(a) it is declared, commenced or continued without giving to the other party to the dispute, in the prescribed manner, a notice of strike or lock-out or before the date of strike or lock-out specified in such notice, or in contravention of section 44; or

(b) it is declared, commenced or continued in consequence of an industrial dispute raised in a manner other than that provided in section 43; or

(c) it is continued in contravention of an order made under section 32, section 33 or section 45 ; or

(d) it is declared, commenced or continued during the period in which a settlement or award is in operation in respect of any of the matters covered by a settlement or award.

(2) A lock-out declared in consequence of an illegal strike and a strike declared in consequence of an illegal lock-out shall not be deemed to be illegal.

Impact of Illegal Strike and Illegal lock-out

1. **Wages during illegal Strike:** The Indian Supreme Court held in *Chandramalai Estate v Their Workmen* ((1960) II LLJ 244 (SC)) that even though a strike is a legitimate and sometimes inevitable weapon in the hands of the labour, it is equally important that the indiscriminate and hasty use of this weapon will not be encouraged. If the strike is unjustified, no wages should be declared to be paid. It has been held by the Supreme Court in another case (*Canara Bank v Jambunathan*, AIR 1995 SC 319) that in order to entitle the workmen to wages for the period of strike, the strike should be legal as well as justified. A strike is legal if it does not violate any provisions of the Ordinance. A strike is unjustified

when if the reasons for it are entirely perverse or unreasonable. The use of force or violence or acts of subotage resorted to by the workmen during a strike disentitles them to wages for the strike period.

2. **Trade Union immunities and illegal strikes:** The Indian Supreme Court also held that illegality or unjustifiability or unreasonableness of the strike will not deprive the labour union of its immunities granted by the Trade Union Act (IRO) (*Rohtas Industries Ltd. v Rohtas Industries Staff Union* (AIR 1976 SC 425))

3. **Whether Workers are entitled to wages during illegal lock-out:** In *Krishna Sugar Mills v State of U.P.* (1964 II LLJ 76) the mill was closed for two days consequent to the alleged assault of officers by some workmen who created a panicky situation. The Allabahad High Court held that the lock-out may be sometimes not at all connected with economic demands; it may be resorted to as a security measure. In this case such a lock-out was declared without giving any notice as was required. It was also unjustified on the ground that it was a retaliatory measure. So the Company was liable to pay wages during the lock-out period.

4. **Can the Employer dispense with the service of workers consequent to a strike?:** The employer-employee relationship is not terminated by participation in strike or by declaration of lock-out. The purpose of strike is to redress the legitimate grievance of the strikers. This right is recognised by the law and violation of this right cannot put an end to the contract of employment by an unilateral process. In *Swadeshi Industries v Workmen* ((1960) II LLJ 539 SC) the Company's textile mills workers resorted to strike. Consequently, the company terminated the services of all the strikers. Later after resumption of work the company employed all of them except 33 strikers. The Supreme Court ordered reinstatement of all the 230 workers holding that the strike for increase in pay, D.A., bonus etc. was legal and justified. So the primary object for the strike was not for any ulterior purpose.

5. **Disciplinary action against striking workmen:** Normally participation in illegal strike amounts to misconduct on the part of the workmen for which even punishment of dismissal can be given. Whether the employer is free to inflict dismissal punishment in such cases is a matter of judicial controversy. In *Model Mills Ltd. v Dhermodas* (1958 I LLJ 539 SC) the Supreme Court upheld the right of employer to dismiss from services the workmen participating in illegal strike under the standing orders of the company. But in a subsequent case, *Indian General Navigation and Railway Company v Their Workmen* (AIR 1960 SC 219) the Supreme Court held that the mere taking part in an illegal strike without anything further would not justify the dismissal of all the workmen taking part in the strike.

Penalty for illegal strike or lock-out

In the process of collective bargaining the right of workmen to go on strike and the right of the employer to declare lock-out in the establishment are the legitimate weapons which are given legal recognition under the modern industrial law. However, in order to put a check to the chaotic conditions the modern industrial legislation has regulated these rights in order to achieve the goal of harmonious industrial relations between the workmen and the employers. With that end in view the IRO has provided for certain penalties which can be imposed upon defaulting workmen and employers who resort to illegal strike or lock-out. The intention of the law makers in this regard is to allow these weapons to be made use of only as a last resort to resolve a dispute by means of conciliation, arbitration or compulsory adjudication for which ample provisions have been made in the Ordinance. General provisions are laid down by the Ordinance for punishing the guilty persons who deliberately contravene the provisions of the Ordinance by resorting to illegal strikes or lock-out in complete disregard to the general social interest of the public at large. Section 57 of the Ordinance, therefore, provides for penal sanctions when the weapons of strike or lock-out are misused under the provision of the IRO. Section 57 lays down the following rules as to the penalty for illegal strike or lock-out:

(1) Any workman who commences, continues or otherwise acts in furtherance of an illegal strike shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to two hundred Taka, or with both.

(2) Any employer who commences, continues or otherwise acts in furtherance of an illegal lock-out shall be punishable with imprisonment for a term which may extend to one year or with fine which may extend to five thousand Taka, or with both, and, in the case of a continuing offence with a further fine which may extend to two hundred Taka, for everyday everyday after the first day during which the offence continues.

Penalty for instigating illegal strike or lock-out

It is not only commencing and continuing an illegal strike and lock-out which have been made punishable but punishment for instigating or inciting strikes or lock-outs is also made punishable offence under the IRO. Section 57 also provides for rules regarding instigation of illegal strike or lock-out which is as follows:

Whoever instigates or incites others to take part in, or expends or supplies money or otherwise acts in furtherance or support of an illegal strike or an illegal lock-out, shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to one thousand Taka, or with both.

Penalty for taking part in or instigating Go-slow

The explanation of section 59 provides a definition of the term 'go slow'. It states that "go-slow" means an orginised deliberate and purposeful slowing down of normal output of work by a body of workmen acting in a concerted manner, but does not include the slowing down of normal output of work which is due to mechanical defect, break-down of machinery, failure or defect in power supply or in the supply of normal material and spare parts of machinery.

Punishment for Go-slow

Section 59 provides that whoever takes part in, or instigates or incites others to take part in, or otherwise acts in furtherance of, a go-slow shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to five hundred Taka, or with both.

Chapter VI

INDUSTRIAL DISPUTES AND THEIR SETTLEMENT

Industrial relations

Industrial dispute is one of the outcomes of industrial relations. "Industrial relations" describe "relationship between management and employees or among employees and their organisations, that characterise or grow out of employment."[1] In order that the term 'industrial relations' could cover every sector of the labour force in all parts of the world, the International Institute of Labour Studies has defined it as "social relations in production." The modern industrial organisation is based upon two large aggregates: (i) accumulation and aggregation of large capital, i.e. capital; and (ii) aggregation of a large number of workers or labour organised under trade unions, i.e. labour. The interaction between the two is the subject matter of industrial relations. This interaction is manifested in two aspects: (i) cooperation, and (ii) conflict among labour and capital. The cooperation between the two is a basic requirement for the functioning of modern industries and growth of industrialisation. Cooperation is the normal feature of industrial relations. However, this cooperation flows from the pursuit of self-interests both by the owners of capital, (i.e. the owner of the industry and its management) and owners of labour (workers). The owners of capital have interest over quick and effective production and the labour have the interest over their wages, working hours and other facilities at the cost of their service they provide for production. Thus there is a fair degree of give and take and serving of mutual interests which is at the base of cooperation between them. This give and take interaction, when face strains, give rise to conflicts between the two groups. These conflicts are known as industrial disputes. Industrial disputes may take as many forms as there are points of contact between management and labour. For the convenience of understanding they may be categorised into three heads: Economic, Institutional and Psychological[2] as described in the diagram below.

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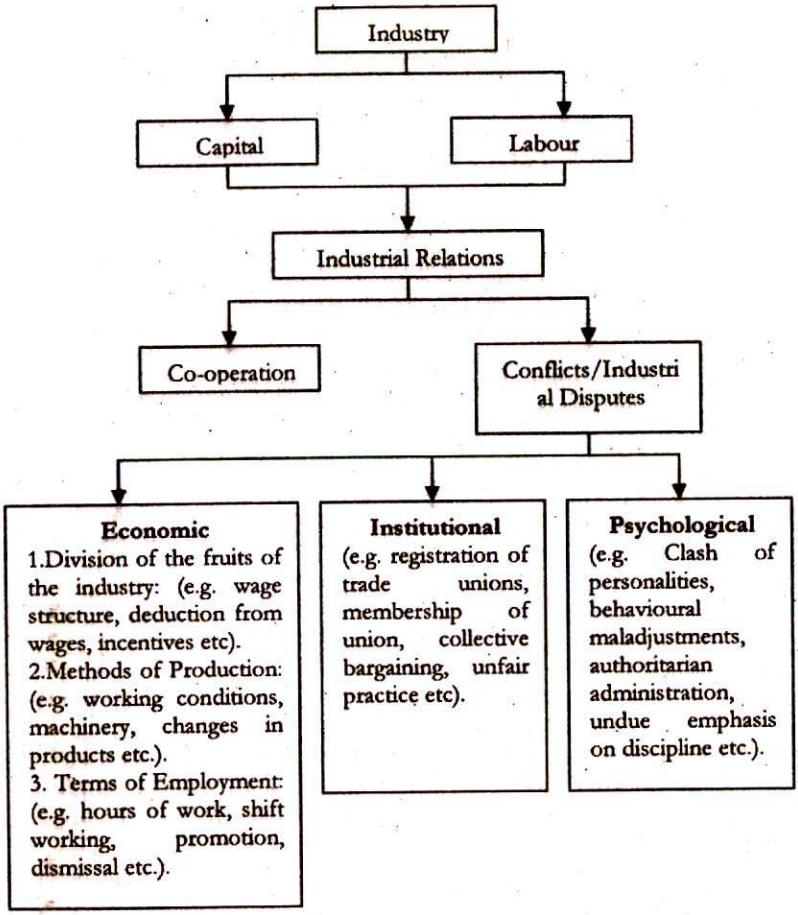
[1] Dale Yoder, quoted in *Industrial Relations and Labour Legislation*, G.P. Sinha, p. 229.
[2] ibid.



The basic idea underlying the provisions of the Industrial Relations Ordinance, 1969 is to settle industrial disputes and to promote industrial peace and to establish a harmonious and cordial relationship between labour and capital by means of conciliation, mediation and adjudication. With this end in view different authorities under this Ordinance have been set out to resolve an industrial dispute. The Ordinance has streamlined for some non-adjudicatory as well as adjudicatory authorities. Non-adjudicatory authorities include Participation Committee, Conciliator and Arbitrator while

adjudicatory (judicial) authorities include Labour Court, Labour Appellate Tribunal etc.

Industrial Disputes

Section 2(xiii) of the IRO defines the term 'industrial dispute' as any dispute or difference between employers and employers or between employers and workmen or between workmen and workmen which is connected with the employment or non-employment or the terms of employment or the conditions of work of any person.

The dimensions of the aforesaid definition determine the permissible area of both community interventions in industrial relations, individual dispute in industrial relations as well as labour activity. However, the definition contains two limitations: first, this is not any dispute; it relates to only disputes relating to an industry; second, the definition states that not all disputes but only those which bear upon the relationship of employers and workmen and terms of employment and conditions of labour.

The definition of industrial dispute may be analysed into three heads:

(i) **Factum of industrial dispute:** The existence of a dispute or difference is the key to the expression 'industrial dispute'. The expression 'dispute or difference' connotes a real and substantial difference having some element of persistency and continuity till resolved.

(ii) **Parties to the Dispute:** In order to fall within the definition of an 'industrial dispute' the dispute must be between: (i) employers and employers, or (ii) employers and workmen, or (iii) workmen and workmen. Trade union as such is not mentioned in the definition of 'industrial dispute' because they act on behalf of the workmen and, therefore, when a trade union raises a dispute, the workmen are deemed to be parties to the dispute (*Madras Gymkhana Club Employees' Union v Gymkhana Club* (1967) 2 LLJ 720 (SC)). However, the parties to the industrial dispute do not include disputes (i) between Government and an industrial establishment; or (ii) between workmen and non-workmen (*Madras Gymkhana Club Employees' Union v Gymkhana Club* (1967) 2 LLJ 720 (SC)).

(iii) **Subject-matter of Industrial Dispute:** In order to be an industrial dispute, the dispute must be "connected with the employment of or non-employment or the terms of employment of or with the conditions of labour, of any person".

When an individual dispute becomes an industrial dispute?

Is a dispute between an individual workman and his employer an 'industrial dispute' under section 2(k) (section 2(xiii) in Bangladesh) if it is not raised by any collective bargaining agent? This question has evoked considerable conflict of opinion in Indian jurisdiction. There have emerged three groups of judicial decisions in Indian jurisdiction.

First group hold the view that a dispute which concerns only the right of an individual worker cannot held to be an industrial dispute; in other words, 'industrial dispute' as defined in section 2(k) must be construed not to mean a dispute between an individual workman and the management (*Kandan Textile Ltd v Industrial Tribunal and others* AIR 1951 (Madras) 616). Approved in (*Manager, United Commercial Bank Ltd v Commissioner of Labour* AIR 1951 (Madas) 141), *J. Choudhury v M.C. Banerjee* 55 C.W.N. 256).

Second group of cases have taken the view that a dispute between an employer and a single employee can be industrial dispute as defined in section 2(k). This was held in *Allahabad Newspapers Ltd v State Industrial Tribunal, U.P.* AIR 1954 All 516.

Third group of cases which is larger in number, have taken the view that a dispute between an employer and a single employee cannot *per se* be an industrial dispute but it may become one, if it is taken up by the Union or a considerable number of workmen (*Bilash Chandra Mitra v Blamer Tawries & Co.*, AIR 1958 Cal 613).

The Indian Supreme Court had for the first time occasion to consider the above three views in *News Papers Ltd. v The State Industrial Tribunal, U.P.* 1957 SC 754. The Court disapproved the views held by the first and the second groups of cases. The Court approved the view held by the third group of cases. It held that a dispute between an employer and a single worker does not fall within the definition of 'industrial disputes' but if in a dispute concerning an individual workman, the workmen as a body or a considerable section of them make common cause with the individual workman, then such

a dispute would be an industrial dispute. This view was followed by the Supreme Court in may subsequent case like *Ram Prasad Vishwakarma v Chairman, Industrial Tribunal, Patna and others* AIR 1961 SC 857.

Following the above decisions subsequently the Indian Supreme Court formulated that in order that the individual dispute may be held to be an industrial dispute it is necessary that it must fulfill two alternative conditions: (i) that the workmen as a body or a considerable section of them must be found to have made common cause with the individual workman, or (ii) that the dispute was taken up or sponsored by the workmen as a body or a considerable section of them at or before the date of reference. In other words, individual dispute *per se* is not 'industrial dispute' unless it is espoused by (i) trade union; or (ii) by the appreciable number of workmen (*Western India Match Co. v Workers' Union* (1970) 2 LLJ 132 (SC)). Two important judgments of the Indian Supreme Court are pertinent to mention here:

> "Notwithstanding that the language of section 2(k) (equivalent to section 2(xiii) of the IRO) is wide enough to cover a dispute between an employer and a single employee, the scheme of the Industrial Dispute Act does not appear to contemplate that the machinery be set in motion, to settle only disputes which involves the rights of workmen as a class and that a dispute touching the individual rights of workmen was not intended to be the subject of an adjudicaiton under the Act, when the same has not been taken up by the union or a number of workmen" (*Central Provices Transport Services v Gaghunath Gopal Patwardhan* (1957) 1 LLJ (SC) 27).

> "The term 'industrial dispute' convey the meaning to the ordinary mind that the dispute must be such as would affect large number of workmen and employers ranged on opposite sides.....But at the same time, having regard to the modern conditions of society where capital and labour have organised themselves into groups for the purpose of fighting their disputes and settling them on the basis of the theory that in union is strength, and collective bargaining has come to stay, a single employee's case might develop into an industrial dispute, when as often happens, it is taken up by trade union of which he is a member and there is concerted demand by the employees for redressal (*D.N. Banerjee v P.R. Mukherjee* (1953) 1 LLJ 195 (SC)).

Appreciable Number: It has been seen that courts insist that in order to convert an individual dispute into 'industrial dispute' the dispute must be espoused by 'appreciable number' of either the entire labour force in the establishment or at least in a particular section thereof to which the dispute relates. But the court at the same time has admitted the expression 'appreciable number' does not necessarily mean majority of workmen in the establishment. Thus in *Workmen v M/S Dharma Pal Prem Chand* (AIR 1966 (SC) 182) out of 45 employees 18 were dismissed. There was no union of workmen. It was held that they could raise a dispute by themselves. Similarly in *Workmen v Rohtak General Transport Company* (1962) 1 LLJ 634 (SC) 5 out of 22 workmen sponsoring the union was held to be 'appreciable number'. (some more authorities: AIR 1949 Bom 141, AIR 1949 (F.C.) 111, AIR 1954 All 516).

Dispute being sponsored by Trade Union: The Indian Supreme Court held in *Associated Cement Co. v Workmen*, AIR 1970 SC 177 that in order to convert an individual dispute into 'industrial dispute' it must be taken up by a union of the workers of the establishment and where there is no such union it may be sponsored by any of the union of workmen employed in similar or allied trades.

Position of Individual Dispute in the Industrial Relations Ordinance, 1969

Is a dispute between an individual workman and his employer an 'industrial dispute' under section 2(xiii) of the IRO if it is not raised by any collective bargaining agent? Section 43 lays down that no industrial dispute shall be deemed to exist unless it has been raised in the prescribed manner by a collective bargaining agent or an employer. It is also clear from the language of section 43 that an individual dispute may only be treated as an industrial dispute if it is raised by a CBA. What will happen if an individual dispute is not formally raised by any CBA but supported by a considerable number of workers? This issue has come before our court in many occasions. However, the position is not crystal clear. The Supreme Court seems to be on a very hard line in judicial interpretation.

In *Md. Ataullah v P.I.D.C. and other* 14 DLR (Dacca) 654 a Division Bench of the Dacca High Court held that a dispute of an individual workman in this case a dismissed workman cannot be said to amount to an 'industrial dispute'.

In *A. Roberio v Labour Appellate Tribunal* 27 DLR (1975) 98 the High Court Division of the Supreme Court had the opportunity to examine most of the noted Indian authorities. The Court then came to the conclusion that when an application is filed by a workman for relief in his 'individual dispute' the dispute cannot be entertained by the Labour Court as an 'industrial dispute'. The Court also held that the Labour Court constituted under section 35 of the Ordinance, is also the forum for filling a complaint under section 25 of the Employment of Labour (Standing Orders) Act, 1965. When an application is filed under section 34 by a workman against his dismissal by his employer, the matter is to be adjudicated according to the provisions of the Employment of Labour (Standing Orders) Act, 1965 because there is no appropriate provisions in the Ordinance for giving the necessary reliefs. Therefore a dismissed worker may file an application under section 34, but the matter, for all practical purposes, is to be treated as one provided in the Employment of Labour (Standing Orders) Act, 196 and the adjudication of such a matter terminates in a decision and not in an award (*A. Roberio v Member, Labour Appellate Tribunal,* Dacca 27 DLR (1975)). Likewise, in *General Manager, Hotel Inter Continental, Dhaka v The Chairman, Second Labour Court, Dhaka and Another* (28 DLR (1976) the High Court Division held that a dispute between an individual workman and his employer is not an 'industrial dispute' if it is not raised by any collective bargaining agent and there will be no remedy under section 34 of the IRO.

In *Railway Men's Stores v Labour Court, Chittagong* (1978) 30 DLR (SC) 251 the Supreme Court held that an industrial dispute shall not be deemed to be in existence unless, as has been provided for in section 43 of the IRO, it has been raised in the prescribed manner by collective bargaining agent or employer. The Court also held in *Chairman, Chittagong Port Authority v Kalipada Day* (1987) 39 DLR 39 that a dispute raised by some workers in their individual capacity will not be an industrial dispute. It was also held that a dismissed worker cannot, by making a demand for reinstatement create an industrial dispute (*Kandan Textile Ltd v Industrial Tribunal and others* AIR 1951 (Madras) 616). Approved in (*Manager, United Commercial Bank Ltd v Commissioner of Labour* AIR 1951 (Madas) 141). Thus now the settled position is that a dispute between an individual workman and his employer is not an 'industrial dispute' if it is not raised by any collective bargaining agent and there will be no remedy under section 34 of the IRO.

However it is important to discuss some cases of both the High Court Division and the Appellate Division with regard to the above question of law.

We will see that the interpretation given by the majority judges in Appellate Division does not seem to be based on sound reasoning.

Omar Sons Ltd. v Chairman, First Labour Court, Dhaka 28 DLR (1976) 178

One Mr. Kashem while serving as an Accounts Clerk in Omar Sons Company was terminated by the company. Kashem claimed termination benefit which was refused by the Company. Thereafter he filed a petition under section 34 of the IRO to the Labour Court. Three questions came for consideration by the Labour Court: first, whether Kashem was a worker or not? Second, whether application under section 34 was maintainable or not? Third, whether the application under section 34 was barred in view of the fact that the application of the worker would have been had he filed an application under section 25 of the Standing Orders Act, 1965? The Labour Court found that Kashem was a worker in terms of the Standing Orders Act. On the second point it found that the application was maintainable under section 34 and on the third point it held that Kashem's application was not barred. The employer took the matter to the High Court Division. The High Court Division rejected the writ application and upheld the decision of the Labour Court holding that a dismissed worker's application was maintainable under section 34 f the IRO. The ratio of the judgment is as follows:

(i) Both the Employment of Labour (Standing Orders) Act, 1965 and the Industrial Ordinance, 1969 are on the same subject. These two enactments are in *pari materia* (in like matteer), both dealing with labour laws. The Standing Orders Act provides that a Labour Court set up under the Industrial Relations Ordinance shall be the Court for the purpose of this Act as well. Again, section 34 of the Ordinance in clear terms provides, inter alia, that a worker can apply to the Labour Court for enforcement of only right secured to him by or under any law, and thereby manifestly including the provisions of the Standing Orders Act within it. These provisions indicate that the law makers treated these two enactments as par, one supplementing the other and that they are to be treated as such.....Where there are parallel laws, they should not ordinarily be deemed to be repugnant to each other but supplementing each other. They should be interpreted harmoniously unless there is any express or by necessary implication repugnancy between the two (para: 8).

(ii) There is a great distinction between the barring of a remedy and extinguishment of a right. Nothing could be found in Standing Orders Act to read that after the prescribed period under section 25 the right secured under the Act will also be extinguished. There being no such express bar, the ordinary principle of the interpretation of statutes will apply. The rule is that limitation restricts rights to take legal action for enforcement of a existing right after the lapse of certain period. It does not extinguish the right but simply bars the enforcement of the said right after certain lapse of time. We find that the right survived and the Ordinance secured to the worker that right and also gave him remedy for its enforcement without prescribing any period of limitation (para:10).

General Manager, Hotel Inter Continental, Dhaka v The Chairman, Second Labour Court, Dhaka and Another (28 DLR (1976)

One Mr. Kabir (fictitious name) was working as a cashier/checker of the Hotel Intercontinental. When on 25.07.1974 he was on duty in Saqi Bar of the Hotel a surprise check carried by an auditor according to the practice of the Hotel and a shortage of Tk. 400.83 was found in the cash handled by Mr. Kabir. On 26.07.1974 Kabir was charged under section 17(3)(b) of the Employment of Labour (Standing Orders) Act, 1965 by the personal manager of the Hotel. He was asked to show cause why he should not be dismissed and/or otherwise punished. After receiving his reply an enquiry was held and the Enquiry Officer who was not satisfied with his explanation found him guilty of the offence charged. The Hotel management dismissed Kabir on 05.09.1974. Kabir then filed an application under section 34 of the IRO praying for his re-instatement. The Second Labour Court, Dhaka allowed the application under section 34 and ordered for his reinstatement with payment of back wages minus Tk. 400.83, the amount was found short. The Hotel filed a writ petition against the order of reinstatement by the Labour Court. The issues before the High Court Division were: (i) Whether an application by a dismissed worker challenging his dismissal is maintainable under section 34 of the IRO or not? In other words, whether an individual dispute not

raised by any collective bargaining agent under section 43 can be treated as 'industrial dispute' or not? (ii) Whether a dismissed worker's remedy (whose dismissal is neither as a result of an industrial dispute nor related to an industrial dispute/arising out of an industrial dispute or dismissal leading to an industrial dispute) lies only in section 25 of the Employment of Labour (Standing Orders) Act, 1965 or in section 34 of the IRO also?

The Court allowed the petition by making the rule absolute. (Kabir lost the battle). The Court held that a dismissed worker can bring an application under section 34 unless his dismissal is raised as an industrial dispute. The ratio of the judgment has been categorised as under:

(i) **Definition of Worker:** The definition of 'workers' or 'workmen' in clause (xxviii) of section 2 of the Ordinance has classified them into two distinct categories. A 'worker' or 'workman' who falls in the first category means any person who is not an employer as defined in the Ordinance but is employed for hire or reward under any express or implied term of employment. In the second category falls a 'worker' or 'workmen' who has been dismissed, discharged, retrenched, laid off or otherwise removed from employment, but beside such dismissal, retrenchment or removal two other factors must exist so as to bring him under this category. One is the existence of any proceedings under the Ordinance in relation to an industrial dispute and the other is the existence of some connection between his dismissal, discharge, retrenchment, lay-off or removal and industrial dispute. To be more explicit, his dismissal must have arisen out an industrial dispute or must have led to such dispute (para: 26).

(ii) **Raising an Industrial Dispute:** Section 43 provides that an industrial dispute can only be raised by a collective bargaining agent or an employer in circumstances provided for in sections 26-33 of the Ordinance (para: 26).

(iii) A dismissed worker can bring an application under section 34 for enforcement of guaranteed or secured right in an industrial dispute when raised by collective bargaining agent or an employer. If no such dispute exists, a dismissed worker will not fall within the second category of workers or workmen, and he cannot, therefore, maintain an application under section 34 (para: 26).

(iv) Section 43 contains an express prohibition against the raising of an industrial dispute except by a collective bargaining agent or an employer or except in the manner prescribed in the Ordinance. There is no other phrase or clause in section 34 which can be interpreted as nullifying the express prohibition in section 43 of the Ordinance (para: 30).

(v) Even if it be conceded that an individual dispute between a single worker and his employer can be included within the definition of 'industrial dispute', such dispute cannot be brought to the notice of the Labour Court for its decision by reason of the express prohibition contained in section 43 of the Ordinance. Being unqualified the prohibition must seem to be both total and complete (para:30).

(vi) A dismissed worker who falls within the definition of 'worker' in the Employment of Labour (Standing Orders) Act, 1965 can avail of the procedure laid down in section 25 of the Act of 1965 for challenging his dismissal. A dismissed worker who is not included within the narrower definition of 'worker' as provided in the Act will not, however, be without any legal remedy, though unable to seek the protection against dismissal under section 25.

In *M/s Railway Men's Stores Ltd v Chairman, Labour Court Chittagong* 30 DLR (SC) 251 (1978) the Appellate Division approved the above view by holing that a dismissed worker cannot maintain an application under section 34 of the IRO. Let us discuss the decision by the Appellate Division.

M/s Railway Men's Stores Ltd v Chairman, Labour Court Chittagong 30 DLR (SC) 251 (1978)

One Mr. Abul Bashar was terminated under section 19(1) of the Standing Orders Act, 1965 on the ground of failure to supervise the work of the kitchen staff and bearers of a restaurant maintained by the appellant Company. In spite of the termination of the service the appellants continued to deal with the said Abul Bashar who was general secretary of the Employers' Union, and ultimately a Memorandum of Settlement was concluded between the management and the representatives of the Union, but in the meantime the Employees' Union filed an application before the Labour Court under section 34 of the IRO for reinstatement of the said Abul Bashar in his former post, alleging, *inter alia*, that the termination of his service without stating full reason was illegal and that he was victimised for being an officer of the Employers' Union. The Labour Court allowed the application and ordered Bashar's reinstatement. The company filed a writ application against the decision of the Labour Court. The High Court Division summarily rejected the application. Thereafter the appellant obtained a special leave to appeal from the Appellate Division. The Appellate Division allowed the appeal by holding that-

(i) Workers terminated, dismissed, or discharged not in connection with any industrial dispute is not a worker under the IRO and cannot apply under section 34. Such a worker cannot apply even through a CBA.

(ii) The right to move the application not being available to Abul Bashar who ceased to be in the employment of the Railwaymen's Stores, the Trade Union was also not competent to file the application under section 34 of the IRO to enforce a right which may be guaranteed to a workman under the Standing Orders Act, but not to it;

(iii) The workman concerned could certainly apply under section 25 of the Standing Orders Act for the necessary redress in respect of the termination of his service if he fulfilled conditions laid down in the said section and could establish that his termination was really a kind of victimisation.

Problems with the Judgment of the Appellate Division:

His Lordship Justice Ruhul Islam in *James Finlay v Chairman, Second Labour Court* observed in his dissenting judgment the following weakness in the judgment of the Appellate Division:

(i) The Appellate Division did not consider whether Abul Bashar was holding a supervisory post for management of the restaurant;

(ii) It did not consider whether he was a worker or not as defined in section 2(v) of the Standing Orders Act which excludes a person being employed in a supervisory capacity;

(iii) It also did not consider if the alleged termination from service was really 'a kind of victimisation for trade union activities'. Because had it been so, it would have been an offence under section 15 of the IRO and in such a case whether an aggrieved person was competent to seek an appropriate remedy under the IRO.

(iv) In view of the restricted scope given to section 34, the victimised workman can at best seek for punishment of the employer under sections 34 and 35 of the IRO but no remedy with regard to his service. For such remedy, the workman has been asked to seek relief under section 25 of the Standing Orders Act. If this interpretation is correct then even in a case of victimisation for Trade Union activities the collective bargaining agent would not be competent to file an applicaiton under section 34 of the IRO for the necessary relief. But this proposition tends to practically negative they basic purpose of the consolidated legislation of the Labour law, namely, the IRO.

Subsequent to the Railway Men's case the Appellate Division had another occasion to consider the same point in *James Finlay v Chairman, Second Labour Court, Dhaka,* 33 DLR (AD) (1981) 58. In this case the majority judgment approved the above decisions in the *Railway Men's* case and *Hotel Intercontinental* case.

James Finlay v Chairman, Second Labour Court, Dhaka
33 DLR (AD) (1981) 58

One Mr. Ally Akbar served the James Finlay Company for 20 years as a Senior Assistant Manager. He was also the General Secretary of

the Workers' Union. Because of his involvement in trade union activities the company initiated two departmental proceedings against him and subsequently he was dismissed from service. Ally filed two separate applications in the Labour Court under section 34 of the IRO the grounds of challenge being that the proceedings drawn by the employer were hit by sections 15 and 47 of the Ordinance and that Ali was dismissed with malafide intention of victimising him for doing lawful Trade Union activities. The Company contended before the Labour Court that Ally's application under section 34 was not maintainable because there was no industrial dispute. The Labour Court found the charges of misconduct baseless and hit by section 15 and it directed Ally's reinstatement. Against the decision of the Labour Court the Company moved the High Court Division by way of Writ Application. The High Court Division allowed the writ petition holding that-

(i) The employee had ceased to be a worker within the meaning of its definition under section 2(xxviii) of the IRO, so his application under section 34 is not maintainable.

(ii) The employee's application could be converted into application under section 25 of the Standing Orders Act, 1965.

(iii) The Labour Court cannot go behind the findings of a domestic enquiry, as its duty was only to see whether the legal requirements prescribed by section 18 of the Act were complied with or not.

Against the decision of the High Court Division the employee obtained special leave to appeal to the Appellate Division which (the majority judgment) approved the High Court Division's judgment.

Dissenting Judgment of Ruhul Islam J:

However, the dissenting judgments of Ruhul Islam J and Badrul Haider Chowdhury J are pertinent to mention here. Ruhul Islam J held that raising an industrial dispute under section 43 and filing a case under section 34 are two different things. For raising an industrial dispute collective bargaining's intervention under section 43 is a must but for filing a case under section 34 there is no condition for intervention by any CBA. As section 34 now stands, the existence of an 'industrial dispute' is no longer a pre-condition for taking

a proceeding before the Labour Court. It is now open to an employee or a workman without being a party to an 'industrial dispute' to apply to the Labour Court for enforcement of any right, etc. If it is a case of raising an industrial dispute then as per requirement of section 43 it should be raised in the prescribed manner by a collective bargaining agent or employer. His Lordship gave the following further explanation in support of his judgment:

Section 34 before amendment stood as under:

"Any party to an industrial dispute relating to a matter arising out of any right guaranteed or secured to an employer or workman by or under any law for the time being in force or an award or settlement may apply to the Labour Court for adjudication of a dispute".

Section 34 after amendment stands as under:

"Any collective bargaining agent or any employer or workman may apply to the Labour Court for the enforcement of any right guaranteed or secured to it or him by or under any law or any award or settlement".

Change and Effect:

(i) The expression 'industrial dispute' has been omitted;

(ii) The expression 'collective bargaining' has been included;

(iii) The expression 'any party to an industrial dispute' has been omitted;

Effect: the effects of the change are as follows:

(i) It enables the employer or workman to apply to the Labour Court for the enforcement of any right guaranteed or secured to it or him under any law or any award or settlement; and it puts no limitation in filing an application;

(ii) Any employer or workman is now entitled to file an application before the Labour Court relating to any matter which need not be an industrial dispute; and

(iii) It is now possible to bring an individual dispute before the Labour Court.

Jurisdiction of the Labour Court under section 35:

35(5)(d) states that a Labour Court shall exercise and perform such other powers and functions as are or may be conferred upon or assigned to it

by or under this Ordinance or any other law. His Lordship Justice Ruhul Islam made following observations on this point:

(i) Thus the IRO does not contemplate only one class of proceedings other than 'industrial dispute'. Section 15 prohibits unfair labour practice on the part of the employers. Section 16 prohibits unfair labour practice on the part of the workmen. Contravention of either of the sections has been made punishable offence under section 53 of the Ordinance. In the case of dismissal, discharge or removal from employment of a workman in contravention of these sections the IRO provides no forum other than as provided in section 34. Contravention of sections 15, 16, 47, 48 etc may be made subject matter of an 'industrial dispute'. However, law does not require that the remedy may be had by the aggrieved person by making the contravention subject matter of an industrial dispute in the manner as provided in the IRO and not by taking an individual dispute to the Labour Court. If the remedy can only be sought by raising an 'industrial dispute', then, in the event of the 'collective bargaining' agent 'failing to make the contravention subject matter of an 'industrial dispute' in the manner as provided in section 43, or in the absence of 'collective bargaining agent', the injured 'workman' goes without any remedy (paras: 60, 61).

(ii) Definition in a modern statute provides the vocabulary for understanding the different provisions of the statute. But definition cannot control the legislative intent or express provisions of the statute or any particular provisions which is clear from the language of the section (para: 69).

(iii) Section 34 was amended because obviously the section was found falling short of the requirement. By the amendment the scope of the section was extended to enable full implementation of all provisions of the statute. Now, by putting restricted meaning to section 34 read with definition of the words 'worker' or 'workman', the purpose of the legislation cannot be defeated.

(iv) When grievance is made before the Labour Court to the effect that the findings of the domestic inquiry was perverse on the ground that the finding of guilty of charges is not supported by the evidence recorded in support of the charges, it becomes a duty on the Labour Court to examine the proceedings of the domestic inquiry. In so doing if the proceedings of the domestic inquiry are found not in accordance with law, the orders passed on the basis of the recommendation of such domestic inquiry must be set aside. (Para: 81)

Justice **Badrul Haider Chowdhury** who also gave dissenting judgment with Ruhul Islam J pointed out:

(i) Unlike before amendment the present section 34 of the IRO allows both collective bargaining agent and an individual employer or employee right to file application (para: 93);

(ii) After such amendment it appears that the contention that first part of the definition of 'worker' or 'workman' does not include a dismissed worker does not appear to be sound(ibid)

(iii) If there is pre-condition for raising industrial dispute for application under section 34, what would happen if in an industry there is no CBA, or there is no registered trade union? A worker dismissed by the employer of such industry then is left without a remedy. This argument is met by saying that the worker can file a petition under section 25 of the Standing Orders Act, 1965. But supposing a worker who has been dismissed by the employer in contravention of section 15 of the IRO, what will be his remedy? (para: 93);

(iv) Applications by an individual worker is maintainable under section 34. In *Jobir v Middlesex County Council (1949) 1 K.B.* Scott L.J. considered that the definition sub-section ought not to be treated as prima facie an operative sub-section. "It is definitive sub-section and no more" and definitive section ought to be construed as not cutting down the enacting provisions of an Act,

unless there is absolutely clear language having the opposite effect (para: 93).

This author has support for the dissenting judgment in the above case and the Appellate Division should come forward to consider these legal issues in detail and set the legal interpretation in right direction for the smooth development of jurisprudence in our system. This decision of the Appellate Division may also be questioned in the light of a recently decided case by the same Appellate Division in *Pubali Bank v Chairman, Labour Court,* 44 DLR (AD) 40 where the Appellate Division held that under section 34 the Labour Court may decide both industrial and non-industrial dispute. If an individual dispute cannot be maintained under section 34 then what matters would come under the category of 'non-industrial dispute'?

How can an Industrial Dispute be raised?

Section 43 lays down that no industrial dispute shall be deemed to exist unless it has been raised in the prescribed manner by a collective bargaining agent or an employer. The Supreme Court has also echoed its voice in the same manner in *Railway Men's Stores v Labour Court, Chittagong* (1978) 30 DLR (SC) 251 where it held that an industrial dispute shall not be deemed to be in existence unless, as has been provided for in section 43 of the IRO, it has been raised in the prescribed manner by CBA or employer.

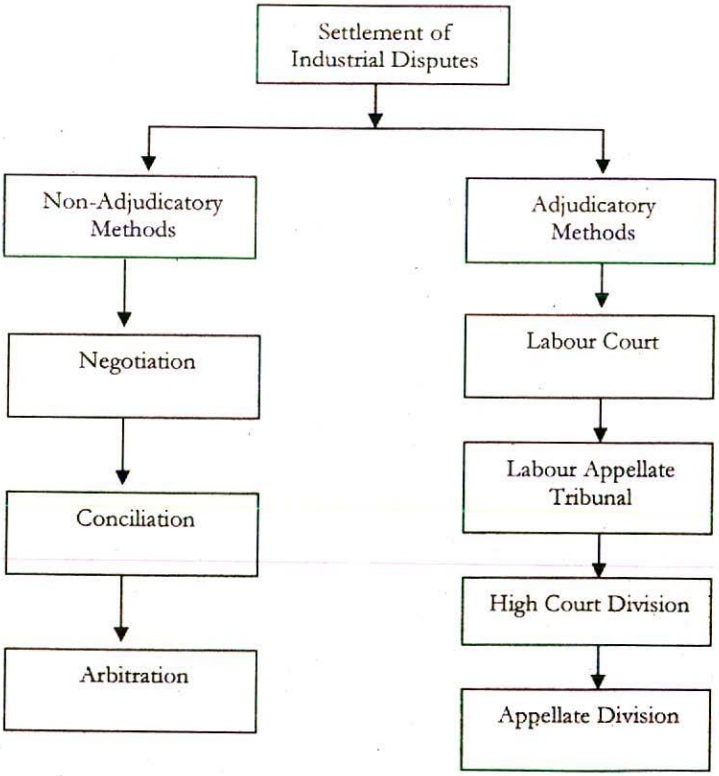
Provisions have been made in sections 26-33 of the Ordinance as to the manner how an industrial dispute may be raised by an employer or CBA on behalf of workers. Steps from raising a dispute till it is settled have been discussed below.

Settlement of Industrial Disputes

Industrial disputes may be settled and resolved through different strategies. These strategies and methods differ from system to system. However, settlement of industrial disputes need different philosophy, outlook, attitude and behaviour on the part of the authorities associated with the task to harmonise the conflicting interest of capital and labour as compared to settling ordinary civil disputes where set rules of law govern the justice. Industrial adjudication requires more humanitarian and pragmatic approach on the part of the persons associated with the task of dispute resolution. The available systems of dispute resolution in different jurisdictions may generally be grouped into two categories: Non-adjudicatory methods and compulsory Adjudicatory methods. Non-adjudicatory methods

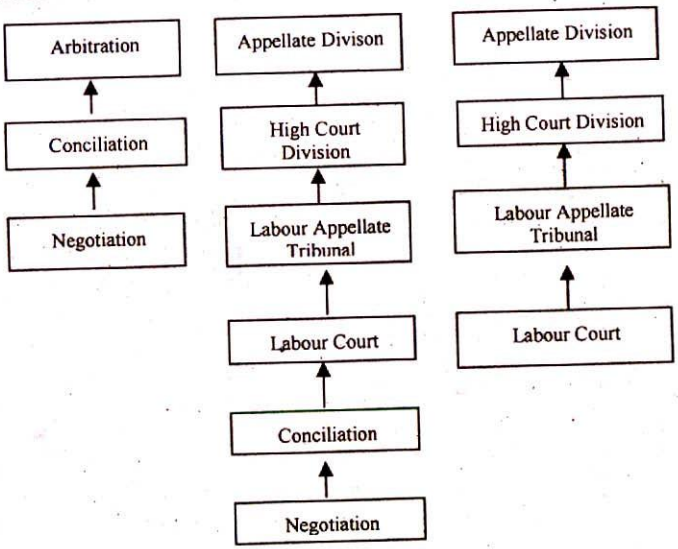
are given preference over adjudicatory methods. These include negotiation and then mediation through the machinery of conciliation authorities. Failing these non-adjudicatory methods provisions are made for compulsory adjudication through courts or tribunals.

The basic idea underlying the provisions of the Industrial Relations Ordinance, 1969 is to settle industrial disputes; promote industrial peace and to establish a harmonious and cordial relationship between labour and capital by means of conciliation, mediation and adjudication. With this end in view different authorities under this Ordinance have been set out to resolve an industrial dispute. The Ordinance has streamlined for some non-adjudicatory as well as adjudicatory authorities. Non-adjudicatory authorities include Participation Committee, Conciliator and Arbitrator while adjudicatory (judicial) authorities include Labour Court and Labour Appellate Tribuanl.



Three routes of Dispute Resolution under the IRO

The Industrial Relations Ordinance has provided for non-judicial and mediation-type mechanism as well as judicial mechanism to resolve an industrial and other disputes. There are three different routes for industrial dispute resolution. The first route is the non-judicial mediation process which includes negotiation, conciliation and arbitration. If a dispute reaches the stage of an award by an arbitrator, it is final and the first route ends here. The second route is non-judicial via judicial route which includes negotiation, conciliation and then application to the Labour Court up until the Appellate Division. The third route is completely judicial starting with the Labour Court and ending in the Appellate Division. The Labour Appellate Tribunal is the highest judicial body created by the Ordinance. However, the jurisdiction of the High Court Division and the Appellate Division can be invoked only through the constitutional process of writ application which is not contemplated in the usual course of adjudication under the Ordinance. Thus the two highest judicial bodies shown in the diagram below is not mentioned or created in the Ordinance.



Stages of Industrial Dispute Resolution

Negotiation:

If a dispute is likely between an employer and an employee, the employer or the CBA shall communicate the same in writing to the other party. Within ten days the parties will try to resolve the matter by way of negotiation; if a settlement reached, a memorandum shall be recorded accordingly (Section 26).

Conciliation:

Failing a negotiation under section 26, any party may report to the conciliator that the negotiation have failed and request the conciliator in writing to conciliate the dispute and conciliator shall, on receipt of such request, proceed to conciliate in the dispute (Section 27A). Under section 28 the conciliator has ten days time for conciliation. If he fails to settle the dispute within ten days, the CBA or the employer may go for strike or lock out by serving notice of twenty-one days.

Arbitration:

If conciliation fails the conciliator shall try to persuade the parties to agree to refer to the dispute to an Arbitrator. In case the parties agree, they shall make a joint request in writing for reference of the dispute to an Arbitrator agreed upon by them. The arbitrator shall give his award within thirty days from the date on which the dispute is referred to him or within such period as may be agreed upon by the parties. The award of the arbitrator shall be final and no appeal shall lie against it (section 31).

Application to the Labour Court:

If no settlement is arrived by way of conciliation and the parties agree not to refer the dispute to an arbitrator, the workmen may go on strike or the employer may declare lock-out. However, the parties at dispute may, either before or after the commencement of a strike or lock out, make joint application to the Labour Court for adjudication of the matter. Again, if a strike or lock-out lasts for more than 30 days the government may prohibit such strike or lock-out and in that case the government must refer the dispute to the Labour Court (Section 32).

Labour Court and Labour Appellate Tribunal

Labour court and Labour Appellate Tribunal are compulsory adjudication of industrial disputes. They have been discussed in separate chapter.

Compulsory Adjudication

If the conciliation fails to bring about settlements and if the parties do not agree to arbitration, then the appropriate Government may refer the entire dispute or particular issues to adjudication. The final stage in the settlement of disputes (which could not be settled either through bipartite negotiations or through the good offices of the conciliation machinery, or through voluntary arbitration) is compulsory arbitration which envisages Government reference to statutory bodies such as Labour courts, Labour Appellate Tribunal etc.

Chapter VII

AUTHORITIES UNDER THE ORDINANCE

Authorities under the Ordinance

The basic idea underlying the provisions of the Industrial Relations Ordinance, 1969 is to settle industrial disputes and to promote industrial peace and to establish a harmonious and cordial relationship between labour and capital by means of conciliation, mediation and adjudication. With this end in view different authorities under this Ordinance have been set out to resolve an industrial dispute. The Ordinance has streamlined for some non-adjudicatory as well as adjudicatory authorities. Non-adjudicatory authorities include Participation Committee, Conciliator and Arbitrator while adjudicatory (judicial) authorities include Labour Court and Labour Appellate Tribuanl.

These authorities are constituted under the different provisions of this Ordinance and have powers and functions in respect of adjudication of industrial disputes. While the Participation Committee have been constituted for redressing day to day grievances and promoting smoother co-operation, the other authorities that have been provided are for settlement of industrial dispute in the first instance by conciliation and failing it by arbitration or adjudication. Though the Ordinance provides for two-tier adjudication machinery, the Appellate Division and the High Court Division of the Supreme Court have available writ or revisional jurisdiction in labour matters.

Adjudicatory and Non-adjudicatory Authorities

Participation Committee

The advantages of co-operation between labour and capital in industry have long back been recognised in all countries. The main function of such a body lies in promoting industrial goodwill and harmony among employers and employees, look after the work and welfare of the personnel, deal with day to day internal matters relating to safety, health, vocational training, apprenticeship, supervision of recreational facilities etc. However, they are not substitutes for trade unions.

Composition of Participation Committee: Section 24 of the Ordinance provides for composition of Participation Committee. This section empowers the Director of Labour or any officer authorised by him in this behalf to require an employer having 50 or more workmen to constitute a Participation Committee. Such committees shall consist of representatives of the employer and the workmen so that the representative of the workmen is not less than the number of the representative of the employer.

Functions of Participation Committee: Section 25 of the Ordinance provides that the functions of the Participation Committee shall be to inculcate and develop a sense of belonging and workers' commitment and, in particular-

(a) To endeavour to promote mutual trust, understanding and co-operation between the employer and the workmen;

(b) To ensure application of labour laws;

(c) To foster a sense of discipline and to improve and maintain safety, occupational health and working condition:

(d) To encourage vocational training, workers' education and family welfare training;

(e) To adopt measures for improvement of welfare services for the workers and their families;

(f) To fulfill production target, reduce production cost and wastes and raise quality of products.

Meetings of the Participation Committee: Section 25A provides that the Participation Committee shall meet at least once in every two months to discuss and exchange views and recommend measures for performance of the functions under section 25. It also provides that the proceeding of every meeting of the Participation Committee shall be submitted to the Director of Labour and the Conciliator within seven days of the date of the meeting.

Difficulties in the Functioning of Participation Committee:

In the smooth functioning of the participation committees certain difficulties have been experienced in our country which are as follows:

(i) lack of appreciation on the part of management and workmen's representatives of the functions and significance of the Committees;

(ii) Illiteracy and lack of understanding amongst the workers;

(iii) Disinclination of workers' representatives to participate in the discussion of the committee;

(iv) lack of co-operation and in some cases even opposition of the trade union leaders to the constitution and functioning of the committees due to fear of losing of importance of their trade unions;

Conciliator

Conciliation is also called mediation in many countries. It is oldest and the most widely used known technique for adjustment of labour disputes. It is a recognised process of settling mutual conflicts not only between individuals and groups but also between nations. According to Alfred Stenger conciliation implies a compromise- a basically voluntary process- the success of which depends on the citizen's willingness to relinquish certain individual liberties as part of his duty to and respect for his fellow men and to accept the other party as equal partner in conciliation proceeding.

Section 27 of the Ordinance empowers the government to appoint such number of persons as it considers necessary to be Conciliators for the purposes of the Ordinance and shall specify in the notification the area within which, or class of establishments or industries in relation to which, each of them shall perform his functions.

Functions of Conciliator: The main function of the conciliator is to mediate in and to promote the settlement of industrial disputes. Sections 27A, 28, 29 and 30 of the Ordinance lay down the following duties of the Conciliator:

Conciliation set in Motion:

(i) Where the parties to an industrial dispute fail to reach a settlement by negotiation under section 26, any of them may report to the Conciliator that the negotiations have failed and request him in writing to conciliate in the dispute and the Conciliator shall, on receipt of such request, proceed to conciliate in the dispute (Section 27A).

Proceedings before the Conciliator (sec. 30):

(ii) Upon receiving the report under section 27A the Conciliator shall, as soon as possible, call a meeting of the parties to the dispute for the purpose of bringing about a settlement;

(iii) The parties to the dispute shall appear before the conciliator in person or shall be represented before him by person nominated by them and authorised to negotiate and enter into an agreement binding on the parties;

(iv) The Conciliator shall perform such functions in relation to a dispute before him as may be prescribed and may, in particular, suggest to either party to the dispute such concessions or modifications in its demand as are in the opinion of the conciliator likely to promote an amicable settlement of the dispute;

(v) If a settlement of the dispute or of matter in dispute is arrived at in the course of the proceedings before him the conciliator shall send a report thereof to the Government together with a memorandum of settlement signed by the parties to the dispute;

Notice of Strike or Lock-out:

(vi) If the Conciliator fails to settle the dispute within ten days from the date of receipt of a request made under section 27A, the collective bargaining agent or the employer may, in accordance with the provisions of this Ordinance, serve on the other party to the dispute twenty-one days' notice of strike or lock-out, as the case may be. However, to give such a notice by a CBA, it must have the consent of three-fourths of its members which must be obtained through secret ballot specifically held for the purpose (section 28).

Conciliation after notice of strike or lock-out (sec. 29):

(vii) Where a party to an industrial dispute serves a notice of strike or lock-out under section 28, it shall, simultaneously with the service of such notice, deliver a copy thereof tc the Conciliator who shall proceed to conciliate or, as the case may be, continue to conciliate in the dispute notwithstanding the notice of strike or lock-out;

(viii) If no settlement is arrived at within the period of the notice of strike or lock-out, the conciliation proceedings may be continued

for such further period as may be agreed upon by the parties (Section 30(5)).

Arbitrator

The method of arbitration provided for in the Ordinance in section 31 is voluntary process. Voluntary arbitration is one of the effective and internationally recognised modes of settlement of industrial disputes. It supplements collective bargaining. When conciliation fails, arbitration may prove to be a satisfactory and most enlightened method of resolving industrial disputes. It has been found that in "many arbitration cases, in which the parties start out angry at each other, they end up less so. The winning party is satisfied and the losing party is likely to feel aggrieved, not at the other party, but at the arbitrator"[1]. Further, informal arbitration offers an opportunity to dissipate hard feeling which the industrial dispute may have aroused. The importance of voluntary arbitration process lies in the fact that (i) it is expected to take into consideration the realities of the situation; (ii) expected to meet the aspiration of the parties; (iii) based on voluntarism; (iv) without compromising the fundamental position of the parties; (v) expected to promote mutual trust.

Section 31 of the Ordinance provides the following rules as to the process of arbitration:

When will the matter be referred to the Arbitrator?

(i) If the conciliation fails, the Conciliator shall try to persuade the parties to agree to refer the dispute to an arbitrator; or

(ii) If the conciliation fails and the parties agree, they shall make a joint request in writing for reference of the dispute to an arbitrator agreed upon by them.

Who is Arbitrator?

The Arbitrator to whom a dispute is referred under sub-section (1) of section 31 may be a person borne on a panel to be maintained by the Government or any other person agreed upon by parties.

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[1] Julius G. Getman, *Grievance Arbitration: Law and Policy in India*, 15

Award of the Arbitrator:

(i) The Arbitrator shall give his award within a period of thirty days from the date on which the dispute is referred to him under sub-section (1) of section 31 or such further period as may be agreed upon by the parties to the dispute;

(ii) After he has made an award, the Arbitrator shall forward copy thereof to the parties and to the Government who shall cause it to be published in the official Gazette;,

(iii) The award of the Arbitrator shall be final and no appeal shall lie against it. It shall be valid for a period not exceeding two years, as may be fixed by the Arbitrator.

Labour Court and Labour Appellate Tribunal

Labour Court and Labour Appellate Tribunal are compulsory adjudication of industrial disputes. They have been discussed in separate chapter.

Compulsory Adjudication

If the conciliation fails to bring about settlements and if the parties do not agree to arbitration, then the appropriate Government may refer the entire dispute or particular issues to adjudication. The final stage in the settlement of disputes (which could not be settled either through bipartite negotiations or through the good offices of the conciliation machinery, or through voluntary arbitration) is compulsory arbitration which envisages Government reference to statutory bodies such as Labour Courts, Labour Appellate Tribunal etc.

Chapter VIII

LABOUR COURT AND LABOUR APPELLATE TRIBUNAL

The basic idea underlying the provisions of the IRO is to settle industrial disputes and to promote industrial peace and to establish a harmonious and cordial relationship between labour and capital by means of conciliation, mediation and adjudication. With this end in view different authorities have been created under the IRO to resolve an industrial dispute. Of these two bodies are adjudicatory or judicial. They are the Labour Court and the Labour Appellate Tribunal. The Ordinance has streamlined for some non-adjudicatory as well as adjudicatory authorities. Non-adjudicatory authorities include Participation Committee, Conciliator and arbitrator while adjudicatory (judicial) authorities include Labour Court and Labour Appellate Tribunal.

These authorities are constituted under the different provisions of this Ordinance and have powers and functions in respect of adjudication of industrial disputes. While the Participation Committee have been constituted for redressing day to day grievances and promoting smoother co-operation, the other authorities that have been provided are for settlement of industrial dispute in the first instance by conciliation and failing it by arbitration or adjudication. Though the Ordinance provides for two-tier adjudication machinery, the Appellate Division and the High Court Division of the Supreme Court have available writ or revisional jurisdiction in labour matters.

Harmonious industrial relations create a favourable atmosphere for the smooth and steady progress of production. This is why to maintain sweet and invigorating atmosphere in industrial spheres, settlement of industrial dispute through voluntary machinery like CBA by negotiation, Conciliator, Arbitrator is preferred. Under the voluntary system of dispute resolution the terms and conditions are embodied in a mutual agreement made between the employer and the workmen expressed through their trade unions. Therefore it brings more harmonious atmosphere than that of through compulsory adjudication.

However, for many reasons voluntary settlement machinery fails to solve disputes and the last resort is taken through judicial adjudication.

Application to the Labour Court:

An industrial dispute may be referred to the Labour Court in any of the following ways:

(i) If no settlement is arrived by way of conciliation and the parties agree not to refer the dispute to an arbitrator, the workmen may go on strike or the employer may declare lock-out. However, the parties at dispute may, either before or after the commencement of a strike or lock out, make joint application to the Labour Court for adjudication of the matter (Section 32).

(ii) Again, if a strike or lock-out lasts for more than 30 days the government may prohibit such strike or lock-out and in that case the government must refer the dispute to the Labour Court (Section 32).

(iii) Again, under section 34 any collective bargaining agent or any employer or workman may apply to the Labour Court for the enforcement of any right guaranteed or secured to it or him by or under any law or any award or settlement.

Formation and Constitution of Labour Court: Under section 35 the Government may establish one or more Labour Courts consisting of a Chairman and two members. One of the members is to represent the workmen and the other to represent the employers.

Qualification: A person shall not be qualified for appointment as Chairman unless he has been or is, or is qualified to be, a Judge or an Additional Judge of the High Court Division or is a District Judge or an Additional District Judge. The members shall be appointed after consultation with the employers and workmen.

Functions/Jurisdiction of the Labour Court:

Under Section 35(5) a Labour Court shall have exclusive jurisdiction to-

(a) adjudicate and determine an industrial dispute which has been referred to or brought before it under this Ordinance;

(b) enquire into and adjudicate any matter relating to the implementation or violation of a settlement which is referred to it by the Government;

(c) try offences under this Ordinance and such other offences under any other law as the Government may, by notification in the official Gazette, specify in this behalf;

(d) exercise and perform such other powers and functions as are or may be conferred upon or assigned to it by or under this ordinance or any other law.

Again, under section 45 the Labour Court has jurisdiction to prohibit strike or lock-out. It states that when strike or lock-out in pursuance of an industrial dispute has already commenced and is in existence at the time when, in respect of such industrial dispute, there is made to or is pending before, a Labour Court an application under section 34, the Labour Court may, by an order in writing, prohibit continuance of the strike or lock-out (section 45(1)).

The Labour Court has the power to give award or decision and also to impose sentence as per section 37. All decisions and sentence of the Labour Court other than awards are final.

Power and Status of the Labour Court:

Section 36 of the IRO provides the procedure and powers of Labour Court which is as under:

(a) The Laobur Court shall follow as nearly as possible summary procedure as prescribed under the Code of Criminal Procedure, 1898 (Act V of 1898) (section 36).

(b) The Labour Court shall, for the purpose of adjudicating and determining any industrial dispute, be deemed to be a Civil Court and shall have the same powers as are vested in such Court under the Code of Civil Procedure, 1908 (Act V of 1908) including the powers of-

(i) enforcing the attendance of any person and examining him on oath;

(ii) compelling the production of documents and material object;

(iii) issuing commissions for the examination of witnesses or documents; and

(iv) delivering *exparte* decision in the event of failure of any party to appear before the court (section 36).

(c) A Labour Court, may if it is satisfied that the dispute has been amicably resolved, allow the withdrawal of a case before it at any stage of the proceeding thereof upon consideration of an application signed by all the parties to the case after giving hearing all or any of them (section 36).

(d) A Labour Court shall, for the purpose of trying an offence under the Ordinance, have the same powers as are vested in the Court of a Magistrate of the first class under the Code of Criminal Procedure, 1898 (Act V of 1898) and shall, for the purpose of appeal from a sentence passed by it, be deemed to be a Court of Sessions under that Code (section 36).

(e) No Court-fee shall be payable for filing, exhibiting or recording any document in, or obtaining any document from a Labour Court (section 36).

Award and decisions of Labour Court: Section 37 provides the following rules as to the Labour Court's decision and award:

(1) An award or decision of a Labour Court shall be given in writing and delivered in open court and two copies thereof shall be forwarded forthwith to the Government.

(2) An award or decision of a Labour Court shall, in every case, be delivered; unless the parties to the dispute give their consent in writing to extend the time-limit within sixty days following the date of filing of the case. However, no award or decision of a Labour Court shall be invalid merely on the ground of delay in its delivery.

(3) The Government shall, within a period of one month from the receipt of the copies of the award or decision, publish it in the official Gazette.

(4) Any party aggrieved by an award given under sub- section (I), may prefer an appeal to the Labour Appellate Tribunal within 30 days of the delivery thereof and the decision of the Tribunal in such appeal shall be final.

(5) All decisions of a Labour Court, other than awards referred to in sub- section (3) of this section, and sentences referred to in sub-section (3) of section 36, shall be final and shall not be called in question in any manner by or before any court or other authority.

Is Labour Court a Civil Court?

In the case of *Pubali Bank V the Chairman, 1st Labour Court*, 44 DLR (AD) 40, the question was raised whether a Labour Court is a Civil Court or not. Their Lordship of the Appellate Division upon consideration of relevant provisions of the Industrial Relations Ordinance 1969 held that the Labour court acts as Civil Court for limited purpose but not a Civil Court at all. It is only by a legal fiction or a statutory hypothesis that it is to be treated as a Civil Court.

Pubali Bank V Chairman, Labour Court, 44 DLR (AD) 40

Fact: One Mr. Sabbir (not real name) instituted Industrial Relations Case No. 73 before the 1st Labour Court, Dhaka under section 34 of the IRO against his employer Bank and three other officers. He was employed as a Sub-Accountant in the International Division of the Head Office of the Bank. He was also the Organising Secretary of the Bank Karmachari Sangha. He was promoted to the rank of an officer by an order dated 14th July, 1984 which he declined to accept. He was again promoted to the rank of an officer with effect from 18th February, 1985 but he refused to accept that promotion. However, the Bank confirmed his promotion, and, by an order dated 23.09.1985 transferred him from its Head Office to Naya Paltan Branch. Mr. Sabbir asserted that his transfer was malafide in violation of the provisions of IRO. He instituted the aforementioned IRO case and prayed for stay of

operation of the orders of promotion and transfer till disposal of the case. The Bank filed a Writ Petition against the stay order of the Labour Court[1]. In the Writ Petition the High Court Division upheld the order of the Labour Court. The Bank filed a civil appeal to the Appellate Division.

Issue before the Court: The legal issues before the Appellate Division were:

(i) Whether the Labour Court is a Civil Court or not.

(ii) Whether the Labour Court can has power to grant an ad-interim order for stay of the operation of an order.

Judgment:

Under section 34 of the IRO a Labour Court may decide both industrial and non-industrial disputes. When the Labour Court decides a non-industrial dispute under section 34 of the IRO it follows the procedure provided in sub-section (1) of section 36 of the Ordinance which states that a Labour Court shall follow as nearly as possible summary procedure as prescribed under the Code of Criminal Procedure. Thus a Labour Court acts purely as a statutory tribunal with all the trappings of a court but not a Court proper.

Similarly when the Labour Court decides an individual complaint from a worker under section 25 of the Employment of Labour (Standing Order) Act, it does not act as a Civil court, nor shall it be deemed to be a civil court. The Labour Court shall be deemed to be a Civil Court and shall have the same powers as are vested in such court under the Code of Civil Procedure subject to the limitation provided in the beginning of the sub-section, namely, "for the purpose of adjudicating and determining any industrial dispute". It

[1] Students might ask how a writ petition lies against the order of the Labour Court while there is another appellate forum, Labour Appellate Tribunal. Please read sub-section 4 of section 37 where it is stated that only award of a Labour Court will be appellable to the Appellate Tribunal. Any decision other than an award will be final and conclusive. So against orders and decisions other than award there is no other equally efficacious remedy than filing a Writ in the High Court Division. Revision will not lie against an order or decision of the Labour Court as Labour Court is not a civil court proper.

shall therefore not be deemed to be a Civil Court nor shall it enjoy such powers as are available to a Civil Court under the Code of Civil Procedure (Per Mustafa Kamal, J.).

An adjudication of an industrial dispute or a proceeding for enforcement of any guaranteed right though a matter of civil nature, is not a suit and does not attract all the panoply of powers of the Code of Civil Procedure. From a plain reading of section 36(2) it is clear that in adjudication of an industrial dispute, the Labour Court acts as a Civil Court for limited purpose- it will not exercise powers like those given in Order IX or Order XXXIX of the Code which civil court may exercise in a suit (Per MH Rahman, J).

Labour Appellate Tribunal

Constitution: The Labour Appellate Tribunal shall consist of one member who shall be appointed by the Government, by notification in the official Gazette, from amongst person who is or has been a Judge or an Additional Judge of the High Court Division (section 38(2)).

Appeal to the Appellate Tribunal: Section 37(3) specifies that any party aggrieved by an award given by the Labour Court, may prefer an appeal to the Labour Appellate Tribunal within 30 days of the delivery thereof and the decision of the Tribunal in such appeal shall be final.

Jurisdiction and Power of the Labour Appellate Tribunal:

(1) The tribunal may, on appeal, confirm, set aside, vary or modify the award, and shall exercise all the powers conferred by this Ordinance on the Court, save as otherwise provided (section 38).

(2) The decision of the Tribunal shall be delivered as expeditiously as possible, within a period of 60 days following the filing of the appeal; however, such decision shall not be rendered invalid by reason of any delay in its delivery (section 38).

(3) If an appeal is preferred against an order of reinstatement of a workman by the Labour Court, the Tribunal shall decide such

appeal within a period not beyond 180 days following the filing of the appeal and in the meantime the Tribunal may pass an order staying the operation of the order of the Labour Court and if such appeal is not disposed of within the aforesaid period the order of the Tribunal shall stand vacated after the expiry of the period (section 38).

(4) The Tribunal may, on its own motion, and for the purpose of satisfying itself as to the correctness, legality or propriety of the order of the Labour Court, call for the record of any case or proceeding under the Ordinance and may pass such order in relation thereto as it thinks fit. However, no order under this sub-section shall be passed revising or modifying any order adversely affecting any person without giving such person a reasonable opportunity of being heard (section 38).

(5) The Tribunal shall have authority to punish for contempt of its authority, or that of any Labour Court subject to its appellate jurisdiction, as if it were a High Court (section 38).

(6) When an appeal in respect of any matter arising out of an industrial dispute is preferred to a Tribunal under section 38, the Tribunal may, by an order in writing prohibit continuance of any strike or lock-out in pursuance of such industrial dispute which had already commenced and was in existence on the date on which the appeal was preferred (section 38).