TRADE UNION PRAXIS - 2
(Towards a Sociology of Trade Unions)

MACROPRAXIS OF ALIENATION - POLITICOLEGAL FRAMEWORK OF INDUSTRIAL RELATIONS

By

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MACROPRAXIS OF ALIENATION – POLITICO-LEGAL FRAMEWORK OF INDUSTRIAL RELATIONS

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2.1. PROCEDURAL LABOUR LEGISLATION IN INDIAN INDUSTRIAL RELATIONS : A BRIEF OVERVIEW

Legislation in relation to labour had its origins under British rule with the passing of the Apprentices Act in 1850. The objective of the Act was to provide for training of children with a view to preparing them for earning their livelihood.[1] The year 1860 saw the emergence of the Employers and Workmen (Disputes) Act which provided for the settlement of wage disputes related to workers engaged in the construction of public works, railways and canals. Judicial magistrates were vested with the powers to settle these disputes. The Act neither provided for bilateral settlement nor for Government intervention in disputes between employers and workmen.[2]

The Year 1926 saw the passing of the Trade Unions Act which gave workers and employers the right to form trade unions. Any seven workers of a unit could register a trade union. 50% of the trade union executive could be from outside the unit. Two types of funds were permissible under the Act -- the General Fund and the Political Fund. While contributions to the General Fund were considered essential as indicative of a particular worker's membership in a union, contributions to the political fund were purely voluntary. The basis of the institutions of multiple unionism, outside leadership and political affiliation of unions

in the Indian context have been traced to the three provisions enumerated above. Significantly, while the Act made multiple unionism possible in Indian organizations, the Act did not provide for any satisfactory or statutory method for recognition of trade unions for purposes of representing workers.

Disputes legislation in India had to wait till 1929 when Government passed the Trade Disputes Act to cope with increased strike activity especially in the textile industry. The Trade Disputes Act (1929) was patterned on the British Industrial Courts Act (1929) and the British Trade Disputes and Trade Unions Act (1927). Two important contributions of this Act to labour legislation were statutory adjudication to resolve disputes and stringent measures to curb strikes or lockouts in public utilities. Government gave itself powers to refer industrial disputes to Boards of Conciliation or Courts of Enquiry as and when Government thought it was appropriate -- when a dispute arose or even when it perceived that a dispute was about to arise.[3]

The Trade Disputes (Extending) Act 1938 confirmed the provisions of the Trade Disputes Act, 1929 while adding a few new dimensions like extension of the definition of disputes to cover not only disputes between employers and workmen but also between workmen and workmen. The system of Government (Central and Provincial) appointing Conciliation Officers to settle disputes was introduced in this Act.[4]

The year 1935 witnessed the enactment of the Government of India Act by which industrial disputes came under the concurrent list.[5] The outbreak of the Second World War led to the proclamation of a state of emergency in India. The commitment of the British to the war effort was at variance with the commitment of the Indian nationalists to political independence from colonial rule. Thus the British introduced Rule 81-A under the Defence of India Rules in January 1942 by which strikes and lockouts were banned.[6] Rule 81-A continued in existence even after the war ended under the Emergency Provisions (Continuance) Ordinance, 1946.

The next major landmark in industrial disputes legislation was the Industrial Disputes Act which came into force on April 1, 1947.[7] The primary object of the Act was the prevention of industrial strife, maintenance of industrial peace and the establishment of a harmonious relationship between management and labour by means of conciliation, mediation and adjudication. The Act also provides for regulation of strikes, lockouts, layoff, retrenchment, change of rules and closure.

The next important event in relation to the evolution of the politico-legal framework of industrial relations was the enactment and adoption of the Constitutions of India on November 26, 1949, the main provisions of which have been discussed earlier.

The period 1949-1988 has witnessed several attempts to bring about changes in the politico-legal framework of the procedural

aspects of industrial relations. The Code of Discipline in Industry (1958), the report of the National Commission on Labour (1969), the Industrial Relations Bill 1978 of the Janata Party, and the proposed Trade Unions and Industrial Disputes (Amendment) Bill, 1988 are some of the more significant efforts in the direction of transforming the profile of industrial relations.

Since the purpose of this section is to examine the profile of the procedural aspects of industrial relations in the Indian Context within the existing politico-legal framework, it would be appropriate to begin the examination by a critical assessment of the following definitions contained in the relevant Acts:

1. Industry
2. Workman
3. Industrial Dispute
4. Union Recognition
5. Strikes

2.2. POLITICO-LEGAL FRAMEWORK OF INDUSTRIAL RELATIONS

2.2.1 CONCEPT OF INDUSTRY

A considerable portion of judicial history and legal practice related to labour matters tends to focus on interpreting certain basic concepts and also in examining the implications of each interpretation for application in some specific area of socio-economic endeavour. Definitions of basic concepts in legislation related to industrial relations, for instance, have

far reaching consequences for the modalities of employer - employee relations in organizations. While legal practitioners *in* the course of serving their clients' interests engage in semantic hair-splitting, industrial relations theorists also watch the careering course of legal concepts in order to monitor the impact of these concepts on employer - employee relations.

The concept of "Industry" has been defined in different ways in different legislations in the Indian context but the focus here is on the definition of industry in the Industrial Disputes Act, 1947. The discussion again will focus on three "stages" in the interpretation of the concept as represented in:

1. Section 2(J) of the I.D.Act, 1947.
2. Case Law related to the concept of industry.
3. The Bangalore Water Supply and Sewerage Board Vs A. Rajappa and others (Civil Appeals No.753-754 dt. 21.2.1978).
4. Amendment to the I.D.Act 46 of 1982 (Modified Version of Sec.2 (J) included but not yet given effect).

The initial impulse for the debate on the definition of industry is contained in Sec.2(J) of the I.D.Act, 1947:

> "Industry means any business, trade, undertaking, manufacturing or calling of employers and includes any calling, service, employment, handicraft or industrial occupation or avocation of workmen".

This definition, on careful examination, appears merely to list the varied "forms" taken by "industry" in the economic environment. Even a careful reading of the various other ways in which this concept has been defined in subsequent cases does not yield a substantive comprehension of what industry is within the purview of the I.D.Act. Various decisions of the Court had ruled that the following kinds of organizations do not come within the ambit of the definition of industry as per the I.D.Act:

1. Kurji Holy Family Hospital[9]
2. Dhanrajgiri Hospital[10]
3. Solicitor's Firm[11]
4. Delhi University[12]
5. Non-proprietory Members' Clubs with Multifarious Activities like the Madras Gymkhana Club[13]
6. The Cricket Club of India.[14]

It was left to Justice Krishna Iyer and his brother Judges' "creative jurisprudence" to make a concerted effort to come to grips with the understanding of the meaning of industry. Thus in the Bangalore Water Supply and Sewerage Board Vs. Rajappa and others (Civil Appeals No.753-754, dated 21.2.1978) the judges took a good, hard look at the concept of industry "with dictionary in hand, decisions in the head and Constitutions at heart".[15]

First, an attempt was made to concretize the issue by asking the following questions:[16]

1. Are establishments run without profit motive or commercial objective industries?
2. Should there be direct co-operation between employer and employee for the activity to be an industry?
3. Is domestic service industry?
4. Are governmental functions industrial?
5. What is a rational criterion for defining industry so as to take into consideration a progressive approach to the regulation of employer - employee relations?
6. Is it scientific to define industry solely on the basis on the basis of the dominant nature of the activity?

Second, the following definition of industry was offered as an aid in answering some of the intransigent questions raised above:[17]

"Industry as defined in Sec.2(J) has a wide import:

a) where

i) Systematic activity

ii) is organized by co-operation between employer and employee (the direct and substantial element is chimerical)

iii) for the production and/or distribution of goods and services calculated to satisfy human wants and wishes (not spiritual or religious but inclusive of material things or services geared to celestial bliss, i.e., making on a large scale prasad or food),prima facie, there is an industry in that enterprise.

b) Absence of profit motive or gainful objective is irrelevant, be it a venture in the public, joint, private or other sector.

c) The true focus of the functional and the decisive test is the nature of the activity with special emphasis on the employer-employee relations.

d) If the organization is a trade or a business, it does not close to one because of philanthropy animating the undertaking.

The logical sequel to the raising of substantive questions about the nature of industry and the identification of the criteria for determining industry was the matching of concrete instances to the evolved model. Hence, in this historic judgement, the judges ruled that professions, clubs, educational institutions, co-operatives, research institutions, charitable projects, government departments (except when carrying out sovereign functions) satisfy the criteria for being defined as industries.[18]

The implications of this definition of industry and its application alarmed employers in the services sector and disturbed legislators and administrators. The general apprehension was that once the rights conferred on labour through the I.D. Act, 1947, were extended to organizations like educational institutions and hospitals, employer-employee "harmony" in such organizations would be effected adversely.

There was also the apprehension that there would be a proliferation of trade unions and intensification of militancy in the educational and health services sectors.

The judges after having pronounced their judgement also stated that "Constitutional and competently enacted legislative provisions may well remove from the scope of the Act categories which otherwise may be covered thereby".[19] Whatever may have been their intent in making this statement, the Government took the cue from this pronouncement and went on to redefine "industry" by amending the Industrial Disputes Act (No.46 of 1982). While the amendment provides a definition of industry drawing heavily from the above judgement, there has also been a conscious effort to withhold 'industry' status from certain organizations even if they fit the judges' criteria for industry. The obvious observation is that while the judges adopted a substantive approach by evolving a criterion-based empirical model for classifying organizations according to whether they are "industries" or not, the Government has used its legislative scalpel to excise certain organizatioons from being deemed as "industry".[20] Thus the Amendment referred to above excludes the following organizations from entitlement to the status of industry: any agricultural activity except where it is carried on it an integrated manner with any other activity; hospitals or dispensaries; educational, scientific, research or training institutions; institutions owned or managed wholly or substantially engaged in any charitable, social or philanthropic service; Khadi and Village Industries; any activity of the

government relatable to the sovereign functions of the government including all the activities carried on by the departments of the Central Government dealing with defence, research, atomic energy and space; any domestic service; any professional activity employing less than ten employees and any cooperative activity or club employing less than ten employees.

The definition itself reads thus:[21]

"Industry means any systematic activity carried on by co-operation between an employer and his workmen (whether such workmen are employed by such employer directly or by or through any agency, including a contractor) for the production, supply or distribution of goods or services with a view to satisfy human wants or wishes (not being wants or wishes which are merely spiritual or religious in nature), whether or not

i) any Capital has been invested for the purpose of carrying on such activity; or

ii) such activity is carried on with a motive to make any gain or profit; and includes

a) any activity of the Dock Labour Board under Sec.5A of the Dock workers (Regulation of Employment), Act, 1948 (9 of 1948);

b) any activity relating to the promotion of sales or business or both carried on by an establishment.

It must also be mentioned here that after having excluded educational institutions and hospitals from the purview of the definition of industry in Amendment No.46 of 1982, (and as mentioned earlier, the new definition is yet to take effect) Government also proposes to enact a separate legislation for hospitals, educational and other institutions in order to regulate employer-employee relationships in such organizations with the focus on establishing a "grievance handling" machinery while simultaneously curbing trade unionism as well as the right to strike in this sector. While individual grievances would be attended to by a Grievance Redressal Authority, an Appellate authority and a Tribunal, Collective Grievances would be attended to by a Management Council and by Arbitration.

2.2.2 CONCEPT OF WORKMAN

Attention can now be turned to the concept of Workman as per the I.D. Act. "Workman" means any person (including an apprentice) employed in any industry to do any unskilled, manual, skilled, technical, operational and clerical award for hire or reward, whether terms of employment be expressed or implied. The term includes any such person who has been dismissed, discharged, or retrenched in connection with, or as a consequence of a dispute, or whole dismissal, discharge or retrenchment has led to that dispute. The term also includes supervisors drawing less than Rs.1600/- per month. The term does not include within the purview of the Act any persons employed in a managerial or administrative capacity.

There have been several interesting judgements related to who is a workman and who is not a workman. An employee whose main task is supervision of the work of others and if he is drawing more than Rs.1600/- he is not a workman.[23-24] Even if the designation does not indicate that an employee is a supervisor but if he is performing functions which are mainly managerial, he is not a workman.[25] However, if the employee is designated supervisor but is not performing supervisory functions, he is still a workman.[26]

The definition of "workman" as per the I. D. Act and a few representative Case Laws referred to above points to certain implications for Industrial Relations in the Indian context:

1. The significance of the definition of workman lies in the fact that only those who come within the purview of the definition in the Act can lay claim to the rights conferred by the Act on workmen.

2. It follows therefore that the rights of the I.D. Act have been conferred on workmen and not on workmen's organizations. Individual workmen in termination cases and in a sense a certain plurality of workmen benefit from the rights of the I.D.Act. Although in practice disputes are raised by workmen's organizations, nevertheless it is a fact that workmen's organizations have been rendered irrelevant by the Act.

3. The definition of the workmen also drives a wedge between labour per se and supervisory, managerial labour. Managerial labour is a necessary function in large scale, modern production relations but by excluding such labour from within the purview of the definition, not only have the rights of the I.D. Act been denied to them but by the same token have been alienated from wage labour and realigned with those who own and control production processes and production relations.

2.2.3. CONCEPT OF INDUSTRIAL DISPUTE

An industrial dispute in the I.D. Act means any dispute between employers and workmen, or employers and employers, or workmen and workmen which is connected with the employment or non-employment or the terms of employment or the conditions of labour of any person.[27] A careful interpretation of the definition of industrial dispute shows that broadly speaking, an industrial dispute should be a collective dispute. It is true that Act 35 of 1965 has inserted Sec.2A into the I.D.Act by which it is quite clear that even a dispute between an individual workman and an employer relating to discharge, dismissal, retrenchment or termination of services of workman shall be deemed to be an industrial dispute "notwithstanding that no other workman nor any union of workman is party to the dispute".[28] In all other cases, however, the dispute should have been raised by a substantial number of workmen.[29] It has been ruled, for instance, that representation by nearly 25% would give a

representative character;[30] in another judgement 5/22 was considered a substantial number[31] and in yet another case 4/11.[32] Espousal of the cause of dismissed workmen by one-twelvth of the workmen was not considered to be a substantial body of workmen.[33]

A workman's cause can be sponsored for the purposes of the requirements of an industrial dispute by even an unrecognized union[34] or even by a minority union.[35-38]

Yet another significant dimension of the definition of industrial dispute in the I.D.Act is that even "non-employment" can become a subject of an industrial dispute. A substantial number of industrial disputes relate to non-employment in systems which have adopted the capitalist path to development whereas in socialist systems, the right to work is a fundamental constitutional right.[39] The right to start or close down operations,[40] the right to hire and fire,[41] the right to layoff, retrench,[42] and lockout[43] workmen have all been conferred on employers. The Industrial Employment Standing Orders Act (1946) also provides for dismissal of workmen on disciplinary grounds after due procedures have been followed.[44]

The concepts of industry, workman and industrial dispute analyzed thus far give indications about the way the right to work has been defined in the legal foundations of industrial relations in the Indian context. The focus on various other legislations which have been enacted to enable the working class to protect its right to work would further enhance our understanding of the phenomenon.

2.2.4 UNION RECOGNITION

It is true several rights have been conferred on the working class through various legislations flowing from the fundamental rights and the directive principles of state policy enshrined in the constitutions. However, it is also true that the exercise of the rights of the working class hinges on the scope and effectiveness of the organization of the working class. The Trade Union Act, 1926 has provided for the registration of a trade union by workers or employers if any seven of them approach the Registrar of Trade Unions. The Act also provides for 50% of the trade union executive to be from outside the enterprise. The provision made for a voluntary political fund has indirectly given sanction for the political affiliation of trade unions. Thus, there is an act which encourages workers to organize. However, after 60 years of the passing of the Act, what is the position? As on March 21, 1985, the total workforce in the country was 292 million out of a total population of 754 million. Of the 292 million, around 25 million were in the organized sector and the remaining 267 million were in the unorganized sector. Of the 25 million in the organised sector only 6 million were unionized.[45] Multiple unionism, interunion rivalry, non-existence of democratic procedures for determining a majority union for representing workers further weaken prospects of working class solidarity. Several efforts have been made to come to terms with the problem of recognition of a representative union for the purposes of collective bargaining.

The most basic rights of the working classes apart from the right to associate are the right to be recognised and the right to be represented by worker organizations. Ideally, the "recognition" of unions should be a function of the strength and solidarity of the organizations of other working classes. The strength of working class organizations again would be function of mobilization and consciousness raising efforts by such organizations. But in practice it is evident that the unionized workforce is only a small proportion of the workforce in the organized sector with the workforce in the unorganized sector virtually untouched by unionization. And considering the fact that given a chance employers would prefer a no union situation for the uninhibited exercise of the managerial prerogative, the question of "recognition" and "representation" of working class organizations needs to be propped up by statutory regulation through state intervention.

The question of "recognition" of unions has been the subject of a raging debate in search of viable solutions. While the debate has gone on, while some industries have evolved systems for recognition of unions for bargaining purposes, the widely prevalent working arrangement appears to be to strike up a good equation with unions affiliated to the party in power at the State level or at the Centre depending upon under whose jurisdiction the organization functions.

A survey of the panorama of views expressed in various reports, codes and bills will now be undertaken to gain an appreciation of the complexity of the issue of recognition.

The Trade Unions Act, 1926 as mentioned earlier provides only for registration of trade unions but is significantly silent on the question of recognition of unions. However, since labour is on the Concurrent List, certain states have passed their own legislations to provide for recognition of unions : The Bombay Industrial Relations Act, 1946; The I.D. Rajasthan (Amendment) Act, 1958; the Madhya Pradesh I.R, Act, 1960.[46]

The BIR Act classified unions into Approved Unions, Representative unions and qualified unions. Certain rights were conferred on unions given the definition applicable to the particular unions. The State and Employers began to have such a stranglehold on labour through the institution of the representative union that the word representative became a misnomer.

The I.D. Rajasthan (Amendment) Act, 1958 and the Madhya Pradesh Industrial Relations Act, 1960 also contained provisions similar to the BIR Act, 1946. The representative union became the vehicle for the State and employers to gain control over labour. The representative union became a virtual monopoly under these dispensations and thus detrimental to democratic functioning of trade unionism. The policy of collusion rather than that of confrontation or collaboration became the watchword under the above circumstances. The major reasons for such a situation are the manner in which the recognition issue has been distorted in the above Acts and also in the mode of "recognizing" a union to represent labour.

Apart from the above State initiatives, there have been some efforts on the part of unions themselves to deal with the multiple union situation and also the deleterious effects of inter-union rivalry. Notable among these attempts is the Inter-union Code of Conduct which was adopted by INTUC, AITUC, HMS and UTUC on May 21, 1958.[47] The inter-union code of conduct stated that the basic principles for maintaining harmonious inter-union relations would be as follows:

1. Every worker has the right to join a union of his choice.
2. Each worker will join one union only.
3. Each union should function democratically.
4. Unions should conduct regular and democratic elections for union posts.
5. Unions should not exploit the ignorance of workers.
6. Casteism, communalism and provincialism to be eschewed by unions.
7. Inter-union dealings to be free of violence, coercion, intimidation and personal vilification.
8. All labour organizations will oppose the formation of company unions.

Yet another important landmark on the issue of recognition was the Code of Discipline in Industry and the set of criteria for recognition of unions spelt out in Appendix A of the Code (1958).[48] Later, in August 1962, the 20th session of the Indian Labour Conference went into the question of the rights of recognized unions under the Code of Discipline. The recommendaions are presented below:

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

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

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

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

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

6. A representative union for an industry in an area should have the right to represent the workers in all the establishments in the industry, but if a union of workers in a particular establishment has a membership of 50 per cent or more of the workers of that establishment it should have the right to deal with matters of purely local interest, such as, for instance,

the handling of grievances pertaining to its own members. All other workers who are not members of that union might either operate through the representative union for the industry or seek redress directly.

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

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

The question of rights of unions recognised under the Code of Discipline vis-a-vis unrecognized unions was discussed at the 20th Session of the Indian Labour Conference (August 1962).[49] While a decision on the rights of unrecognised unions was deferred for future consideration, it was agreed that unions granted recognition under the Code of Discipline should enjoy the following rights:

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

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

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

iv) for the purpose of prevention or settlement of an industrial dispute:

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

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

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

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

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

vii) to nominate its representatives on non-statutory bipartite committees, eg. production committees, welfare committees, canteen committees, house allotment committees, etc., set up by managements.

Since the Code of Discipline in Industry is a non-statutory union-management pronouncement, its provisions are recommendatory and not mandatory. Its implementation therefore has also been ineffective.

The National Labour Commission Report (1969)[50] also dwelt on this issue and made the folowing recommendations:

It would be desirable to make recognition compulsory under a Central Law in all undertakings employing 100 or more workers or where the capital invested is above a stipulated size. A trade union seeking recognition as a bargaining agent from an individual employer should have a membership of at least 30 per cent of workers in the establishment. The minimum membership should be 25 per cent if recognition is sought for an industry in a local area.

The proposed National/State Industrial Relations Commission (Recommendations 175-177) will have the power to decide the representative character of a union, either by examination of membership records, or if it considers necessary, by holding an election by secret ballot open to all employees. The Commission will deal with various aspects of union recognition such as (i) determining the level of recognition - whether plant, industry,

centre-cum-industry-to decide the majority union, (ii) certifying the majority union as a recognised union for collective bargaining and (iii) generally dealing with other related matters.

The recognised union should be statutorily given certain exclusive rights and facilities, such as right of sole representation; entering into collective agreements on terms of employment and conditions of service, collection of membership subscription within the premises of the undertaking, the right of check-off, holding discussions with departmental representatives of its worker members within factory premises, inspecting, by prior agreement, the place of work of any of its members, and nominating its representatives on works/grievance committees and other bipartite committees.

The minority unions should be allowed only the right to represent cases of dismissal and discharge of their members before the Labour Court.

Leaders of the Indian National Trade Union Congress expressed themselves strongly on the issue of union recognition and made an impassioned plea for the method of membership verification as a means of determining the representative union.
51
The 'Minute of Dissent' (1969) is also one of the most powerful arguments against the method of secret ballot as a method of determining the representative union. Leftist unions have always been ardent critics of the INTUC point of view and in their turn

have been votaries of the secret ballot as the most democratic method of determining the representative unions.[52]

One of the major initiatives on the part of the Government to evolve a comprehensive Industrial Relations legislation was taken in the year 1978 by the Janata Party when it was in power at the Centre.[53] The Industrial Relations Bill, 1978 which never saw the light of day was an effort to redesign the legal framework of Industrial Relations by amending the Trade Union Act (1926), the Industrial Employment (Standing Orders) Act (1946) and the Industrial Disputes Act, 1947. Chapter IV of the IR Bill, 1978 deals with the issue of negotiating agents:

1. A registered trade union could become the chief negotiating agent (CNA) if it has more than 50% of support.

2. The sole negotiating agent if it has not less than 65% of employee support.

3. The associated union (AU) if it has not less than 20% employee support in which another union is certified as a CNA.

4. A union with not less than 40% of employee support in a local negotiating unit may be termed a local union (LU). (Negotiating unit means an industrial establishment, where are two or more units situated in different locations, each unit is a local negotiating unit).

5. Where there is no registered trade union, a committee called the Negotiating Committee can be elected by employees for discharging the functions of a SNA. Apart from describing negotiating agents the bill prescribes a procedure for applying for certification as negotiating agents to the tribunals.

A provision is made for employers to recognise the certified negotiating agents, non-compliance of which is punishable. Finally, in this chapter, the rights of the negotiating agents are listed. Some of them are to hold discussions with the employers in a place identified by the employer, to settle disputes with the employer, to get office accommodation, and put up notices relating to meetings and statements of income and expenditure.

Yet another useful document on the issue of union recognition was the report of the "Study Group on Modalities of One Union in one Industry". The Study Group was constituted as a result of a decision taken by all the Central Unions working in all the steel plants on 12th April, 1977 at New Delhi in a meeting convened by the Minister of Steel and Mines.[54] Seven Central Trade Union representatives (INTUC, AITUC, CITU, BMS, UTUC(LS), HMS, and UTUC) and Plant level trade union representatives from 9 steel plants/related organizations constituted the Study Group. Some of the salient suggestions made in the report were as follows:

1. All unions agreed that the ideal to be achieved is that of 'One Union One Industry'.

2. All unions felt that multiple unionism does harm to the cause of woring class solidarity.

3. All unions felt that the goal of one union one industry should be achieved by the trade union movement itself. There should be no undue interferance from the State or from employers in this matter.

4. There were differences on how the goal should be achieved. INTUC supported membership verification or check off as a method for determining the representative union. INTUC felt a "good" union should represent workers and not a union which believes in confrontation, strikes, gheraos, work-to-rule and so on.

5. Representatives of CITU, AITUC, HMS, bms, NFITU, UTUC(LS) and plant level independent unions were in favour of secret ballot to determine the representative union.

6. There was general agreement that as an interim arrangement either all the unions should be recognized for purposes of negotiations or a Composite Bargaining Agency with proportional representation based on numerical strength should be introduced.

The survey of the modalities of union recognition provides a glimpse of the complexity of the issue. While workers have been given the right to form a union, the existing legislation in the name of protecting and promoting trade unionism in India has only served to weaken the trade union base of the working class by making multiple unionism and interunion rivalry part of the complex trade union scenario.

It is evident from the survey of various initiatives of the State in relation to union recognition that the issue has always been an important means for maintaining or gaining control over collective organisations of workers. The existing system of union recognition has encouraged the practice of recognition of unions affiliated to parties in power at the Centre or in the States. The reluctance to legislate for a democratic method of recognising a union for bargaining purposes can only be explained in terms of the political expediency of parties which have been in power at the Centre or in the States with a view to controlling labour in the organised sector.

2.2.5 THE RIGHT TO STRIKE

The system adopted by Indian society for development being capitalist, any analysis of strikes will have to take into consideration the compulsion on labour to assert its right to strike given its role in the process of collective bargaining . On the other hand, the political compulsion on the ruling classes to curb the right of labour to strike in order to pursue its

interests given the socio-economic formation is also an important conceptual consideration. Several legal instruments, for instance, have been evolved in the Indian context, to manage strikes. The Industrial Disputes Act (1947) and the Essential Service Maintenance Act (1981) are two important pieces of legislation which have placed restrictions on the right to strike.

The Industrial Disputes Act (1947) has recognized the reality of strikes and has not banned strikes out of existence. But for purposes of regulating strikes, certain legal concepts have been introduced into the field of industrial relations:

- Definition of strikes.
- Classification of organizations in terms of whether they are public utilities for prescribing varying criteria for regulating strikes.
- Classification of strikes in terms of whether they are legal or illegal, justified or unjustified.

The ID Act defines strike as 'a cessation of work by a body of persons employed in any industry acting in combination, or a concerted refusal, or a refusal under a common understanding, of any number of persons who are or have been as employed to work or to accept employment'.[55]

Thus, the threefold test to see whether a strike has occurred or not are:

1. There should be a cessation of work.

2. By a body of persons employed in any industry.

3. Acting in combination.

The threefold test creates the illusion that the strike is an apolitical activity because the question of intent, whether it is political or economic, is rendered immaterial.

Again, there is the question of legality or illegality of a strike which depends very much on the manner in which the ID Act classifies organizations into public utility services and non-public utility services.

General prohibitions related to strikes applicable to all workmen in India are as follows :[56]

1. When conciliation is going on before a Board of Conciliation and seven days thereafter.

2. When adjudication is going on before a Labour Court and two months after such proceedings are concluded.

3. When and if an appropriate government bans the strike in its reference.

4. When an arbitration notice has been given and arbitration proceedings are on and two months after the conclusion of such proceedings.

5. When a settlement or award is in operation then on matters covered by the settlement or award there is a ban on strikes.

If an organization is a public utility service as per the First Schedule of the ID Act or if any organization is declared a public utility service which government is empowered to do under the law six months at a time, there are certain additional conditions regulating strikes :[57]

1. A strike notice has to be issued to the employer and to the conciliation officer.
2. The strike cannot take place for 14 days from the date of issue of the strike notice.
3. The strike notice is valid only for six weeks from the date of issue of the strike notice.
4. The strike cannot commence on any day prior to the date specified in the strike notice.
5. The strike cannot take place during the pendency of conciliation before a conciliation officer and for seven days after the conclusion of such proceedings.

The restrictions on strikes are such that going on a legal strike has been hemmed in by a host of legal restrictions.

Apart from the legality or illegality of the strike, yet another consideration revolves around whether a strike is justified or not justified. The implication being that even if a strike is legal it may be declared to be unjustified. The point however is how some of these concepts affect labour's right to strike.

Firstly striking workers have to face the consequences of the 'no work, no pay' principle. The issue of wages during strikes has been the subject of several decisions by Tribunals.[58-59] The picture which emerges is as follows :

Illegal strikes	No wages
Legal and Justified strikes	Wages sometimes
Legal and Unjustified strikes	No wages.

Apart from loss of wages, workers are also likely to have disciplinary action taken against them. Violent and defiant participation in strikes could lead to dismissal after enquiry. If standing orders prohibit participation in illegal strikes, then again striking workers can be dismissed after enquiry.[60] It has also been ruled that if in spite of sincere efforts by management, workers continue obstinately to strike, they could be dismissed after enquiry.[61]

If the ID Act 1947 has put curbs on the right to strike, the Essential Services Maintenance Act, 1981 has intensified these curbs. The Act empowers the Central Government by an order to declare organizations as essential services for a period of six months and also to ban strikes. According to the Act, mere participation in an illegal strike would make a worker liable to dismissal. Penalties for participation in illegal strikes have been enhanced. Police Officers have been empowered to arrest offenders under the Act without warrant and offences under the

Act can be tried summarily by any metropolitan or judicial magistrate.

The discussion thus far has described the legal instruments deployed by the state to restrain the right of workers to strike in their thrust towards protecting and promoting working class interests. There are certain other important dimensions which also impinge on the right to strike.

It is almost a truism to state that even if certain rights are conferred on workers, these rights become operational and are exercised only if workers are organized into trade unions. It is the collective organization of workers which creates awareness of the rights and also provides the impetus and the courage to exercise those rights. In the Indian context, the Trade Unions Act, 1926 has conferred the right to associate on the workers. However, the manner in which the Act is formulated, the trade union scenario is one of multiple unionism and interunion rivalry leading to the atomization and disarray of the working classes. The Act is silent about the modalities of recognizing unions and has not laid down any norms for democratic procedures for determining unions to represent workers at the plant, industry and national levels. This has led to a situation where unions have not evolved into organizations which truly represent the working class. A policy of striking up a good equation with one or more unions aligned either with the employer or with the ruling party at the State or Centre or with both employer and ruling party has generally become the unstated strategy. Thus the trade union scene is dominated not by trade unions committed

to the cause of the working classes but by trade unions aligned with the owning classes. Multiple unionism along political lines as well as along craft versus industrial lines has led to the splintering of the trade union movemeht in the Indian context thus weakening the bargaining power of the trade unions. Certain amendments to trade union legislation on the anvil will further tighten the grip on trade union functioning. For instance, if trade unions indulge in "unfair labour practices" like calling illegal strikes or use of violence, they will not only be derecognized they also be liable for other penalties like fines and imprisonment.

2.3 POLITICO-LEGAL FRAMEWORK OF INDUSTRIAL RELATIONS: PROFILE OF EMPLOYER-EMPLOYEE RELATIONSHIPS

The analysis of certain procedural aspects of the politico-legal framework of industrial relations yields a certain profile of employer rights, employee rights and a profile of employer-employee relationships in the Indian context.

2.3.1 PROFILE OF EMPLOYER RIGHTS

1. Employers have the right to own and to control work organizations, structures and processes.
2. Employers have the right to hire employees.
3. Employers have the right to frame the terms of the employer-employee contracts.
4. Employers have the right to define discipline and to enforce discipline at the workplace.

5. Employers have the right to layoff, to retrench and to dismiss employees.

6. Employers have the right to lockout employees.

7. Employees have the right to close down operations.

8. Employers have the right to form trade unions but are under no statutory compulsion to recognize representative worker unions.

9. Employers have the right to activate the machinery for resolving disputes especially the machinery for conciliation.

2.3.2 PROFILE OF EMPLOYEE RIGHTS

1. Employment is not guaranteed by the Constitutions as a fundamental right.

2. Those employed have the right to form and register trade unions to protect and promote immediate as well as long-term interests of the employees but there is no statutory compulsion on employers to recognize representative unions.

3. Employees have the right to strike but the right has been curbed to such an extent that it is virtually impossible to go on a legal strike especially in a public utility service.

4. Employees have the right to activate the machinery to resolve disputes but find adjudication a main method of securing justice in spite of the cost and time involved in the process.

5. Employees have the right to defend themselves in disciplinary proceedings and find growing protection in the progressive intervention of the Judiciary in such proceedings.

6. Employees have the right to layoff and retrenchment compensation only and no guarantee of life-time employment.

2.3.3 PROFILE OF EMPLOYER-EMPLOYEE RELATIONSHIPS IN THE INDIAN CONTEXT

1. The Employer-Employee relationship is a contractual relationship with the power to employ according to the employers' terms being vested with employers.

2. The employer-employee relationship is an unequal struggle for power to gain control over work processes at the point of the workplace.

3. The Employer-Employee relationship is ridden with structural contradictions given the modalities of property relations of the Indian socio-economic formation.

4. The Employer-Employee relationship is conditioned by legislative enactments and executive authority of the state in which the state-employer interests exercise control over working class rights.

5. The Employer-Employee relationship is conditioned by judicial interpretations and pronouncements given the framework and character of the superstructure of the Indian socio-economic formation.

2.4. POLITICO-LEGAL FRAMEWORK : UNDERLYING LOGIC

The pattern implied in the amendments proposed in the Trade Unions and Industrial Disputes Amendment Bill (1988) did not deviate substantially from the existing profile of employer employee relationships. If at all there was a deviation it was in the form of a pronounced reinforcement of the orientation towards the control oriented approach to industrial relations discernible in the present dispensation. The control oriented approach as discussed earlier focusses on the institutions of job regulation and the procedural and substantive rules spewed by these institutions.

The major planks of this approach to industrial relations are :

1. Preoccupation with maintenance of order and the containment of conflict.

2. The development of institutions for rule-making for the regulation of employer-employee relationships.

3. The projection of the institution of collective bargaining as a suitable institution for the rule-making process.

4. Greater control over worker organizations and greater curbs on the collective action of worker organizations through preventive and punitive legislation.

The amendment Bill now withdrawn proposed collective bargaining as a pivotal mechanism for disputes resolution in the Indian context. The proposal attempted not only to introduce procedures for the recognition of bargaining agents but also for changing the profile of trade unions. Higher membership requirement for registration, reduction in external leadership, the discouragement of craft unionism and the fostering of industrial unionism, precedence of apex-level bargaining over plant level bargaining, shift from litigation in High Courts to Industrial Relations Commissions, the widening of the scope of individual disputes with the concomitant shrinkage of the scope of collective disputes, more stringent curbs on trade union and worker involvement in strikes - combined together constitute the profile of the industrial relations reforms proposed by the Amendment Bill. The logic of control oriented ideology was more than evident in the underlying logic of the proposed amendments.

The control oriented logic as well as control oriented solution to the industrial relations question, however, is a limited approach because its strategies do not take into consideration the nature of the socio-economic formation within which the drama of industrial relations is played out. This school looks at industrial relations and labour legislation within a narrow institutional framework. Any analysis of specific legal provisions and procedures in specific industrial relations systems and any analysis of change in the profile of industrial relations systems cannot be divorced from the nature of the socio-economic formation within which the processes of labour-management relations evolve and operate. Equally important from the analytical point of view but ignored by this school is the question of whether the socio-economic formation within which industrial relations exist is antagonistic or non-antagonistic. Since pluralist logic is insensitive to the logic of the socio-economic formations, its solution strategies are oriented to the procedural aspects of industrial relations only while little attention is paid to the substantive contradictions of given antagonistic socio-economic formations.

The structural contradictions of antagonistic socio-economic formations have their roots in their politico-economic policy framework which is based on the priority of private ownership over social forms of ownership, foreign capital over nationalist capital, private profit over social need, individualistic self-aggrandizement over social benefit, the predilections of a

privileged few over the greatest good of the social totality. And the role of the superstructure of which the politico-legal framework of industrial relations is one component is the reproduction of the socio-economic formation described above. Even in non-antagonistic socio-economic formations contradictions could take the form of abrogated democratic rights, bureaucratic control of labour organizations and the hold of the party over labour organizations.

The Indian experience in relation to the politico-legal framework of industrial relations shows that the superstructure and its initiatives have left the structural contradictions of the socio-economic formation untouched while several legal reforms have addressed themselves to the procedural aspects of industrial relations. Several positive and negative legal instruments have been devised in order to bring about commitment to industrial peace, industrial productivity and socio-economic development. There is enough empirical evidence to demonstrate that at best the industrial relations system has been able to achieve only an uneasy truce.

The plight of management under the above circumstances is precarious. Management is an essential function whatever the nature of the socio-economic formation. The professionalization of management again is a necessary and legitimate aspiration in any socio-economic formation. But the exercise of management is predominantly dependent on the intrinsic nature of the socio-

economic formation within which management lives, moves and has its being. The degree and intensity of the shared values of labour and management become vital considerations in the exercise of the necessary functions of management in organizations. But the exercise of management in antagonistic socio-economic formations is at a distinct disadvantage considering the lack of a substantive consensus given the structural contradictions of the formation.

What is true of the exercise of management in general is even more true of the exercise of the management of industrial relations. Despite the plethora of labour laws, the management of industrial relations whether at the macrolevel or at the plant level remains both ineffective as well as ineffecient given the structural contradictions of antagonistic socio-economic formations. The lacuna of a fundamental and substantive basis of shared values for sustained collaboration between labour and management renders even the behavioural and legal initiatives of managements partially or substantially ineffective. If the working class continues to labour under such dispensations it is not because work is a social act of creative collaboration but because work, however alienating, is a necessary means of survival. Thus, the explanation for the perennial problems of managing industrial relations is to be sought not so much in the lack of individual expertise or lack of organizational will or in the intransigence of labour organizations or in the dearth of labour laws but in the substantive structural contradictions of antagonistic socio-economic formations. Non-antagonistic socio-

economic formations are characterized by the curtailment of the democratic functioning of trade unions. The current trend is the resurgence of trade unionism independent of the Party and the State. Management will have to reorient its strategies given the emergence of new forms of trade unionism.

The paradox of labour policy and legal reform in the Indian context therefore lies in the fact that democratic rights have been conferred on the working classes without the resolution of the structural contradictions of its socio-economic formation. But the exercise of the democratic rights has intensified the structural contradictions and has posed a serious threat to the reproduction of the socio-economic formation. The response of the Superstructure has therefore been one of intensifying its controls on the collective organizations and collective action of the working classes through periodic attempts to reform the politico-legal framework of industrial relations. Laws, amendments to law and more stringent sanctions have followed each other in rapid succession informed inevitably by the sophistry of the control oriented logic and its attendant solutions.

But the fundamental problem remains no amount of control through industrial relations legislation appears to be bringing about the desired commitment to industrial peace, unfettered productivity and equitable socio-economic development. So long as labour policy and legal reform adopts the path of superstructural enforcement of the compliance of labour without the resolution of the structural contradictions of the Indian socio-economic

formation, the conflict between management and labour will continue unabated. This is because the logic of the superstructure in an antagonistic socio-economic formation is by its very nature oriented to the enforcement of the compliance of labour while being fully conscious that a substantive politico-economic consensus between labour and management is wanting given the structural contradictions. Where democratic freedoms are curtailed in non-antagonistic socio-economic formations, movements for the restoration of democratic rights are bound to arise as is evident from several socialist countries. Global trends seem to indicate that irrespective of whether society is antagonistic or non-antagonistic, a fundamental social need which has to be met by the State is the protection and promotion of democratic rights. The basic collective bargaining rights - the right to associate, the right to represent, right to be recognized, right to information, right of freedom of speech and the right to strike - have to be conferred through appropriate legislation.

2.5. CONCLUSION

It may be recalled that the central focus of the parts one and two was to develop an appropriate perspective on the Indian situation and also to evolve an appropriate theoretical perspective for understanding industrial relations in the above context. The purpose of this exercise was to develop a framework for analyzing trade union praxis defined as the praxis of alienation, praxis of disalienation and the praxis of the

liberated human community. The analysis of the Indian situation shows that the Indian socio-economic function is characterized by the Mixed Economy System, pluralist politics, ethnic diversity and all these forces are in dynamic interaction within the constitutional framework of democratic structures and processes. Industrial relations in this context is the struggle for the control for the workplace by employers and employees and their organizations and affiliates. The general thrust of the State through its procedural legislations has been to confer certain democratic rights but also to adopt more of a control oriented approach to worker organizations and actions than a commitment oriented approach. This has tended to sharpen the contradictions in the Indian socio-economic formation. It is within the above reality that the analysis of the praxis of alienation and the praxis of disalienation of the working classes have to be analyzed. The analysis of the macropraxis of the alienation of the working classes thus leads us to the analysis of the microproxis of alienation.

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