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NATIONAL COMMISSION ON LABOUR

TOPIC NOTES
ON
TRADE UNIONS AND EMPLOYERS' ORGANISATIONS

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ON

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(Section III of the Questionnaire)

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NATIONAL COMMISSION ON LABOUR

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NATIONAL COMMISSION ON LABOUR

PLAN FOR DISCUSSION

TRADE UNIONS AND EMPLOYERS' ORGANISATIONS

To facilitate discussion of notes included in this volume and to assist Members in the consideration of the topics covered under the subject, the Secretariat has arranged the notes in what it considers to be a logical sequence. As was decided earlier in the Commission the list of topics was circulated to Members and such suggestions for modification and addition as were received from them were taken into account in drawing up the final list. It is expected that between them, they will cover most of the controversial topics in the area on which the Commission will have to take a decision. As was advised by the Commission earlier, each note contains four sections - (1) the present position in India, (2) analysis of the evidence, (3) a brief summary of foreign practices; and (4) an examination of the alternatives available and suggestions as to the most suitable course of action.

2. State policy in relation to trade unions in India has in the main followed two basic objectives: (a) protection of the right to organise; and (b) promotion of trade union participation in policy making in areas affecting labour. The former is covered by legislation which enables registration of unions with minimum formalities and grants certain legal immunities to unions. For the latter, Government has created an extra legal framework i.e. tripartite advisory forums where all important matters of labour policy, legislation and

planning are discussed.

3. While protection afforded by law has facilitated the growth of unions, certain factors such as the association of political parties with unions, the absence of provision for recognition of unions, the emphasis on compulsory adjudication for the settlement of disputes have given rise to some fundamental weaknesses in the movement. Multiplicity of unions, inter-union rivalry, poor finances, paucity of inside leadership are some of the problems which need urgent attention if the movement is to play its rightful role in the community.

4. In any consideration of the future development of trade union movement in India one has to be very clear about certain fundamental issues, such as:

(A) The role and functions that the unions should assume particularly in the context of national planning and developing economy.

(B) The measures that should be taken to promote growth of healthy and strong unions in particular to remove the present weaknesses relating to leadership, membership, finances, multiplicity and inter and intra-union rivalries. The problem of recognition of unions as sole bargaining agent assumes importance in this context.

(C) Changes which are required in the law to provide for regulation in respect of (A) and (B) above.

5. The notes have, therefore, been arranged in the above order. The attempt has been first to define what role should

be assumed by and assigned to unions in a democratic system. Recognition of unions is of basic importance in any attempt to strengthen and stabilise the trade union movement and enable it to play its role responsibly and effectively. Measures have been suggested to remedy short-comings in the union organisation. Importance of statutory regulation to promote trade union growth and their recognition is viewed in the light of past experience and practices.

6. In the system of industrial relations, the employers' organisation is the counter-part of the trade union. A legal definition of a trade union under the Trade Unions Act, in fact, covers employers' organisations also. A basic distinction however, has to be kept in view. While workers who associate themselves for common dealings with the employers are organised in a trade union, the employer is already an organisation in himself capable of meeting a trade union on equal terms. Employers' associations which have other functions besides dealing with labour matters are organised at three levels: (a) federations at the national level; (b) Industrial Associations at the industry level; and (c) Chambers of Commerce. While the associations at the industry-level have been increasingly connected with collective bargaining with workers' unions at the corresponding level, the federations at the national level have mainly been advisory in nature, representing the employers at the various national tripartite bodies.

7. While not all the problems discussed in relation

to trade unions in the notes included in this volume concern employers' organisations, some do seem to have a relationship. The problems of unified representation of employers interest in collective bargaining and at the tripartite forums has for practical purposes been effectively tackled by two of the three main Employers' Organisations when they came together as the Council of Indian Employers. But the employer now is no longer the private employer alone. There has yet to be a fusion of interest between public sector and private sector employers as indeed between the employer interests within Government and the rest of the employing world. The trends in policy have been not to treat private and public sector employment differently in so far as labour matters are concerned. It is therefore likely that in the years to come a greater cohesion will come about.

8. There have been cases of individual employers getting out of the Association to avoid the commitments which Associations undertake on behalf of employers. Though it is not a major problem so far as labour is concerned, it does require to be mentioned in order to bring out the similarity at least theoretically in Workers and Employers' Organisations. Sanctions in the case of employers organisation can be more effective and yet cases were there which showed the unwillingness of the employers organisations to invoke such sanctions. There have been occasions when employers organisations feel helpless about their membership though these could be not so frequent as workers going out of one union to join another.

the minimum; for those whose emoluments exceed Rupees 100 it should be one per cent of wages including Dearness Allowance. (Reference: Note on Trade Union Finances, Para 20)

18. While the present Trade Unions Act, 1926 has helped in the growth of the trade union movement by giving them needed protection, experience has shown that it requires certain modifications .Compulsory registration of unions has been suggested because uniform regulations governing all unions would improve their qualitative and organisational standards. The ease with which trade unions can be formed at present has been thought to be one of the causes of small unions, multiplicity of unions and poor finances. A slight change in the registration requirements has been suggested: While the present number of seven persons for starting of new unions may be retained, the requirements should be raised to 10 per cent of the regular employees or 100 whichever is lower in undertakings where already a registered union has been functioning for over a year.

This, it is hoped, will reduce the formation of rival unions to a considerable extent. The experience has been that maintenance of accounts etc. by the unions has not been by and large satisfactory. Its compliance too could not be persued because of inadequate powers with the Registrar of Trade Unions. Therefore, the suggestion is to vest the Registrar of Trade Unions with some more

9. The lack of arrangements necessary for proper and efficient communication between the apex and the constituents again is a shortcoming common to both trade unions and employers' organisations. The suggestions made in the relevant notes on these topics as also in some others will apply with equal force to both.

10. The main suggestions made in the notes are briefly as follows:

A

The primary function of a trade union is to protect and promote the interests of its members, as a union like any other organisation draws its sustenance and strength from members. However, it is realised that trade unions cannot function in isolation of the rest of the community. This assumes greater importance in a developing economy, striving to achieve planned economic growth in the quickest possible time. In such a situation the needs of production and maintaining industrial peace for the maximisation of effort impose special responsibilities on the unions. Trade unions of today and tomorrow, have therefore, a dual task before them - both equally important and urgent. The task of the leadership is to find a balance between them, so that they are in tune with the community and actively help in its progress. (Reference: Note on Role and Functions of Trade Unions, Paras 17-20).

B

11. A system of recognition of majority union as the sole bargaining agent has been considered to be basic for any

improvement in the present industrial relations system, and an essential step to eliminate the weaknesses of the trade union movement. Industrial democracy implies that only trade unions can properly represent the wider interest of the working class and that the majority unions should have the exclusive right to represent. Sole representation is also justified because such a step would minimise multiplicity of unions, inter-union rivalry and give larger membership to a union and eventually strength to union movement. As such, it is suggested that recognition should be made a statutory obligation. As regards the basis of recognition, opinions are sharply divided between verification procedure and secret ballot. Both these procedures have their own limitations, and either can work provided the right atmosphere is created. It is felt that much of the objection to either of these procedures will be eliminated if the procedure is administered by an independent agency. As such, constitution of an independent agency with discretion to choose either of the methods depending upon individual situations has been considered to be appropriate. (Reference: Note on Recognition of Unions, Para 37).

12. A pertinent question that would arise would be what rights and facilities a representative union should enjoy, besides the right to represent the employees in any negotiations with the employer. It is not considered desirable at this stage, to suggest the facility of union-shop to recognised unions. It is better that such security measures are allowed to evolve in the natural process of the growth of unions rather

than be introduced through compulsion. (Reference: Note on Union Security - Closed-shop/Union-shop, Para 21).

13. Importance of check-off practice in improving trade union finances has been recognised. It is not considered desirable to make it a statutory obligation on the employer to extend this facility to a recognised union. Only an enabling legal provision is considered desirable. Where the recognised union asks for the facility and on the authorisation received from the individual members it is suggested that employers should give it. (Reference: Note on Check-off, Paras 15-16).

14. In order to promote the development of strong unions, encouragement to the formation of industry-wise/area-wise unions will be a step in the right direction. Formation of category-wise/craft unions should be discouraged as it will only add a new dimension to the already existing multiplicity of unions. Where a case exists for recognition to such unions, the independent agency concerned with recognition of unions may be empowered to decide whether recognition of such a union is desirable in a particular situation or not.

(Reference: Note on Structure of Trade Unions, Paras 22-23).

15. Considering that multiplicity and inter-union rivalry in the trade union movement reflect the indiscipline and divided loyalties obtaining in other aspects of our national life, any lasting improvement in this regard can come only by a general improvement at the national level. What is here suggested are measures that may reduce the impact of such

rivalries in the trade union movement. In order to reduce inter-union rivalries, some agreement on the lines of the U.K. Bridlington Agreement seems called for. It is realised that such an arrangement will work only with some amount of basic agreement between the various trade union organisations to keep their political identities and affiliations separate from the trade union work. Intra-union rivalries should be settled either through the concerned central organisation or by reference to the independent authority concerned with trade union recognition, etc. (Reference: Note on Inter-union Rivalries, Paras 20-25).

16. The presence of outsiders in trade unions has often been blamed for the weaknesses of the trade union movement. However, a legal ban on outsiders in trade unions appears neither necessary nor desirable. More emphasis should be laid on efforts to build up strong and responsible internal leadership. Steps which would help reduce the importance of outsiders and build up internal leadership have been suggested. (Reference: Note on Outsiders in Trade Unions, Paras 20 & 23).

17. It is a well-recognised fact that trade unions have been suffering for lack of funds which in turn has affected their ability to carry out their functions effectively. In order to improve the finances of unions, apart from steps such as recognition of unions, an increase in the minimum membership fee of trade unions has been suggested. It should be raised to 50 paise per month at

powers. Besides the above, certain additional clauses are required to be inserted in the Trade Unions Act particularly on recognition of unions and unfair labour practices, cancellation of registration of unions found guilty of certain actions. (Reference: Note on Trade Union Legislation, Para 21).

Role and functions of trade unions

The primary function of a trade union is to protect and promote the interests of its members. It draws its strength from the funds and the support that is provided to it by its members. It has, therefore, to strive to advance the terms and conditions of their employment and generally their economic and social interests so as to achieve for them the highest possible living standards. Social welfare activities like welfare schemes, mutual benefit societies, cooperatives, vocational training courses, employment offices, libraries, etc. to promote the economic and social welfare of the union members are therefore clearly within the union's functions. That these are recognised as the basic functions of a trade union, is clear from the provisions in the Trade Unions Act, 1926 which stipulates the objectives on which the general funds of a trade union can be spent.

2. However, even the normal activities of trade unions lead them into areas not strictly within these confines. In the discharge of their basic functions, the legislative support that trade unions require for realisation of some of the objectives and achievement of their long term interests inevitably leads to the involvement of the unions in politics. Unions have to take a stand in regard to the social and economic objectives of the community/country as a whole and exert pressures upon the process of public policy making so that the choices made and priorities adopted are not contrary

to the interests of the workers. Whether a union should get directly associated with particular political parties would perhaps depend upon the circumstances of each situation. Considering that such political action/association is legitimate and to facilitate it the Trade Unions Act, 1926 permits the constitution of a separate fund for political purposes.

3. But the unions cannot always function in isolation. Workers as citizens have their responsibilities, the needs of a developing economy, the requirements of rapid economic growth, and the importance of maintenance of industrial peace and avoidance of work-stoppages, impose certain urgent responsibilities on the working class - as on all citizens. The trade unions being the organised expression of the working class have to shoulder this urgent social task. The association of the organised trade union movement with formulation of labour programmes in the tripartite bodies, at the central and State levels, and with the Labour Panel of the Planning Commission are pointers to this.

4. Some argue that in the present state of development of the trade union movement when (i) organised trade unionism is confined largely to the urban industrial sectors; (ii) a vast section of labour employed in agriculture and small industries is still outside the pale of trade union influence; (iii) the levels of living, wages and working conditions of workers are to be protected and

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improved; (iv) several unions compete for the loyalty of the workers and have also to contend against the unhelpful, if not antagonistic, employers, the needs of sheer survival will force the trade unions to give priority to the immediate interests of the workers. Some of these situations are within the control of unions; others are not.

5. There can be considerable differences of opinion as to the priorities between the two and the way in which conflicts between these roles can be reconciled. The process of achieving the reconciliation of interests depends upon the creation of awareness of the identity between the two. It requires social, economic and industrial change which will produce an environment in which the identity can be seen in practice. The creation of such environment may involve a measure of State intervention in industrial and economic affairs, and in the relationship between the employers and the employees depending on the traditions of each country and the realities of the situation at a given time. But such obligations as the unions can have to the society, the unions argue, have to be reciprocal.

II

Evidence before the Commission.

6. The evidence before the Commission indicates that the traditional role of trade unions is the protection of the interests of its members but unions should extend their

field of activities. The emphasis generally has been on the extension of union activities to spheres like worker education, consumer cooperation, workers' housing and welfare etc., in addition to unions taking on a more responsible attitude to their duties and obligations to increase production and to maintain industrial peace.

7. Most of the State Governments have suggested that while the conventional role of the trade unions will continue, they have to expand their activities viz. (i) the trade unions should educate their workers about their responsibility towards society in general and industry in particular. The unions can be very effective in checking labour turnover and absenteeism. Some have recommended that trade unions should give greater attention to setting up consumers cooperatives, housing cooperatives, etc. to improve the general standards of living of the workers. Mutual benefit funds should be re-established to help the workers in times of needs like sickness, unemployment and other contingencies.

8. Employers' organisations including public sector undertakings, while appreciating the traditional role of the workers, would like a change in their present approach and attitudes. They would like the unions to give up agitational approach; some have laid emphasis on trade unions' role in increasing productivity and efficiency of labour, and on social welfare of members. One employers' association has suggested that "the nature and scope of activities of the

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trade unions needs to be tailored considerably for meeting national objectives".

9. Most of the workers' organisations have emphasised the traditional role of the workers' unions. However, one central organisation, while acknowledging the traditional role of unions, suggested that it should be extended (i) to serve their membership and to cater to the many sided requirements of the workers as responsible citizens; (ii) to plan for sustaining the interests of their membership during normal time by organising intellectual, social, cultural and recreational activities, consumers cooperatives, credit cooperatives and cooperative housing societies; and (iii) to educate the rank and file that the traditional agitational role should gradually be transformed into one of understanding. The workers should also be given an effective role in participation in the affairs of the industry including its management as co-partner in industry. Another central organisation points out that "if the trade unions allow themselves to be diverted from their traditional role in the name of requirements of economic development, the weaker and exploited sections of the working class will find themselves terrorised and deprived of safeguards to an even greater extent".

10. While several Study Groups have generally stressed the importance of unions taking up a responsible attitude in collective bargaining and for maintaining industrial peace, some have made specific references to the role and functions of trade unions. The Study Group on Industrial Relations

(Southern Region) would like the unions to shift their attention to activities which promote the social and cultural life of their members instead of confining themselves to raise disputes with employers and to enable the unions to undertake such activities, they recommend increase in the membership subscription. While the Eastern Region Study Group has pointed out the need to improve the functioning of unions, the Study Group for Plantations (Coffee and Rubber) emphasised the important role that the employers' organisations and trade unions have to play in the economic development of the country through successful implementation of the Five Year Plans, by safeguarding industrial peace and ensuring increased production. "In this regard, the responsibility of trade unions is onerous. Hereafter, they should project themselves more and more in constructive activities like workers' education and welfare in cooperation with the employers' organisations and the Government." The independent members of the Study Group on Ports and Docks commend that "the all-India labour leaders should keep before themselves the broader perspective of the establishment of a socialist society and of achieving planned economic development of the country as a whole and coordinate this wider outlook with the interests of the workers in the ports sector".

III

International Experience

11. The role that the trade unions have been able to perform in protecting the interests of the members differs

from country to country and from time to time in the same country depending upon their economic and social development. It also depends on the strength—both organisational and financial—of trade unions and also to a very great extent on the institutional set up of the society in which they operate. Obviously, no uniform pattern is discernible. For example, in socialist countries, in the earliest stages, the unions performed purely traditional function of protecting the interest of the workers and gradually when the institutional set up transformed, they are actively participating in running the industry and the emphasis on looking to the interest of the members alone was changed to that of increasing production and maintenance of discipline.

12. The participation of trade unions now ranges from joint consultation at plant/industry level to work on administrative bodies like Economic and Social Council in France, Planning Commission in Sweden, Economic Council in Denmark to more informal contacts with the higher governmental authorities in the U.S.A. The I.L.O. in its 1962 Session, passed a resolution to the effect that Governments should be requested to associate Trade Unions (and employers organisations) formally in the nation-building activities. In a number of countries the law specifies the activities that trade unions may lawfully engage in. However, they are not exhaustive and in no way restrict the unions' freedom to enlarge their activities. In Brazil, official/recognised organisations have

a duty, under penalty of withdrawal of recognition to cooperate with the authorities in fostering social unity and in carrying out the Government's economic policy. In Sweden also the emphasis is gradually shifting to increasing production. In France and Netherlands and some others, unions, according to law, are consulted on any draft legislation dealing with economic and social issues. In Sweden and Netherlands they are made responsible for the implementation of the labour and social security legislation.

13. In the United Kingdom, it is recognised that the cardinal role of the trade unions is to promote the interests of their members. Whether the trade unions have any role to play in accelerating the social and economic advance of the nation is not self-evident and there is certainly a scope for argument about the priorities between the two. In recent years, however, there has been a tacit acceptance of this function on the part of T.U.C. when in the Joint Statement of Intent on Productivity Prices and Incomes in December, 1964 T.U.C. on behalf of trade unions declared its willingness to shoulder these responsibilities. According to this "the representatives of trade unions and employers undertook to encourage and lead a sustained attack on obstacles to efficiency, to strive for more vigorous standards of performance .. and to cooperate with the machinery set up by Government to review the movement of Prices and incomes...."

14. In United States, the main function at present undertaken by the trade unions is to safeguard the interest of the workers at the bargaining table and enlarge their social and welfare activities. "The American labour movement in the last forty years has been working mainly on the basis that it should claim improved privileges for the working class and by so doing improve the general level of living in the community." In recent years, however, there has been a growing awareness on its part, of the needs of the community and the distinct emphasis now in the American Labour Movement seems to be on joint responsibility of management and unions to protect and advance the welfare of the whole society. The unions now realise that this cannot be done within the narrow concept of collective bargaining; it must take on a much broader social responsibility.

15. In the U.S.S.R., the preamble to the rules of the trade unions states that they shall "organise a socialist emulation of workers and employees to raise labour productivity to the utmost, to fulfil and over fulfil state plans, to develop continuously all branches of industry, transport and agriculture, to improve quality and reduce production cost, to make full use of all the reserves of the socialist economy, to take part in planning and regulating wagespromote the introduction of progressive technologically substantiated production rates" Similar provisions are to be found in the trade union rules of Poland, Bulgaria and Yugoslavia.

IV

Suggestions.

16. As already pointed out, the range of the activities and the role that the unions can be expected to play is contingent on the economic, social and institutional set up in a country. The limits on the one hand are prescribed by the strength - both organisational and financial - of unions and on the other hand by the stage of economic development of a country and its institutional set up. Changing social and economic environment necessitates a continuous rethinking in the attitudes which organised labour should take in the larger interests of the community.

17. The Indian trade union movement has yet to build itself into a strong and stable force capable of positive action in the economic life of the community. Because of the inter-union rivalries, organisational deficiencies, influence of outsiders and multiplicity of unions, the funds at the disposal of the unions have not been sufficient to enlarge their activities. Though they have been able to achieve substantial progress in wresting major concessions in the matters of wages and working conditions, in regard to the welfare activities their contributions have been insignificant. If one looks into the composition of the expenditure of an average trade union this statement is collaborated. This is one sphere which requires to be attended to by the unions increasingly.

18. The same organisational weaknesses have militated against unions developing into effective instrument of collective bargaining and joint consultation at the plant level. Till action is taken to remedy these deficiencies, no amount of exhortation will transform the unions into instruments of effective action for their members, let alone for the community. Certain changes contemplated in regard to recognition of unions, its structure, finances, shift in the emphasis on the settlement of disputes through collective bargaining will, it is hoped, gradually change the attitudes, capabilities and achievements of trade unions. A revitalised trade union movement has to pay greater attention to their basic responsibilities to their members. These involve: (i) improving their internal administration; (ii) building up cadres of union workers; (iii) raising adequate resources; (iv) educating and training workers; (v) increasing and improving communications within the union as well as with other sections of the community; (vi) promoting social, cultural and welfare amenities for members.

19. At the same time it is imperative that trade unions keep the well being and progress of the community constantly before them in all their dealings. As the third plan document puts it: "There is need for a considerable readaptation in the outlook, functions and practices of trade unions to suit the conditions which have arisen and are emerging. How to make them an essential part of the apparatus of industrial

and economic administration of the country and prepare them for the discharge of the responsibility which attached to this position is a major task before the trade union leadership. No one will dispute that the primary function of the trade unions will remain the traditional one but they will have to take upon themselves the additional role of promoting the economic welfare of the community. In some activities, they will have to work in cooperation with the employers, viz. raising the productivity, maintenance of industrial peace at the plant level, etc. in others, they will have to shoulder greater responsibilities in cooperation with the State. Their increasing participation in the formulation of economic policies will be called for and at that time they will be required to view the matters with an open eye and will have to weigh the interests of members with that of the community."

20. Trade unions have a stake in the success of the national plans for economic development since these are formulated and implemented as much for equitable distribution as for maximising production. In this context some important aspects of the social responsibilities of trade unions appear to be in the fields of:

- (i) promotion of emotional integration;
- (ii) responsible cooperation in improving levels of production and productivity;
- (iii) maintaining discipline at the work-place and ensuring high standards of quality of production;

- (iv) appreciating and explaining the technological changes taking place in industry and preparing and helping workers to adapt to such changes;
- (v) generally influencing the socio-economic policies of the community through active participation in their formulation at various levels.

Recognition of Unions

I

Industrial democracy implies that only trade unions can properly represent the wider interests of the working class and that the majority union should have the right to sole representation. In this context, recognition of a representative union is fundamental in that it signifies acceptance of the right of the union to speak and act for its members, to enter into agreement with the employer and to be responsible for ensuring that the agreement is observed by the employer on the one hand and workers on the other. Union recognition can be an effective check on proliferation of unions and help in avoiding fragmentation in the ranks of labour.

2. That the need for a provision for recognition exists, is evident from the attempts made from time to time in State labour legislation as well as through tripartite agreements and voluntary codes. The Bombay Industrial Relations Act, 1946 and certain other State Acts (Madhya Pradesh and Rajasthan), the amendment incorporated (but not enforced) in the Indian Trade Unions Act, 1947 and later the provisions in the Code of Discipline in Industry (Code) are instances in point.

3. Provision for recognition has lacked uniformity. And even the obligations (Statutory or voluntary) imposed under these, have not found easy

or ungrudging acceptance. The employers as has been the case all over, have been by and large, slow to appreciate the advantages of recognition of a single bargaining agent; many could still be considered antagonistic to granting union recognition. The main complaint against the operation of the Code of discipline from the workers' side is the way it has operated in satisfying their urge to get effectively organised. When an employer refuses to grant recognition, the Government can only try to persuade him, with doubtful chances of success. There has been, therefore, a persistent demand, for making recognition of unions compulsory. Workers feel that the matter is so important that it can no longer be left to the sweet-will of the employers. If the evil of rival union is to be curbed and unions are to grow strong and stable, and if collective bargaining is to be encouraged, there is no escape from making it obligatory for the employers to recognise unions under law. Unions desiring to secure that right can be required to fulfil certain conditions regarding membership and methods of work, but once these conditions are fulfilled they must be eligible to represent workers.

4. The Royal Commission on Labour (1929) considered this question but stated that it was unable to endorse the proposal for obligatory recognition. In its view, "recognition should mean that the employer recognises the right of the union to negotiate with him in respect

of matters affecting the common or individual interest of its members". It further felt that recognition should not be with-held on the ground that a union consisted only a minority of employees and that "the existence of two or more rival unions is not in itself a sufficient ground for refusing to recognise any or all of them". The Commission recommended that "Government should take the lead, in the case of their industrial employees in making recognition of unions easy and in encouraging them to secure registration".

5. Statutory provision for recognition of unions was made for the first time in the Bombay Industrial Disputes Act, 1938. The Act was rewritten eight years later and the Bombay Industrial Relations Act, 1946, started its career. The 1946 Act provides for the classification of registered trade unions as (i) Representative Unions, (having a membership of not less than 15% employees in any industry in a local area); (ii) Qualified Unions (5% membership in any industry in a local area); and (iii) Primary Unions and (iv) approved unions. The unions in each category enjoy certain privileges as indeed they have obligations. Under the Madhya Pradesh Industrial Relations Act, 1960, which provides for registration of unions as representative unions subject to their fulfilling certain conditions, managements have to give certain facilities in

in regard to presentation of grievances of union members and so on. The basis for such recognition was verification of membership of the unions; this has since been altered replacing verification by secret ballot. The Industrial Disputes (Rajasthan Amendment) Act, 1958 also provides for the registration of unions as representative unions. In Bihar for the purpose of recognition, the tripartite Central (Standing) Labour Advisory Board has laid down some principles which are generally on the lines of the criteria appended to the Code.

6. The Indian Trade Unions (Amendment) Act, 1947 was the attempt of the Central Government to write into law the principle of union recognition. The Amending Act provided, inter-alia, for the grant of recognition compulsorily by order of the Labour Court. The grant of recognition was subject to the unions fulfilling certain conditions relating to its membership and functioning and its following among workmen employed by the employer in that industry. In deciding whether a union fulfilled this condition, the Labour Court was required to have regard to whether the fee paying membership of the union was not less than a prescribed percentage. These provisions were not enforced. Provision for certification of bargaining agents was made in the Industrial Relation Bill, 1950. The Bill provided for the certification of three types of bargaining agents: viz. (i) a general bargaining agent, (for a whole industry in a local area), (ii) a special

bargaining agent, (for a particular craft), and (iii) a local bargaining agent (for an individual establishment). For the purpose of certification the Labour Court should take such evidence, make such enquiries and examine such records as it deemed necessary. The Bill was allowed to lapse with the dissolution of the Constituent Assembly (Legislative). The endeavours to resurrect it through a more comprehensive law after the first Parliament was elected in 1952 had to be given up because the tripartite reaction was hostile. There is thus no central law for recognition of unions. The latest attempt in this regard was the Private Members Bill on the Recognition of Trade Unions, introduced by Shri Madhu Limaye in the Lok Sabha in April '68. The Bill seeks to provide for compulsory recognition of unions as sole bargaining agent provided they fulfil certain conditions. The Bill was withdrawn, on an assurance by the Labour Minister that the matter is already under consideration by the National Commission on Labour and the Government itself will bring forward a bill incorporating the recommendations of the National Commission on this subject.

7. The need for some provision for recognition of unions was stressed in the Second Five Year Plan. Because of the desire to go slow on legislation the voluntary Code (1958) gave it an important place in

in its scheme. It is the provision in the Code which governs recognition of unions except in industries/industrial units in the States where recognition has been provided by State laws. Unions are recognised by managements, on a voluntary basis, in accordance with the criteria laid down under the Code. According to the criteria, a union can claim to be recognised as a representative union for an industry as a whole in a local area or in an establishment. A union claiming recognition should have been functioning at least for a period of one year as a registered union, should have the specified membership and should not have been found responsible for a breach of the Code during the period of one year immediately before claiming recognition in an industry or establishment. To determine the representative character of unions, membership is counted only of those who had paid subscriptions for at least three months during a period of six months immediately preceding the date of counting. In case more than one union is functioning in an establishment, the membership of all the eligible unions is verified, in accordance with a procedure evolved by the tripartite Standing Labour Committee, by the Chief Labour Commissioner (Central) or the State Implementation Officer/the State Labour Commissioner, according as the establishment falls in the Central or the State sphere. Once a union has been recognised under the Code it is entitled to enjoy the status for at least two years from the date of recognition. A union which does not observe the Code can be derecognised normally for a period of one year.

8. Unions recognised under the Code or certified under the Bombay and Madhya Pradesh enactments enjoy certain rights. Apart from the right to sole representation in negotiations and collective agreements with the employer, these include the right to collect union dues, hold discussions in the premises of the undertakings with the workers concerned for prevention or settlement of an industrial dispute, put up notices, inspect work places of its members, demand reference of any dispute for arbitration and the right to be represented on joint consultative bodies.

9. Even among those who accept union recognition as fundamental to better industrial relations, certain aspects of the existing recognition procedures have been the subject of considerable debate and controversy. The most important of these has centred round the issue as to what should be the basis for deciding the majority union: should it be (a) verification of the fee paying membership of the unions or (b) election by secret ballot. The issue has been long debated in various tripartite forums, without arriving at any consensus. Some of the other related issues which need to be sorted out are:-

- (a) should recognition be made compulsory under law or be voluntary (as under the Code)? If the former, should there be a Central law on the subject?

(b) what should be the agency to administer the recognition procedures - should it be an independent authority or the Labour Department (or a wing of it) as at present?

(c) what should be the rights of (i) recognised unions, and (ii) minority unions?

II. Evidence before the Commission.

In the evidence before the Commission, the case has been cogently made out and vigorously argued in favour of each of the alternatives in the field of recognition of trade unions. The arguments in favour and against, have run on familiar lines. It is not necessary to repeat them here.

10. State Governments are generally in favour of statutory provision for recognition of unions. They are, however, divided in their views about the basis to be adopted for determining the representative union; while many seem to be in favour of secret ballot as the basis of recognition some have favoured verification of membership.

11. Employers' organisations have also expressed divergent views, some supporting secret ballot and some other favouring verification. All of them are, however, agreed that there is need for a system of union recognition. The Council of Employers has suggested an alternative which provides for verification as also election by secret ballot in certain circumstances. According to this proposal the membership of the contending unions, has to be verified by the concerned

authority and the majority union is to be given recognition, the majority union should not have less than 30% membership. In case, however, two or more unions have 30% or more membership, and the difference between the membership of any two of them is less than 10%, a secret ballot of all workers in the establishment should be arranged to determine the most representative union.

12. Employers in the public sector have generally favoured secret ballot as the basis for union recognition.

13. Among the trade union organisations also opinion is divided although more of them seemed to opt for secret ballot rather than verification of membership. The latter, however, is strongly advocated by the federation claiming the largest membership and some others.

14. The Study Group on Labour Legislation provides in the draft code, for recognition of unions as bargaining agents. The Registrar is to issue a certificate of recognition to the majority union, having not less than 25% membership, after "holding such enquiry as he deems fit for ascertaining the membership" of the contending unions. The Industrial Relations Study Groups have generally favoured provision being made for compulsory recognition of trade unions and for the setting up of independent quasi-judicial machinery to administer the various aspects of recognition procedures. As

regards the procedure for recognition, however, the Eastern and Western Region Study Groups have favoured secret ballot by all workers while the Southern Region Group favoured verification of membership. The Northern Region Group did not express itself in favour of either but suggested that whichever method is generally acceptable to all the parties should be adopted. The Central Working Group on Labour Administration seemed to favour the continuance of the present arrangements for recognition under the Code of Discipline with a change in the minimum membership requirement. Some industry Study Groups (Heavy Chemicals, Ports & Docks, Plantations, Iron & Steel, etc.) have also expressed a preference for secret ballot.

15. As regards the agency to administer the provisions regarding recognition such as deciding the majority union, certifying it as the bargaining agent, determining areas of bargaining and deciding issues of unfair labour practices, etc. the trend seems to be in favour of an independent authority. Such an authority alone according to many would be able to inspire confidence among the unions/parties and will eliminate suspicions of favouritism etc. in this vital area. Although State Governments, public sector employers and some others have suggested the continuation of the present arrangement, viz. recognition through Government machinery, they do not seem to object to the setting up of an independent agency for this purpose. According to the Study Group on Labour Legislation, recognition matters are to be dealt with by the Registrar of unions. Others, particularly

several of the Study Groups and a number of employers and trade union organisations have expressed a strong preference for the setting up of an independent quasi-judicial authority to deal with these matters.

16. On the issue of the period for which recognition is to be given, the few who have expressed their views, seem to be in favour of a period of 2 to 3 years.

17. The general view appears to be in favour of giving the sole bargaining right and other rights and facilities normally given to representative under the existing arrangement. Several have suggested the grant of the right to check-off to the recognised unions in addition to other rights. Most of the evidence indicates opposition to grant of any right, even the right to take up individual cases of its own members, to the minority unions.

III. Foreign Experience.

18. The experience in regard to recognition of trade unions and related procedures in other countries is summarised below:-

19. In countries (e.g. Canada, U.S.A., Japan, Philippines, etc.) the law gives a monopoly of negotiating collective agreements to the most representative Organisation. In these countries only the most representative union has the right to conclude collective agreements applicable to all wage earners in the category/establishment concerned, irrespective of whether they are members of the union or not.

20. In the U.S.A., the National Labour Relations Board deals with all issues relating to certification of the representative union. Any worker, or group of workers or organisation of employees or an employer may call upon the N.L.R.B. to carry out enquiries as a preliminary to certifying a union as a bargaining agent in a particular unit. Where the representative character of a union is disputed, the N.L.R.B. may organise a secret ballot in which all workers participate. In Canada also a similar system obtains, with this difference, that the Board may not necessarily hold an election by secret ballot, but can decide on the basis of examination of records also. In Japan, the Minister of Labour may, if necessary after a secret ballot, designate the most representative organisation with power to appoint members to the negotiating committee set up in public corporations and nationalised industries.

21. In Philippines, the Industrial Peace Act, 1953 provides for the certification of the majority union as an exclusive collective bargaining agent in a unit. In case of dispute, the Court may, after investigation, and in case of doubt, order a 'certification election' by secret ballot. It is mandatory on the court to hold the election if 10% of the employees in the unit request an election or if an employer petitions for it. The election is conducted by the Labour Department in accordance with the rules and regulation prescribed by the Court.

22. In Malaysia, the Industrial Relations Act, 1967 provides that an employer on whom a trade union has served a claim for recognition shall, within 30 days of the serving of the claim, either accord recognition or notify the union of the grounds for his refusal to accord recognition; on such refusal the trade union may refer it to the Court for decision. The recognition holds good for 2 years.

23. In some countries (Australia, New Zealand, Egypt,) only the most representative registered organisation in an undertaking or occupation has the right to take part in the compulsory conciliation and arbitration procedures or to conclude collective agreements on behalf of their members. The entry of other unions is barred. If the existing union can reasonably represent the interest of workers.

24. In the United Kingdom union recognition is on a voluntary basis. Unions have, over a long period fought for and obtained it through their own strength so that today most employers have accepted unions and do grant recognition. The Donovan Commission which considered this question, recommended that the Industrial Relations Commission should deal with all disputes relating to recognition.

25. In certain countries (e.g. Belgium, France, Austria, Netherlands) - where the trade union movement is divided along political, occupational or ^{denominational} (religious) lines, the law grades the unions by laying down

criteria as to their representative character. For instance, in Belgium the most representative organisations are allotted seats on the basis of their membership on the joint industrial committees which play a major part in the negotiation of collective agreements and in the conciliation and arbitration procedure for industrial disputes. In France also the most representative organisations have certain prerogatives in the negotiation of collective agreements and under the conciliation and arbitration procedure as well as in bodies or institutions like Works Councils, Boards of Nationalised Industries, the Economic Council and the Higher Collective Agreements Board.

IV. Suggestions.

26. As has been mentioned earlier, the issue of union recognition is of key importance in the field of trade union organisation and labour management relations. The view that the Commission may take in regard to this issue will have a close bearing on its thinking on several other aspects of industrial relations.

27. If collective bargaining is to be the main method of settlement of industrial disputes and if such collective bargaining is to become a reality, it is necessary to provide for the recognition of majority unions as representative unions. The experience of the progress of union recognition on a voluntary basis under the Code has not been quite encouraging. To overcome the employer resistance which still exists in many quarters and to bring about uniformity

in the procedure, it would be desirable to make recognition compulsory under a central law.

28. A major question in regard to union recognition is how such representative union is to be selected.

The method of determining the representative character of a union has to ensure objectivity, fairness and freedom from manipulation and at the same time should be expeditious. The existing recognition procedures provide for verification of membership of unions, by a Government agency - an arrangement which according to critics of the system, does not satisfy the above criteria. The alternative for verification, generally advocated is a procedure involving voting in a secret ballot. The variants of these two main alternatives, currently under discussion are:-

(a) Verification of membership.

(i) Verification by a Government agency.

(ii) Verification of membership by an independent agency headed by a person from the Judiciary.

(iii) Assessment of the relative strength of the unions by a Judicial authority on the basis of declarations by workers.

(b) Secret Ballot.

(i) by all employees.

(ii) restricted to union members only.

29. Those in favour of verification of membership base their preference on the premise that (i) it is

the support of fee paying, stable membership of registered trade unions only that should entitle representative status to a union; and (ii) a regular check by a competent authority can alone satisfactorily determine whether or not memberships claims are genuine. It is also argued that regular fee paying membership alone will ensure financial viability of trade unions and enable them to discharge effectively their other responsibilities. They concede that membership basis may be open to inflation and manipulation, but stress that a method can surely be devised to overcome these, by entrusting verification to an independent authority.

30. Secret Ballot is opposed on the ground that it would 'politicalise' the trade union movement and that an atmosphere of elections, with some leaders resorting to making wild promises, would vitiate the atmosphere. In their view, workers in this country are not yet developed to make a rational choice of what is objectively good and creative when confronted with demagogic slogans and rousing of emotional sentiments over any industrial issue which can be whipped up. They also question the appropriateness of the analogy of political choice through adult franchise; further, adoption of secret ballot election will, in this view, deal a severe blow to the trade union movement itself, by taking away any incentive for unionisation.

31. The supporters of secret ballot on the other hand, base their case primarily on the ground that it is

the most democratic method for choosing the union that best represents the majority of the workers. Membership verification as a basis for selection of the representative union is considered unsatisfactory as it is at best an indirect method. When membership records and accounts of subscriptions received are often in an unsatisfactory state, and there are admittedly many questionable ways of boosting membership claims, the task of verification becomes very complex; in addition, it would suffer from the added disadvantages of delay, lack of objectivity and possibilities of manipulation, etc. As regards the argument about 'politicalisation', they contend that (i) politicalisation is inherent in a democratic set up and the process of representation in industrial democracy need be no different from that for political office; and (ii) the fear of wild promises and rousing of passions can be exaggerated. In their view, the Indian worker is now grown up to know what is good for him and to make a rational choice; and in any case, if he is expected to shoulder more and more responsibilities in the field of industrial relations, it would not be right to deny him even the elementary responsibility of choosing his representative; responsible behaviour cannot be promoted through denial of rights.

32. The debate between verification of membership and election by secret ballot as criteria for sole bargaining agency has acquired^a sharper edge in the

context of factors like administrative deficiencies, political interference, poor quality unionism, etc. Much of the basis of the controversy would fade away if the administrative arrangements for recognition are suitably modified and are made independent and trade unions grow stronger and become more stable. Under better quality norms for trade unions, membership support and electoral support may be expected to coincide.

33. In the current context, the case for secret ballot may appear to be somewhat stronger, because the people affected by it desire a change. But this system has its own draw-backs, the consequences of which can be serious.. Prudence, therefore, requires that a system which is administratively simpler, and which is generally acceptable should be evolved. Much of the opposition to membership verification today is the outcome of fears of manipulation and interference by the administrative authority - fears which are not always unfounded. It is reasonable to expect that verification will become more acceptable, if entrusted to an independent quasi-judicial authority. Similarly, election by secret ballot may find favour with those now opposed to it, when an independent authority conducts it, strictly according to accepted regulations. The best course, therefore, seems to be to leave the choice of method, in any particular case, to the discretion of the independent Authority set up for this purpose. This Authority will have the power to decide the representative character of unions, either by examination of their membership records,

or if it considers necessary, by holding an election by secret ballot.

34. Under the existing arrangements, the verification of membership of the contending unions is entrusted to the Labour Departments at the centre or the State level. This arrangement, while found satisfactory by some, has been criticised by others, as dilatory, partial and subject to political pressures. The need for dispelling any such suspicions in regard to the functioning of an agency so vital to good industrial relations that ensuring its objectivity and neutrality cannot be overemphasised. This authority which should be judicial in character and independent of the normal labour administration machinery should be entrusted with the recognition work in its various aspects:

- (i) determination of the areas of bargaining, (ii) deciding the majority unions through due process, (iii) certifying the majority unions as the recognised union for collective bargaining, (iv) deciding issues of unfair labour practices and (v) generally dealing with other related matters.

35. A union recognised under any procedure as the representative union, should be given, besides the right of sole representation of the workers in any collective bargaining, certain facilities to enable it to effectively discharge its functions as the sole representative of the workers' interests and

as the agency for collective bargaining with the employer.

Among such facilities are the right to collect membership fees on the premises, to hold meetings, ship, the use of notice boards and the right to be represented on bipartite consultative bodies, such as works committees, etc. The facility of check-off, should be granted when a recognised union asks for it.

36. A closely related question is that of the rights, if any, to be given to the minority (unrecognised) unions. When the majority union is recognised as the sole bargaining agent on behalf of all the employees in the undertaking, the question of some employees being represented by a minority union should not arise. Acceptance of the right of minority unions to represent their members would defeat the very purpose for which the system of recognition of majority union is being introduced - namely, elimination of rival unions, promotion of responsible collective bargaining and development of strong and stable unions.

37. On the question of the period for which recognition should be granted, it should be for 2 years with provision for its continuation unless the recognition is challenged by a rival union.

To sum up:

- (a) Recognition of unions should be made compulsory under a central law;
- (b) An independent, quasi-judicial authority should deal with all recognition matters.
- (c) This Authority should determine the representative character of unions, either on the basis of membership verification, or if it considers it necessary, by holding an election by secret ballot, of all employees in the undertaking.

- (d) A recognised union should enjoy the sole bargaining rights, besides other normal facilities.
- (e) Minority (unrecognised) unions should have no right of representation.
- (f) The period of recognition of unions should be two years.

'PL'

NATIONAL COMMISSION ON LABOURUnion Security - Closed Shop/Union Shop

Union security arrangements are essentially Western concepts. The quest for such union security followed the growth of trade unionism and the importance of collective bargaining in the regulation of wages and conditions of work of employees. Trade unions started asking: is it reasonable that a worker should benefit from the activities of a trade union and decline to belong to it? and generally came out with the answer that there should be no 'free riders'.

2. Union security involves agreement with the employer or at least his acquiescence in refusing to employ a non-member. Its two main variants are; (i) pre-entry 'closed shop' by which the employer will recruit only trade union members; this gives the union control over the supply of labour; and (ii) post-entry or 'union shop', by which new entrants to employment, if they are not union members, must join it within a specified period. Union security arrangements of this type may or may not operate with 'check off'. That can be an independent area of agreement between parties.

3. An important argument in favour of closed-shop/union-shop is the close link that exists between effective collective bargaining and strong trade unions; where there is already a strong and stable union it adds to its strength and in other cases it hastens and supports the process of stabilisation of unions. A corollary to the above argument is the common obligation principle. The arguments normally advanced in its support are: (a) since in an establishment all workers enjoy the benefits secured by a representative union, no employee is entitled to share the gains unless he contributes towards its activities and expenses; (b) it becomes easier for a representative union with which collective agreement is signed, to implement its part of

the obligations, if workers are subject to union discipline;
 (c) it exercises a check on eventualities like non-members
 not honouring the commitments made by a representative
 union and (d) union security clauses give financial support
 and also enhance the prestige of a representative union.

Closed/Union shop provisions will provide some advantages to
 the individual worker also; it will eliminate interference
 from the employers' side in the trade union activities for
 membership. His employment is also more secure, though
 in countries where it is practiced employment is not much
 of a problem. An employer also benefits by such arrangements
 as he is sure that he is dealing with an organisation which
 represents all his workers.

4. The arguments on the other side are: (i) The practice
 infringes on the constitutional right of freedom of association
 in that it compels an employee to join a particular union.
 (ii) It reduces individual's liberty in a number of ways.
 Freedom of association has two aspects - freedom of individual
 to form or join an association of his liking as well as the
 freedom not to join any association. Since in a union-shop
 or closed-shop a person has no choice but to join a trade
 union and to pay subscription, such arrangements seem to abridge
 a person's freedom. It may also happen that a trade union
 may refuse to accept an individual's membership and cut him out
 of employment market altogether. The individual is obligated
 to accept all the decisions of a union of which he is a member,
 in case of disagreement or non-observance of decision he runs
 the risk of expulsion from the union and loosing his job.
 The trade union therefore loses its voluntary ^{Character,} ~~organisation.~~

Some critics have also argued that if union's finances are
 secure it may not be necessary ^{for} ~~it~~ to function in a democratic manne

5. In India the experience with closed-shop or union-shop
 is almost nil. The earliest attempt for union security was

made by Tata Workers Union in 1956; the agreement of January 8, 1956 between TISCO, Jamshedpur and Tata Workers Union provided in principle for a union membership security clause. The parties jointly approached the Government for alteration in law to make it premissible. A Committee appointed by the Bihar Government in 1956, 'to examine the question of introduction of check-off and union shop in selected establishments', recommended the conditional introduction of union-shop purely as an experimental measure. In the Committee's view, "the right of the citizens to seek and get employment is one of the fundamental rights guaranteed under the Constitution and any interference with that right in the shape of prior membership of a trade union will be an unreasonable limitation on the right to work". It, therefore, was "strongly opposed to the system of "closed-shop" under which membership of a trade union is a condition of employment. The Committee, however, felt that this objection does not apply equally to "union-shop ^{under} ~~under~~ which a worker is given an opportunity to be a member of the recognised trade union within a certain period after his employment."* The main condition laid down by the Committee for the introduction of union-shop was the determination of the representative character of the union by the Labour Commissioner through secret ballot. Only when majority of the workers within the bargaining unit voted for a particular union, the demand for union-shop provision could be considered by the management.

II Evidence before the Commission

6. The trend of evidence before the Commission on this subject has been that although closed shop/union shop may have some advantages from the point of view of trade unions, the introduction of such a system is not practicable nor

*Report of the Committee on Union-shop and Check-off (1965) appointed by the Bihar Government in 1956.

desirable, and that in any case the closed-shop is inconsistent with the Constitutional position on freedom of association.. Some have, however, favoured union-shop subject to the fulfilment of certain preconditions before its introduction.

7. The State Governments seem to feel that the system can work well only when there is no multiplicity of unions. Most of them consider it undesirable and unlikely to succeed in the present circumstances; in the view of some, it comes in the way of the individual's freedom of association.

8. Employers' organisations, including Public Sector undertakings, generally, have expressed themselves against its introduction. In their view its success to a large extent depends on responsible trade union leadership, unified trade union movement, etc. which do not exist today nor do they foresee its establishment in the coming years.

9. Most of the workers' organisations including the two central organisations of workers which have given their opinion on closed-shop/union-shop are against the introduction of the system. One central organisation desires that every worker should be member of a union. Many have pointed out that membership of a union is voluntary and to force a worker to join a union is unconstitutional and infringes his fundamental rights. Some have pointed out that because of the multiplicity of unions, and inter union and intra-union rivalries, it would not be desirable to introduce the system; that the situation is not ripe for its introduction. It "will only give further opportunities to the Government and employers to interfere in trade union affairs and manipulate the unions". Majority of those who favour 'union-shop' have based their arguments on the plea that it will give strength to a recognised union, eliminate multiplicity of unions, and lend it financial support. A few have favoured the system on the grounds that such a system will ensure job protection to workers, besides promoting good industrial relations.

10. The Study Group on Industrial Relations (Eastern Region) and Ports & Docks are not in favour of this system. The Study Group on Industrial Relations (Northern Region), although it did not consider the time ripe to attempt any legal measure in the form of either closed or union-shop, recommended that union-shop may be gradually built up without the compelling force of law. To this end, it recommended that where a recognised union exists, in a unit all workers in that unit should be required to join that union or any other union of their choice.

III Foreign Practices

11. The 31st Session of the International Labour Conference discussed the question whether the convention (No.87) on Freedom of Association and Protection of the Right to Organise covered 'the right not to organise'. The problem was considered controversial because member countries having provision of freedom of association permitted such union security clauses as closed shop or union shop. It was also feared that in countries where there are several trade union movements, the introduction of the system might endanger the principle of freedom of a worker to choose his union. Owing to wide variations in the approach between one country and another, the Conference came to the conclusion that the convention could in no way be interpreted as authorising or prohibiting union security arrangements, such questions being matters for regulation in accordance with national practice."

12. Netherlands, Belgium and France have by law prohibited union security clauses. A provision in the French Act of 1946 which was incorporated in the 1950 Collective Agreements Act enjoins that nation-wide agreements must contain the clause on freedom of association. In addition an Act was passed on 23rd April, 1956 which forbids anti-union discrimination

13. The Labour Management Relations (Taft-Hartley) Act of 1947 stipulates that employers may not be required to hire trade unionist only, but permits union-shop and maintenance of membership clauses. These clauses are valid subject to certain conditions. However, a number of States have a provision of 'right to work'. In U.S.A. in the matter of membership, the State Legislation is given precedence over provisions of LMRA. The States which have provision of 'right to work' prohibit by law any requirement of union membership condition for employment. Despite the State provisions, in 1958-59, the Bureau of Labour Statistics found that ~~22~~²¹ per cent of the workers were covered by the agreements providing for union security clauses.

14. In the United Kingdom, it is estimated that employees working in units with closed shop agreements numbered ^{about} 16% of the total. Among union members, two persons in every five were covered under such security clauses. The union security clauses in U.K. are differently understood as compared with U.S.A. Where such agreements prevail in the U.K. workers can be members of one or the other union and not necessarily of a particular union as the term union-shop or closed-shop connotes in U.S.A.

15. The method generally used to achieve union security are (i) to put pressure or persuasion, (ii) refuse to work along side with non-unionist; and (iii) in some cases employers have also been found to show preference for union members, to achieve 100 per cent membership. Because of the strong tradition of voluntarism and self-government, the parties are left free to come to any agreement on closed-shop or union-shop. The Donovan Commission (1965-68) rejected the idea of prohibiting closed-shop: "It is better to recognise that under proper safeguards, a closed shop can serve a useful purpose and to devise alternative means of overcoming the disadvantages which

accompany it. We have also borne in mind that throughout this report, we advance a number of proposals to assist trade unions to organise effectively and to reduce the incidence of strikes. The effect of our proposals should be to extend to more industries the conditions which now permit many trade unions to organise and bargain without need for the closed-shop, and we believe therefore that in many cases unions should in time feel able to dispense with its aid".*

16. Mexican Labour Code permits such clauses, but consequent agreements are required not to work to the detriment of non-organised workers who were already in employer's service at the time of contracting the agreement. In New Zealand, the recruitment of non-union workers is permissible only if union members are not available. In Japan, union-shop clauses are quite usual. In other developing countries of Asia, the instances of union-shop are rare.

17. In countries which allow union security clauses the law, in order to protect the workers who are thus compelled to join a union, usually stipulates that no obstacles must be placed in the way of their joining and that there must be no discrimination against them. In Australia, for example, the registration of a union may be annulled if its rules do not grant adequate facilities for the admission of new members or if they impose unduly severe conditions. Similarly, in New Zealand any person required to join a union is entitled to become a member, and any provision to the contrary in the union rules is null and void. In the United States it is illegal for any organisation to require wage earners covered by a union security clause to pay entrance dues which the National Labour Relations Board considers excessive or arbitrary.

* Report of the Royal Commission on Trade Unions and Employers Association (1968) PP: 163-164.

IV

Suggestions

18. The question of permitting pre-entry unionisation 'closed-shop' does not, ^{arise} in India ~~arise~~ because it may operate against the fundamental right of Freedom of Association. Therefore, one can only think in terms of 'union-shop', though in this system also some compulsion is 'in built'. Admitting that such security measures give strength and stability to a union, organisational and financial and facilitate collective bargaining, the question that arises is whether such security should be used to enable unions acquire strength or unions should build themselves up and win, through their own strength, the benefits of union security. In the present multiplicity of unions, inter and intra-union rivalry, present political climate, the extent of unionisation and dependence on adjudication rather than on collective bargaining, any move in the direction of union-shop will ~~generally~~ be resisted.

19. The issue of union security through closed-shop or union-shop arises mainly in a situation where trade unions, through collective agreements, are responsible for the regulation of wages and conditions of work and would like that all workers who benefit from the union's efforts should belong to the unions. In the Indian situation, with no obligation on employers for recognition of unions and with collective bargaining in its nascent stage, the unions cannot claim to be responsible for the regulation of the conditions to any great extent and consequently cannot claim the benefits of union security either. Further multiple unionism make it difficult for trade unions to demand and obtain any effective union security measures. This however could be considered as a static view of what is likely to happen in labour management relations in the years to come.

20. Any attempt to give the benefit of union-shop to recognised representative unions at present will amount to

conferring on it the status permanently. This question therefore ties itself up with union recognition on the one hand and the rights of minority unions on the other. The weight of the evidence before us is in favour of granting some rights to minority unions; this by implication means accepting the existence of minority unions and any legal provision for union security will go against this evidence.

21. The Commission's recommendations on recognition of a representative union, union finances, rights of recognised vis-a-vis minority unions, changes in the present system of settlement of industrial disputes, joint consultation at plant level etc. will have far-reaching impact on unions' organisational and bargaining capacity and hence on union security provisions. Therefore, it will be better that such security measures are allowed to evolve in the natural process of the growth of trade unions rather than be introduced through compulsion. There should be nothing in our recommendations which should rule out this evolution.

22. Even when the matter of union-shop is to be left to be decided between the parties, it is quite conceivable that the demand might come up here and there. Already, one comes across unions which have acquired necessary strength and stability and such unions may legitimately demand union-shop or similar security measures from employers. Commission's recommendations will have to foresee and accommodate such cases. At the same time it will be necessary to recommend safeguards to the individuals against the possible abuse of the system.

- (i) The union demanding union-shop should satisfy to the authorities concerned with the recognition of unions, that it has got a clear majority of the working force as its members;

- (ii) Before union asks for union-shop, it should hold a free and fair referendum ascertaining the wishes of the workers. If majority of workers favour such a clause only then union ship should be permitted;
- (iii) 'Union-shop' established in the manner referred to at (i) and (ii) above should be allowed to operate for at least a year.
- (iv) Adequate safeguards should be provided for the protection of (a) individuals who are members of the union but are expelled unreasonably; (b) workers though willing to join the union are not admitted; and (c) workers who are already in employer's service before the agreement on union-shop is concluded but who are not union members.
- (v) If 20% of the workers at any time after a year demand that 'union shop' clause should be inoperative action should be initiated by the authority concerned for ascertaining the wishes of all workers. If a clear majority is in favour of rescinding the clause, the union and management should work without 'union shop' arrangement.

Sustained and regular membership lends stability and strength to a union; its bargaining power improves and as a consequence the union can attend to its broader social responsibilities. Regular membership connotes payment of union dues. Union members, like anyone else, are prone to forgetfulness, and at times indifference and union dues fall in arrears. Inter-union and intra-union rivalries and the competition to attract membership, makes collections sporadic and irregular. Collection of dues is generally done by union leaders or their helpers contacting workers by visiting their residences or at the work places on the pay day with the permission of the employers. The method of collecting dues through appointment of paid persons or a person on commission basis is not common in India nor is 'check-off'.

2. Check-off is a practice in which the employer regularly deducts membership dues (and in many cases other financial obligations to the union) from employees' pay and hands over these deductions to the union. It becomes a clause in collective bargaining and is made legally permissible. In countries where the system is in vogue, it is considered to be a form of union security.

3. In India the experience of check-off is almost negligible. Instances where even strong and recognised unions demanded the extension of this facility have been few. Among instances in which check-off was introduced, though the experiment was short lived, may be mentioned, the Textile industry in Ahmedabad and the Indian Telephones in Bangalore. A Committee appointed by the

Bihar Government in 1956 'to examine the question of introduction of check-off and union-shop in selected establishments' recommended the introduction of check-off system^{as}/an experimental measure and subject to certain conditions viz. (i) the initiative for check-off must be taken by the union itself; (ii) check-off should be permitted only if the workers sign authorisation slips and hand these over directly to the Head of the Department in which he works; (iii) once the authorisation slip has been handed over, it should be valid for the calendar year or the financial year (whatever is the period of union membership); (iv) the deduction will stop if the authorisation is revoked by the worker; (v) the unions which seek to enjoy the benefit of check-off should ensure proper maintenance of accounts and democratic functioning; etc.*

4. Those who favour check-off see several advantages in it: the arrangement eliminates the necessity to approach individual members each month and ensure regular payment of membership dues. The chances of members falling in arrears is reduced. It is less painful for a worker to part with money that he has not received in his hands. It leaves union executives and other representatives free to concentrate on other important work of the union which today gets neglected for lack of time. Check-off eliminates to a great extent the possibility of dual membership. Employers will benefit by this arrangement as it eliminates on the job interruptions caused by collection of dues albeit by a recognised union. On the other hand,

* Report of the Committee on Union-Shop and Check-off, (1965), appointed by the Govt. of Bihar in 1956.

those who do not favour check-off feel that collection of dues etc. is an important way of keeping in close and live touch with members and maintaining the organisers' active interest in union affairs. The check-off takes the edge out of the activities of the unions. But the more basic difficulty urged by unions is that it discloses information to the employer about the state of trade union organisation in terms of finance, membership and names of members. In a situation where employer is not well disposed towards a union, there is a creeping fear of victimisation in its various forms.

II

Evidence before the Commission.

5. The evidence indicates that unions are not enthusiastic in demanding or keen on obtaining, this facility. Employers are not entirely opposed to the system, though they would avoid this extra work if possible. There is adequate support to the idea that if the system is to be introduced, the facility should be restricted only to recognised/representative unions and it should be voluntary in nature.

6. State Governments generally are of the view that in the present situation because of multiplicity of unions introduction of the system is inadvisable. Before such facilities are extended, there should be an accepted method for recognition of union(s). They envisage difficulties in giving effect to check-off if union recognition is shorter than ^{for} two years. Some States feel that it will not succeed unless a substantial majority of workers have become union members. One State

Government has favoured the facility of check-off to be given to all registered unions functioning in an establishment, without any distinction being made between the recognised and unrecognised unions; but generally under the present Indian conditions the States apprehended mal-practices on the part of employers as well as unions. In their view, the present facilities available to recognised unions for collection of dues under the Code of Discipline or under the B.I.R. Act are adequate.

7. Employers' organisations have expressed doubts about the desirability of introducing the system because of the prevalence of multiplicity of unions in each industry and the possibility of intra and inter-union rivalries being further accentuated if it is introduced. They do not seem to be disinclined to extend check-off facilities to a representative union if the union wants them.

8. Workers' organisations have generally favoured the introduction of the system; some of them want the privilege to be restricted; in case of others, there is neither any unanimity on the introduction of the system itself nor on the grounds on which the arrangement is opposed. The main argument advanced against the system however has been that it will make union leaders lazy and will cut them off from the rank and file members. Majority of those who favour check-off wish the extension of the facility to recognised unions only.

9. The four Industrial Relations Study Groups are unanimous on one point. If check-off is to be introduced, the facility should be extended to recognised unions only.

The Western Region which has pinned great hopes on collective bargaining want it to be a consequence of collective bargaining. Northern Region recommended the grant of this facility to the recognised union whether through collective bargaining or otherwise. The Southern Region has recommended that once a union is recognised on the basis of majority membership, the verification of membership could be on the basis of those who agree to deduction of union subscription from their wages. The representatives of unions in the Eastern Region do not favour the idea. However, it could be introduced if the recognised union concerned wanted it because of conditions prevailing in a particular plant.

III

Foreign Practices

10. Although there is no statutory obligation upon an employer to extend the facility of check-off, the system has been a well-known device to ensure security to unions in U.S.A. The check-off is usually combined with another form of union security which is commonly known as 'union shop'. Check-off arrangements are included in a majority of collective bargaining contracts, but seldom has this issue led to controversy between the union and the management nor has it been made a major bargaining issue. In 1958-59 about 77 per cent of agreements provided for the check-off. Under the Taft-Hartley Act, check-off is lawful only on written authorisation of the individual employee and the employees' written authorisation may be used for only

one year or for the duration of its contract whichever is shorter.

11. The system is in vogue, but on a voluntary basis in Britain. It is estimated that one in five British unions have their contributions collected in this way and out of these a large proportion are in the public sector including some local authorities. There are divergent views among the trade unionists and among employers about the desirability of check-off, but the fact that it has been increasingly adopted shows that both sides have seen its advantages. The Royal Commission on Trade Unions and Employers Associations (U.K.) was of the view that check-off is a useful arrangement, the advantages of which outweigh the disadvantages, and recommended that "trade unions which do not already collect subscriptions by means of the check-off might usefully consider doing so; and employers should consider requests for the check-off sympathetically".*

12. In Sweden and Malaysia, deductions of unions contributions from the workers' wages is rare and dues are usually collected by local union representatives. Just as the union shop is a condition of membership, so is check-off the usual method used in Japan for the collection of dues. Payment is usually made to the prefectural Labour Bank, an institution established under law in 1953 and set up by unions in each prefecture.

* Report of the Royal Commission on Trade Unions and Employers' Associations (1968), p. 272.

IV

Suggestions

13. The need to promote the organisational and financial security of unions is recognised. Determination of a sole bargaining agent and conferring on it the right to enter into negotiations with the employer will by itself give some security to unions. The present facility extended by the management to such unions to collect union dues within factory premises on pay-day (as is the present provision under the B.I.R. Act) will facilitate the collection of dues. But still the unions find that arrears of dues are substantial. Some measures are required to give them financial security. Introduction of check-off will help in improving security of unions. Considering these advantages, unions are not disinclined to accept check-off but fear disclosure of membership lists to management. Such apprehensions should not be entertained for long particularly because employers attitude to unions has undergone a change and is expected to change even more favourably.

14. However, "While it would be wrong to deny that each of the arguments against the check-off has some validity, the balance of arguments is increasingly considered by unions to lie in favour of the practice. The expenditure of time and energy on the part of the voluntary workers in carrying out this basic function can detract considerably from other trade union work and there is little evidence to show that interest among members is lower where it operates. In fact, as in the case of the union shop with which the check-off is in practice closely connected, the greater stability and efficiency of trade

union organisation should enhance the union's effectiveness." * There is something to be said in favour of this view in our context also.

15. In view of the present attitudes of the parties, it does not seem necessary to make the grant of this facility statutory. Only an enabling legal provision would be adequate. The right to demand check-off facilities should vest with the unions and if such a demand is made by a recognised union it would be made incumbent on management to accept it.

16. An individual employee from whose pay membership subscription is deducted must be a party to such a deduction. A system of 'authorisation slip' from individual employees will meet such a requirement. At the same time, to avoid any unnecessary increase in the workload of management or upset in the financial stability of unions by too frequent revocations, it should be provided that authorisation will be valid for at least one year. It should be considered an unfair labour practice on the part of the employer if they divulge the names of the persons who have given the authorisation slips to other unions or try to intimidate workers for joining a particular unions.

* T.U.C. Memorandum submitted to the Royal Commission on Trade Unions and Employers Associations. p.136.

17. Check-off should not be made the basis for recognition or derecognition of unions. This safeguard is necessary in the interests of representative unions. Since the check-off as conceived, has to be voluntary in nature (voluntary not only in the sense that it should be introduced only when unions demand but also in the sense that an individual may have the loyalty towards a particular union but may prefer paying dues to the union personally) membership of union as revealed by 'check-off' may not tally with the actual and claims and counter claims may arise on this account. The procedure for recognition is a problem in its own right and there can be no easy way to settle it.

Structure of Trade Unions

The pattern and structure of trade unions, and the basis on which they are organised, do not admit of any simple generalisations. The structure of trade unions has been evolutionary- a process which is continuous. Unions in different countries have developed on different lines, depending on social and economic compulsions of industrialisation, political and historical factors and the institutional framework of the respective societies. And trade union movement in its attempt to adjust to changing factors itself undergoes changes though the process may be very slow. Government intervention through legislation and other action does play a role in giving a direction to the structure. But its role and impact again vary. Arrangement for tripartite consultations at the Centre and State levels and constitution of bodies like wage boards, had xxxxx impact on growth of industry-wise unions at State and All-India level. Legislative provisions too have played a minor role. Because of absence of any legislative provision for the recognition of unions and clear demarcation of the rights of a representative union and easy terms for registration there has been a mushroom growth of unions at plant level; provision in the B.I.R. Act permitting recognition of industry-wise unions has helped to some extent the growth of industry-wise unions.

2. In the Indian context, it would be appropriate to

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broadly classify unions into four main types, viz. (i) plant level unions covering all ranks of workers without any occupational or craft bias; (ii) craft/category unions where the basis of organisation is employment in jobs requiring only particular skills or in particular categories; (iii) industry-wise unions, in this category will come unions which seek to organise all workers irrespective of grade/occupation or department to which they belong in a specific industry in a centre, region or country as a whole; and (iv) general unions covering workers of various categories in several units and industries.

3. The general pattern of organisation in India is the formation of unions at plant level. At the apex are central organisations which have their branches at a state level to which the plant unions are generally affiliated. This was an obvious trend as in the early stages when the bulk of labour consisted of manual workers with little difference in their skills with equal need for protection from exploitation and improvement of their conditions, organisation on plant wise basis covering all the workmen was necessary. While this has been the general pattern there have also been unions based on industry-wise combination or on the basis of craft or category of employees. The main reason for the development of unions on industry-wise basis has been concentration of certain industries in a particular area. For instance, cotton-textiles in Madras, Bombay and Ahmedabad,

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Plantations in Assam, Jute in West Bengal, etc. With the setting up institutions like the Wage Boards, Industrial Committees, etc. the formation of industry-wise unions at all-India level has also got some fillip in recent years. In the eastern region jute, engineering, tea and coal are organised on industry-wise basis; others are generally plant-wise. In the northern region, sugar is an instance where unions have been organised on industry-wise basis; similarly in the western region, textiles have been organised. The latest development in this field has been the formation of all-India federations of industry-wise unions. Cotton-textiles, cement, plantations, sugar coal, Banks, Insurance and Iron & Steel are some of the industries where industry-wise unions at all-India level have come into existence. Ports and Docks and Road Transport are other instances. In turn, these all-India federations are affiliated to one or the other central organisations of workers.

4. Since Independence, there has been a split in the movement at the all-India level which has had its repercussions at lower levels - regional as well as plant. This trend in the movement can be mainly attributed to political developments. After Independence, four central organisations came into existence viz. AITUC, FMS, INTUC and UTUC, but of late, some other organisations at all-India level like Hind Mazdoor Panchayat and Bhartiya Mazdoor Sangh are emerging.

5. The tendency to form unions on a craft/category

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basis appears to prevail in certain modern industries such as Air Transport and to some extent in Railways, Posts and Telegraphs and Shipping. It is more common in new industries based on modern technology and the growth of skilled technical categories of workers which gives rise to lack of homogeneity and very wide disparities in their salary scales.

6. Advocates of unions covering all workers without distinction of craft or category—either at the plant level or the industry level — base their case on the assumption that workmen are the primary interest of any union. Such unions also lend support to the solidarity of the workers and give strength to the trade union movement. They have been generally opposing the emergence of craft/category wise unions. The main advantage claimed by industry-wise unions is that collective bargaining at the industry level is facilitated by their existence and if collective bargaining is practised at industry level, uniformity is achieved in respect of conditions of work, wages etc. in different undertakings. Also according to them it will be easier to reconcile sectional claims and to achieve coherent policy. Another claim made is that negotiations on sharing gains of productivity and introduction of technological changes would also be facilitated. Further, it becomes easier for employers to negotiate when there is one union representing the interest of different sectional interests rather than negotiating with number of unions representing different categories of

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workers. These in favour of craft/category wise unions argue that workers belonging to a craft have closer common interests; their interests are apt to be ignored or likely to receive inadequate attention or appreciation in a union covering all categories and as such to safeguard and advance their sectional interests craft unions are advantageous. It is also argued that the increasing complexity of modern industry makes it difficult for industry-wise unions to function effectively and smoothly and that the growth of technology and new skills demand craft unions to serve their interests well. The lack of homogeneity and the rivalries between workers belonging to different craft groups also have often prompted these groups to form their own separate associations.

7. The Indian Labour Conference which discussed this issue in 1964 concluded that formation of departmental/category-wise unions was a factor likely to weaken the trade union movement and that every attempt should be made to discourage formation of such unions. According to the conference, disadvantages of craft unions in the Indian context are obvious. With most trade unions confined to a single plant, the advantages of horizontal mobility will be absent and the disadvantage of having to bargain with too many unions in one plant would still prevail. They would add a new dimension to multiple unionism already prevalent.

8. Those who are in favour of plant-level unions are not

actually opposed to the formation of industry-wise unions, but are against the formation of craft unions. General unions at the plant level are necessary as the development of industries except in a few cases, is not confined to a particular region; mostly they are scattered and therefore there is no way out but to organise the workers in unions at plant level and then to build up a hierarchy at State and all-India level. The industry-wise unions at all-India level are also absolutely necessary in order to coordinate the activities of different unions at State level or at area level or even at plant level. Then, the activities of the industry-wise unions/craft-wise unions also need coordination at all-India level. In practice it is seen that many of the craft unions or industry-wise unions are affiliated to one or the other central organisations. General unions covering workers in several units covering different industries have come up in some industrial centres; but their appeal is rather limited.

Evidence before the Commission: ^{II}

9. The evidence reaching the Commission indicates an appreciation of the existing trade union structure based generally on plant unions, with area industry unions in some States (Maharashtra, Gujarat and Madhya Pradesh), as also a general support, for the development of industry-wise unions. Such industry-wise unions will have ultimately to develop into national unions and the ideal of one union in one industry is a goal worth striving for. Also by and large there is

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agreement that craft/category-wise unions should be discouraged.

10. The views of the State Governments in regard to recognition of unions as sole bargaining agents indicate an implied acceptance of the continuance of plant-wise unions. Most of them, however, favour the growth and promotion of industry-wise unions on the grounds that such a union will be better fitted to promote their members interests through effective collective bargaining as they can view the matters affecting the industry as a whole in larger and proper prospective. As against plant-wise unions, industry-wise unions would be more broad based and better equipped financially and organisationally to serve the interests of workers. Such a union will also facilitate uniformity in approach to various problems and can be instrumental in maintaining healthy industrial relations. The States opposing the formation of such unions are of the view that even if industry-wise unions are introduced, individual grievances and matters specific to plants will have to be tackled at unit level. The formation of craft unions has not been favoured generally. Those in favour want that such a union should not enjoy any special privileges over the general union if the later is in existence.

11. Most of the employers' organisations including some of the public undertakings have favoured the idea of industry-wise unions; those who do not favour it, seem to feel

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that industry-wise unions will create problems in the matter of recognition; also such unions cannot take into account the regional variations. The formation of category-wise unions is not favoured by the majority; a few who favour wish that the rights of the category-wise unions be restricted; they should be permitted only to deal with matters which are of specific interest to the craft.

12. By and large, workers' organisations are in favour of industry-wise unions. One central organisation has stated that it will help to standardise conditions of work, wages and other amenities in different establishments and thereby reduce industrial disputes at plant level. It will also help industry by eliminating chances of unfair competition between the different unions; also industry-wise unions with larger membership will be able to look after the interests of workmen in a better way. Two central organisations apprehend difficulties in the matter of recognition. Majority of the workers' organisations including three central organisations have opposed the idea of formation of category/craft unions. However, one central organisation while opposing the idea has expressed the view that technicians may be allowed to form such unions.

13. Only a few Study Groups have touched upon the subject. The Study Group on Jute is opposed to the idea of granting recognition to industry-wise association while that for Ports and Docks has favoured the idea. The Study Group

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on Cotton-textiles is also in favour of granting recognition to industry-wise unions. Study Group on Air Transport is not in favour of recognising new craft unions or encouraging their formation. "It is necessary to take steps to ensure that craft unionism does not degenerate into fragmentation of unions and thereby bringing about the evils of inter-union and intra-union rivalries". Study Group on Rail Transport is also opposed to category-wise unions mainly on the ground the work of all categories in the Railways is inter-dependent and inter-linked and the problem of any single category cannot be decided in isolation. The Study Group on Industrial Relations (Northern Region) recommended that where there is already a general union in existence, formation of category/craft union be discouraged by imposing the condition of higher percentage.

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III

International Experience

14. At present in U.K. there are three principal types of unions for manual workers viz. craft, general and industrial-some unions partake of the character of more than one of the principal types. However, the emphasis has been on formation of unions on occupational basis but since generally the negotiations are carried on an industrial basis, at the negotiating table workers' side comprises number of unions; sometimes these unions have come together in federations such as the Confederation of Ship Building and Engineering Unions, the National Federation of Building Trades Operatives. However, the constituents retain a very large degree of autonomy but federations are able to evolve a common view on matters which concern them all. The six growing and large unions e.g. Transport and General Workers' Union, the Electrical Trades Union, the National Union of Public Employees etc. affiliated to Trade Union Congress have a scope of openness of membership which is often combined with occupational or sectoral base. Another characteristic of U.K. trade union movement is the establishment of a single central organisation i.e. Trades Union Congress. T.U.C. is a coordinating body but it gives sufficient scope of freedom and autonomy in the functioning of affiliates.

15. The basic feature in the structure of the American labour movement is the local union. In the case of a

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craft union the workers of a particular craft are organised on area or locality basis; industrial unions may consist of all workers in a particular plant or group of plants in a given place. The majority of unionised workers are members of local union most of which are affiliated of national unions covering a particular occupation or in certain cases covering all workers in an industry. In 1960, there were practically 200 nation-wide organisations and 80 thousand local unions. The great majority of nation-wide organisations were affiliated to a single national trade union federation: the American Federation of Labour and Congress of Industrial Organisations (AFL-CIO). Before 1955, AFL-CIO were separate organisations. The national unions wield considerable influence over the locals. In the matter of launching a strike, negotiating collective agreements, etc., national unions prescribe detailed rules relating to conduct and procedural affairs of the locals. However, the locals have a very great importance in the American system as collective bargaining at the local level is the main plank of the American system.

16. In Sweden, the trade union movement is characterised by outstanding unity and cohesion. As at present, the trade union movement is organised more on the basis of purely industrial unions. In the initial stages the movement met a strong opposition from craft unions but today with a few exceptions (foundrymen, workers in the building and printing presses), manual workers employed

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in a particular industry are the member of only one union. This development has gone hand in hand with the growth of collective bargaining at industry level. The picture is somewhat different in case of non-manual workers.

A number of unions operate a single plant. At the apex in there are only two central bodies viz. Confederation of Swedish Trade Unions and the Central Organisation of Salaried Employees and majority of Swedish unions are affiliated to either of these two bodies.

17. Trade unions in Australia are said to have preferred to organise on industrial basis and there have been a number of successful amalgamations to achieve the direction. The Commonwealth Arbitration Legislation discourages registration of more than one union in an industry. The formation of industry-wise unions has been natural development. No doubt, skilled workmen are attracted to join craft unions but such craft unions are not many in existence.

18. In Russia, the All Union Central Council of Trade Unions (AUCCTU) which derives its authority from the All Union Congress of Trade Unions (AUCTU) is the central organisation of trade unions directing all union activities. The constitution and rules of trade unions lay down industrial principle i.e. all persons employed in a factory or establishment belong to one union and each trade union comprises of employees of one branch of the national economy. The underlying principle of Soviet

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trade union structure is democratic centralism. It governs the relationship between different levels of trade union organisation. Since lower trade unions are subordinate to higher level unions, the decisions taken by the latter have got to be accepted by the lower bodies, regardless of their views on them.

19. The most striking feature of the Japanese Trade Unions has been its 'Enterprise' basis of organisation. Practically 85% of all basic union units embracing almost 80% of total union membership are organised along enterprise lines i.e. the members are confined to a single shop, establishment or enterprise. The remaining are divided between the industrial unions and craft organisations. The enterprise unions generally include all branches and plants of a firm who are engaged in the production of single or multiple lines whether in one or several industries. The enterprise unions can take two forms of organisations: it may be purely a union at the plant level or it can be a federation with local branches or an enterprise wide federation or confederation of local unions. The majority of the enterprise unions include both white collar and production workers. They have national industrial unions and federations. At the apex there is multiplicity of organisations with rigid political biases.

20. Unions in Malaysia are a mixture of local craft and specialised departmental unions on the one hand and

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industrial unions on the other hand. There are many unions made up of workers in a particular government institution or department and organised on a local, regional or even national basis depending on the shape of the department concerned. There are some relatively big unions comprising groups of workers in all/^{or}part of an industry or in a particular sector of economy which correspond more closely to larger unions of other countries. The multiplicity and variety in trade union organisation to some extent is counter balanced by the existence of regional and central organisations. Those that exist at present are however loosely organised bodies with no strong control over their members.

IV.

Suggestions

21. Any suggestions as to the future development of trade union structure have to take into account the limits placed on it by the fast changing social, economic and political environment within which unions work and also widening functions and range of services which unions would be required to provide to members as a result of these changes. No suggestion, howsoever apt it may be, in the present context which gives a Kink to the movement - a departure from the present structure would work. It has to harmonise with natural growth of unions. Suggestions which may remove some of the

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the present weaknesses of the movement and make unions adaptable to developments as a result of manifold changes that are taking place would be appropriate.

22. One of the most pressing needs for a solution to a structural and functional needs of a union is the question of adequate size; unions in order to discharge their functions satisfactorily and also to meet the future requirements have to be organisationally and financially viable. As at present practically about 80 per cent of the unions in India are having membership less than 500; obviously not much can be expected of such small unions. Multiplicity of unions whether due to craft basis of union organisation or others, has been one of the significant causes of smallness of unions. Of course, no dogmatic formula can be laid down as to the optimum size of the union. Only feasible way seems to be to curb the tendency of many unions to look after the interests of a group of workers. To achieve this, it is imperative to recognise only one union as a sole bargaining agent at plant/industry level. Encouragement to the formation of industry-wise/area-wise unions will be a step in the right direction. Reduction of organisation at the State and apex level is also called for. Tightening membership criteria for participation of unions at bipartite and tri-partite conference is a way to achieve reduction.

23. Formation of category-wise/craft unions should be discouraged as it will only add a new dimension to

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the already existing multiplicity of unions. But at the same time, the argument that the demands of skilled categories are not appreciated or properly sponsored by a general union cannot be brushed aside easily. There may be cases where recognition to such unions may be desirable. The independent agency which is visualised for recognition of unions can be vested with powers to decide whether recognition of such a union is desirable in a particular situation or not. It is also hoped that plant/industry unions will in future develop their organisation in such a manner that allows adequate internal representation of the interests of particular category/craft or department groups. If unions fail to provide for such eventualities it will give rise to frustration, unofficial action or even breaking away of craft unions from general unions. However, this is an area which calls for action on the part of the organisations.

MA/

Inter-Union Rivalry

I

A source of weakness in the trade union movement in India has been rivalry between trade unions; such inter-union rivalries leading to friction in the field of industrial relations has often led to unrest and work-stoppages. The rivalry between unions has also been the main cause for the failure of machinery for joint consultation at the level of the undertaking and collective bargaining.

2. Inter-union rivalry has been the inevitable outcome of multiplicity of unions, resulting from the political orientation of the main trade union organisations. It got into the system even within the first ten years of the formally organised movement. Certain provisions in the laws and practices relating to settlement of industrial disputes, such as the ease with which trade unions could be registered, the absence of any provision for the recognition of a union for purpose of collective bargaining, the provision that any union can raise a dispute under the Industrial Disputes Act, have also helped in the continuance of this rivalry.

3. The result has been that in each unit a number of unions belonging to different political persuasions

or groups operate in the same establishment each claiming to speak on behalf of the workers. There is constant attempt at undermining each others' influence, through raising extravagant demands, striking militant postures and questioning each others bonafides. This brings them into conflict with each other and often with the management and it is not unusual to find the management taking advantage of the situation.

4. Basically, inter-union conflict derives from differences between trade union leaders belonging to different political parties. Even personal ambitions of union leaders without any political affiliation can cause and have caused such rivalry. With political parties seeking to have their own trade union wings at the all-India level, each with its own net-work of unions, rivalry becomes inevitable not only between the unions at the plant level but also between their regional, industrial and national organisations.

5. Attempts made from time to time to bring about unity in the trade union movement have not borne fruit. In fact, we find that more and more political parties are trying to promote their own trade union organisations, either by splitting the existing ones, or by forming rival unions.

6. The next best thing was to regulate inter-union relations on a voluntary basis. An inter-union Code of Conduct was evolved in May 1958 at a meeting of the representatives of the four central organisations of workers. (Copy attached - Appendix I). The meeting was presided over by the then Minister of Labour and Employment. The Code of Conduct adopted at this meeting recognises the existence of unions of different ideologies but seeks to regulate their relations on the basis of mutual understanding. It recognises the right of every employee to join the union of his choice. It forbids coercion, violence, intimidation and personal vilification in inter-union dealings. The Code emphasises the need to follow democratic principles in the functioning of trade unions. An important provision of the Code is that no organisation should make excessive or extravagant demands in an attempt to outbid its rival. In the absence of any machinery jointly set up for the purpose by the four central organisations of workers the Implementation Machinery both at the Centre and in the States came to be entrusted with the task of implementation of the Code. The working of the Code was reviewed from time to time and renewed appeals were made to the central workers' organisations to observe its provisions faithfully and in good spirit.

7. The working of the Code of Conduct during these years has clearly shown that the signatories to the Code themselves had no faith in its effectiveness; that the causes of inter-union rivalries are more deep-rooted and cannot be removed by half-hearted measures. What is required is a genuine and concerted effort on the part of all the parties concerned.

8. Apart from inter-union rivalry instances of intra-union rivalry have also been quite numerous in recent years. This phenomenon has occasionally disturbed industrial peace and retarded production. This rivalry as also the other type have attacked industrial units irrespective of labels. At its 24th Session held in February 1966, the Standing Labour Committee recommended that where more than one set of persons claimed to be the office-bearers of the same union provision should be made in the Trade Unions Act, providing for an election, confined to the members of the unions concerned, to be conducted under the orders of the Labour Court.

II

Evidence before the Commission

9. The evidence before the Commission shows that there is common agreement that inter-union rivalries are mainly due to influence of political parties on trade unions, that it is deleterious to the real interests of

the trade union movement and that some immediate steps should be taken to remedy this situation. Among the steps suggested in this regard are recognition of union as sole bargaining agent and elimination of the control of political parties on trade unions.

10. Almost all the State Governments are conscious of the factors that are responsible for inter-union rivalry as also the undesirable consequences, this has led to. In their view, union rivalries are at the source of increase in the number of disputes, disintegration of the strength of the workers, deterioration of the employer-employee relations and even general indiscipline sometimes resulting in law and order situations. In their view, recognition of a representative union as the sole bargaining agent would remedy the situation to a large extent. The elimination of the influence of the outside leadership and of political parties on the unions would also help.

11. Employers' organisations have generally stated that inter-union rivalries have prevented early settlement of disputes and exploitation and weakening of the labour movement. They also feel that the situation may improve through the system of union recognition and reduction of outsiders influence.

12. Workers' organisations have also shown an awareness of the bad effects of inter-union rivalries and have emphasised that only a system of union recognition may effectively improve the situation and reduce rivalries. As mentioned by a central organisation, "because of the existence of more than one union at the plant level and bitter rivalry among them, collective bargaining becomes difficult and more disputes which should be settled across the table have to go before an adjudicator and thus embark on a tortuous and painful process of endless litigation. This also gives a handle to unscrupulous employers to play one union against the other for their own ends." (I.F.T.U.C.) In the opinion of UTUC inter-union rivalry has had both beneficial and injurious effects; "while it tended to make unions keen and active in protecting the rights of the workers, it also led to raising spurious and untenable demands and indulging in spiteful propaganda."

13. As regards the influence of party politics on trade union movement there is general appreciation of the factors that have led to the association of political parties in India with the trade union movement and their assumption of its leadership. But about their present role and control over the trade union movement both State Governments and Employers' Organisations have been

quite emphatic that the influence of political parties on the day-to-day working of the trade unions should be eliminated. The general view is that the outside political leadership often makes use of the trade unions to subserve their own party ends irrespective of their effects on the workers themselves. The trade union organisations are also of the view that apart from the historical justification for the association of political parties with trade unions, it is also unavoidable that trade union members do interest themselves in politics and political parties show interest in trade union movement. It is time that the trade union movement rids itself of the influence of local party politics and concentrates on its own legitimate objectives and functions.

14. In the course of oral evidence in Kerala an interesting solution was revealed. It was reported both by employers' and workers' organisations who appeared before the Commission that in spite of union rivalries there is no difficulty in all rival unions coming together and negotiating with the employer. Their demands on the employer are common. The arguments for reaching an agreement/disagreement are the same. If in the process an agreement is reached, the employer hesitates to give effect to it unless all unions append their signatures to the agreement. This arrangement has a distinctive

regional significance. Whether it can work elsewhere is doubtful. At the national level, however, a similar solution prevails in the sense that all federations join hands in making their demands on Government/employer.

III

Foreign Practices

15. While inter-union rivalry arising out of political or religious affiliations is not unknown in other democratic countries, its impact has been greatly reduced as a result of the growth of collective bargaining and the recognition of unions. The extent and nature of such association vary from country to country depending on its historical development, political institutions and the circumstances of the growth of the trade union movement. While in many democratic countries trade unions are not directly linked with particular political parties (U.S.A., U.K., Australia)- in many others they are so linked.

16. Although the economic and social background and the industrial relations system and institutions are different, the experience of the T.U.C. in U.K. in dealing with inter-union rivalry may hold some lessons for us. In the U.K., the rules of the Trade Union Congress place upon its General Council, a special

responsibility to promote a settlement in disputes between affiliated unions. The principles which regulate the settlement of disputes and threaten disputes between unions are commonly known as the Bridlington Agreement and were adopted by the Trade Union Congress in 1939. (A summary of the main principles is appended - Appendix-II). The object is to avoid competition between unions, ensure stability in trade union membership and prevent poaching of members. It also provides that a union should not commence organising activities at any establishment in respect of any grade or grades of workers in which another union has the majority of workers employed and negotiates wages and conditions of work unless by arrangement with that union. A special disputes committee exists for the purpose. It can act as a fact-finding commission, as a conciliator, or as a 'court' with the power, if necessary, to make a decision in favour of one or the other of the two parties to the dispute. It is a general principle of the T.U.C. disputes machinery that it should^{not} be used unless the General Council has first been assured that the unions concerned have made an effort to settle the dispute between themselves. A report on the work of the disputes committee is presented every year to

the Congress. If it considers the circumstances to be serious enough the Congress can exclude from affiliation a union which has not accepted a decision of the disputes committee. The Donovan Commission observed that, "in general the limitations on poaching set out in the Bridlington principles are observed and partly as a result of it, a number of joint working agreements have been concluded between unions."

17. The U.S. experience in this regard is limited for the period of about twenty years (1936-1956) i.e. from the birth of the C.I.O. to the merger of A.F. of L. and C.I.O. The two organisations in the intervening period had a "no raiding" contract. Such details as are available about the working of the contract should that disputes which come to one or the other federation were of a minor character.

18. The Australian system is somewhat similar to the U.K. But the process which the Commonwealth Conciliation and Arbitration Commission has in not registering a union when another to which workers can conveniently belong have been used effectively in avoiding rivalry. In fact, in some cases where a union has chosen to be recalcitrant, the C.C.A.C. has used the threat of registering a rival union to secure compliance with its orders.

IV

Suggestions

19. A system of recognition of unions as sole bargaining agent, raising the qualitative requirements of union registration and functioning, a shift to collective bargaining as the main method of disputes settlement and the institution of independent authorities for adjudication and administration of procedures will go far in reducing multiplicity and inter-union rivalries.

20. But this is more a remedy than a step to prevent rivalry. For prevention the basic cause of rivalry requires a deeper probe. With all the work which eminent union leaders have done among workers the worker^{has} still weak loyalties; exceptions apart. This is not a phenomenon only in this trade union relations but is spread over the other aspects of our national life. And the difficulties consequent on this have a long term remedy.

21. It has been stated that elimination of inter-union rivalries and achievement of trade union unity will be possible when the leadership of the various central organisations is prepared to act as trade unionists first and politicians next. In view of what has been said in the above para this is to facile an

assumption. A more plausible one will be an expectation that leadership will develop from within as indeed it has been in the last ten years among certain categories of employees. It is only in such case democratic processes in the functioning of unions will be respected and over a period of years a more lasting unity in the movement will come.

22. With this development as a goal, some temporary expedients could also be suggested. There is a fair measure of agreement between federations in the all-India forums of discussion. Could they go one step further and accept for inter-union relationship, the principles underlying the Bridlington Agreement in U.K.?

23. In place of one central workers' organisation as in the U.K., there are four major ones in India and even more in years to come. But it may still be possible to have a joint machinery comprising representatives of workers' organisations to deal with disputes between their affiliated unions on the lines of the dispute machinery in the U.K. In fact, such a machinery was envisaged at the joint meeting of representatives of the four central organisations in 1958 when the Code of Conduct was adopted.

INTER-UNION CODE OF CONDUCT

We, the representatives of four Central Labour Organisations, namely, INTUC, AITUC, HMS & UTUC agree to observe the following basic principles for maintaining harmonious inter-union relations:-

- (1) Every employee in an industry or unit shall have the freedom and right to join a union of his choice. No coercion shall be exercised in this matter.
- (2) There shall be no dual membership of unions. (In the case of Representative Unions, this principle needs further examination).
- (3) There shall be unreserved acceptance of and respect for, democratic functioning of trade unions.
- (4) There shall be regular and democratic elections of executive bodies and office-bearers of trade unions.
- (5) Ignorance and/or backwardness of workers shall not be exploited by any organisation.
~~XXXXX~~ No organisation shall make excessive or extravagant demands.
- (6) Casteism, communalism and provincialism shall be eschewed by all unions.
- (7) There shall be no violence, coercion, intimidation, or personal vilification in inter-union dealings.
- (8) All Central Labour Organisations shall co bat the formation of continuance of Company Unions.

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24. On the same pattern each central workers' organisation may be persuaded to set up a machinery in their own organisation to decide disputes arising between their own unions or two groups of persons in the same union.

25. In case the central organisation concerned is not able to settle an intra-union dispute, the matter should be decided by an election to be conducted under the orders of the independent authority concerned with the certification of representative unions etc. A suitable provision for this may be made in the Trade Unions Act.

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APPENDIX IIPrinciples for the avoidance of disputes adopted by the Bridlington Congress 1939.

1. Each union shall consider the possibility of joint working agreements with unions with whom they are in frequent contact; such agreements should deal, where possible, with:-

- (a) Spheres of influence;
- (b) recognition of cards;
- (c) Machinery for composing difficulties;
- (d) Conditions for transfer of members.

2. No one who is or has recently been a member of any trade union should be accepted into membership in another without inquiry of his present or former union. The present or former union shall be under obligation to reply within 14 days of the inquiry, stating:-

- (a) Whether the applicant has tendered his resignation;
- (b) Whether he is clear on the books;
- (c) Whether he is under discipline or penalty;
- (d) Whether there are any other reasons why the applicant should not be accepted.

3. Each union shall use an Inquiry Form as proposed by the General Council in the case of all inquiries under (2) above, and forward reasoned replies on any such form as they may receive from an inquiring union.

Contd.....

(ii)

4. No union shall accept a member of another union where inquiry shows that the member is:-

- (a) Under discipline;
- (b) Engaged in a trade dispute;
- (c) In arrears with contributions.

5. No union shall commence organising activities at any establishment or undertaking in respect of any grade or grades of workers in which another union has the majority of workers employed and negotiates wages and conditions, unless by arrangement with that union.

6. Each union shall include in its membership form questions on the lines of the TUC Model Form, in regard to past or present membership of another union.

The essential questions on the Model Form are as follows:

Are you, or have you been, a member of any other Trade Union or Unions? Give the name of the Union or Unions of which you are or were formerly a member.

If you are a member of any other Trade Union and are not in benefit, please state what is the amount of your arrears.

.....

I

To put the current debate about 'outsiders' in the trade union movement in its proper perspective, an accepted fact requires to be mentioned. Labour leaders from outside the ranks of labour, in some cases with strong political affiliations, have played an important role in the building up of the trade union movement in India. The debate usually opens with the connotation of the term "outsider". According to the Indian Trade Unions Act, 1926, any person not actually engaged or employed in the industry to which the union relates is deemed to be an outsider. The Act permits the existence of 'outsiders' in the trade union executive upto a specified limit - 50% of the total. Royal Commission on Labour, 1929-31 had recommended a reduction in this proportion of outsiders.

2. Those opposed to outsiders in trade unions find that it is necessary to widen the scope of the definition of 'outsider' so as to exclude particularly those who are discharged or dismissed. There are others who emphasise current employment status i.e. whether the person is currently employed in a unit/industry or not, to determine whether the person is an 'insider' or 'outsider'.

3. From the unions, the argument is that anyone who has devoted his life to trade union work and has been a full time trade unionist, whether he had ever worked as an employee in an industry or not should not be treated as 'outsider'. Another dimension is

introduced in the connotation when politics gets associated with the organisers of a union. Ultimately the controversy over 'outsiders' has been linked with "outsiders of one political leaning or other" and their elimination from trade unions. The argument is that the presence of 'outsiders' is not conducive to trade union unity. Experience has shown, it is argued, that multiple unionism is mainly the result of different political outsiders wanting to establish unions of their own, with a view to increasing their political influence, albeit in urban areas. It is also maintained that 'outside' elements are responsible for many of the ills of the trade union movement and for bad labour management relations. A further allegation against outsiders is that they further their personal or political ends in preference to improving labour management relations. In recent years as a result of political splinter groups, intra-union rivalries have appeared on the scene. And all this, it is emphasised, is inherently bad for the working class; all this points towards the need for minimising the influence of 'outsiders'.

4. Experience has shown that there is the other side of the picture also. The general illiteracy among the working classes, it is stated, makes it difficult for a strong cadre of internal leaders to emerge. The complicated nature of industry requires the services, by way of helpers/well wishers of educated persons who can appreciate

the complex framework and procedures of industrial relations and all this means whole-time attention of office bearers. In the last twenty years a cadre of union leaders who are trade union workers first and politicians next has emerged and this cadre should not be denied the privilege of serving labour.

5. It has also been noticed that politics and trade unionism are inextricably mixed. It is asserted that this is more a function of the political democracy we have than of what has happened on the labour management scene. Accordingly, the position would not have changed, i.e. political influence would have operated, even if 'outsiders' had been barred from union offices. The employee office bearers themselves could not have been prevented from being interested in and connected with the political parties, or seeking assistance of one political group or the other. Such instances have also been witnessed in the last twenty years and for good reasons.

II

Evidence before the Commission.

6. The weight of the evidence before the Commission appears to be in favour of a reduction in the proportion of outsiders in trade unions. Some have argued cutting out 'outsiders' with one fell stroke. Others want the process of elimination of 'outsiders' to be gradual. Still a third but important section wants status quo.

7. Most of the State Governments seem to favour an active programme of measures to promote the growth of internal leadership, which alone will ultimately be an effective answer to this problem. As a first step the suggestion is that the law should be amended to provide that either the President or General Secretary of a union should be from the ranks of the workers.

8. The employers' organisations, including Public Sector Corporations/Undertakings, have emphasised the undesirable effects of outside leadership, particularly the politically oriented leadership, in trade unions and have suggested a substantial reduction in their percentage in union executives. The Council of Indian Employers desire that outsiders may be allowed to the extent of 10 per cent in the executives of national and industrial unions, whereas in the plant level unions direct association of outsiders should be discouraged to the maximum extent. There is no suggestion of total ban.

9. The workers' organisations have generally laid stress on the useful role played by the outsiders in the past and on the factors that justify their continuing association with the unions for some time to come. The importance of steps - workers' education, trade union training, etc. - to encourage and build up workers to take up the responsibility of leadership has also been emphasised. Some unions have suggested that office-bearers of trade unions should be barred

from holding a simultaneous office with a political party.

10. Independent observers of the industrial relations scene, research scholars, academic circles favour a ban, but will be satisfied with a substantial reduction of 'outsiders'.

11. The four Industrial Relations Study Groups have also emphasised the need for building of internal leadership. In order to hasten this process of building up from within, the Northern Region Study Group favoured the reduction in the legal limit of the number of outsider office-bearers to one-third of the total.

The Eastern Region Study Group suggested that provision should be made to restrict individuals from becoming office-bearers of more than a certain number of

registered trade unions. The Western Region Study Group was sharply divided in its views regarding the problem of the outsiders; opinions ranging from one extreme

of total banning of non-workers from unions to the justifying of their continuance for many years to come and opposing any action to reduce their position in the trade unions have been recorded. The study Group on

Workers' Education as well as the Northern Region Industrial Relations Study Group have emphasised the important role that the Workers' Education Scheme could play in helping the process of training workers as

trade union leaders. The Study Group on Sugar Industry favoured the reduction in the limit on outsiders to

20%, and the filling up of at least one of the top offices of the union - President or General Secretary - by a regular employee.

III

12. Article 3 of the ILO Convention (No. 87) concerning Freedom of Association and Protection of the Right to Organise provides that "workers and employers organisations shall have the right to draw up their constitutions and rules and to elect their representatives in full freedom" and enjoins that "the public authorities shall refrain from any interference which would restrict this right or impede the lawful exercise thereof". States would, however, remain free to provide in their legislation for such formalities as appeared appropriate to ensure the normal functioning of industrial organisations.

13. The legislation in many countries contains no provisions concerning grounds for disqualification from office in a trade union or employers' organisation. The laws in several countries, however, provide for the disqualification of persons from trade union office on grounds, of (a) nationality (b) political opinions and (c) occupation, apart from conviction on offences involving moral turpitude.

14. In some countries, aliens are not eligible for posts as officials of an organisation although generally foreign workers are not deprived of the right to join

trade unions. In some countries (Phillipines, Union of South Africa, Spain, etc.) the law disqualifies individuals from trade union offices on political grounds.

15. In some countries the law provides that the officials of a workers' or employers' organisation, or at least a majority of them, must be engaged in the occupation for which the organisation was established; the assumption being that officials who belong to the occupation are better qualified to speak on its behalf than those who have no connection with it. For instance, in Burma the law provides that officers of a registered union must be elected from among the workers employed in the undertaking and that none of the union officials shall be an executive of a political party. The Malayan law requires that to become a member of the executive of a trade union a person must have been engaged for a minimum of three years in the trade, occupation or industry with which the union is connected.

16. "Outsider" in the context of the Indian trade unions is somewhat different from his counterpart in many other countries. Persons sought to be excluded from holding office in the unions vary from country to country; it is sometimes the alien worker, sometimes persons holding certain political views; and sometimes those belonging or not belonging to certain occupations; the criteria adopted seem to depend on the particular circumstances - the composition of the labour force, the structure of the unions, the political history of the country and the political ideology of the

Government and so on. For instance, in the U.K. office bearers of a union or the T.U.C. may be ex-workers but according to our concept they are outsiders. The outsider leader, who is a non-worker, who is often a politician, and whose main avocation is not trade union work, seems to be a feature somewhat peculiar to trade unionism in countries like India, Pakistan (for some time), Burma and Malaya which had passed through a phase of struggle from colonialism to Independence.

IV

Suggestions:

17. The Commission has to examine this problem in the broader context. It seems that outsiders have been made to appear more dangerous than they really are. Their influence is less pernicious. There have been occasions where inside leadership has been equally militant or has been instrumental in moulding the attitude of outsiders. These may be exceptions so far but their incidence will increase. On the other hand arguments about illiteracy of workers, victimisation of leadership usually urged in favour of continuing outsiders will also sound weak as of a future date.

18. The remedies suggested range from an outright ban on all non-employees straightaway or through a phased reduction in the proportion of outsiders in union executives, to leaving the outsider alone and concentrating on steps that would strengthen inside leadership.

19. Resorting to imposition of a total legal ban on all non-employees seems to be too drastic a step in any case and may even clash with Article 19 of the Constitution. Whom workers choose to elect as their leaders is a matter best left to the workers themselves. If elimination of outsiders is accepted as a means to strengthen trade unions, to make them responsible and self-reliant, and not an end in itself, the right course would be to take steps to promote internal leadership and give them a more responsible role to play and possibly keep them outside the pale of victimisation. Merely banning outsiders may only result in the trade union movement becoming weaker, and the prospect of inside leadership taking over, recede further.

Reducing the proportion of outsiders in union executives also may be a fruitless exercise in the absence of certain preconditions for the emergence of inside leadership.

It is not the number of outsiders in a union that really matters, but the extent of influence they wield. Even today, outsiders in union executives are estimated to be much less than the number legally permitted, in fact only about 10 per cent; but they appear to wield sufficient influence in the union affairs.

20. The only alternative left is to concentrate efforts on those measures which would help build up a strong and responsible leadership from within and leave the 'outsider' alone, because it is not really a question of outside leadership and inside leadership, but one of effective leadership. Today, apart from historical justification, the factors earlier indicated

and unsympathetic attitude of the employers in general, the emphasis on legalism and adjudication for the settlement of disputes, and the state of organisation in the unorganised sectors of industry have kept the phenomenon alive. It would be futile to seek elimination of 'outsiders' without dealing effectively with the factors that are responsible for their continuance. The Royal Commission's observation that "the endeavour to dictate to unions on the subject of their officers or leaders is short sighted and unwise" is still true; and efforts to solve this problem should primarily be directed to creating conditions favourable to the emergence of inside leadership.

21. A possible view is that the problem may largely solve itself. The fact that trade unions in the Banking Industry, Insurance and Civil Aviation are managed effectively by persons thrown up from the rank and file lends sufficient support to this contention. With the improvements suggested in the Workers' Education Scheme and a greater emphasis on building up good trade union workers, internal leadership will certainly develop. If provision is made for adequate protection against unfair labour practices, an important factor inhibiting the emergence of internal leadership would be eliminated. Compulsory recognition of majority unions to represent the workers and negotiate on their behalf will vest union officials with greater

responsibilities; which would give them the needed confidence and the best schooling for building up competent internal leadership. To add to these, if legal complications are sought to be avoided workers will certainly stand on their own. Thus the compulsions of the developments taking place in the economy are a guarantee for minimising outside influence. The process can be helped and hastened by steps like a progressive reduction in the proportion of outsiders in unions, and reserving at least some top positions in union executives for worker members.

22. There is an allied question which came up in evidence very often from employers groups and some independents. They sought to limit the number of unions which an outsider can hold on the analogy of company directorships which an employer can accept. But since we are suggesting that 'outsiders' are a passing phase, there need be no recommendation on this issue.

23. To sum up :

(a) A legal ban on outsiders in trade unions appears neither necessary nor desirable.

(b) The following steps which would help reduce the importance of outsiders and build up internal leadership, should be actively promoted :

- (i) Intensification of the Workers' Education Scheme to train workers in trade unionism and industrial relations;

- (ii) Providing penalties for unfair labour practices including victimisation.
- (c) Trade union organisations should also make serious efforts to train workers in union organisation and industrial relations;
- (d) In order to hasten this process,
- (i) The number of outsiders in union executives may be reduced to about 10 per cent of the total and the position may be reviewed after ten years;
 - (ii) It should be provided that either the President or the General Secretary of a union should be from the ranks of the workers;
 - (iii) No union office-bearer should concurrently be an executive of a political party.
- (e) There may be some consequential steps depending upon what the Commission decides on issues like
- (i) recognition of majority union;
 - (ii) relative emphasis on collective bargaining and adjudication; and
 - (iii) streamlining of legal remedies in disputes over rights.

Trade Union Finances

A trade union, like any other organisation needs funds.

The main sources of income of the unions are: membership fees, contributions from members, donations, sale of periodicals, special levies, etc. The extent of the income would be contingent on (i) the rate of subscription/donations including entrance fee, etc. (ii) the extent of membership and (iii) regular and timely collection of dues.

2. The Trade Unions Act' 1926 makes certain provisions regarding the finances of trade unions and their proper utilisation. Section 6 provides that "the payment of subscription of members of the trade unions shall be not less than twenty five naya paisa per month" and for the safe custody of union funds and for annual audit. Section 15 stipulates the purposes/objects on which general funds of the unions can be spent and permits constitution of a separate fund for political purposes. Section 28 requires a registered union to submit a general statement of receipts, funds, expenditure, etc. duly audited to the Registrar of trade unions every year.

3. An examination of the available data on the income and expenditure of trade unions over the years leaves no doubt that financial position of trade unions is weak, as a consequence they are unstable and unviable. Because of poor income and meagre resources, unions are in no position to maintain any worthwhile organisation or regular establishment, or provide adequate services on a continuing basis to their members. Union members do not expect these either. Their visit to the union office or union meetings is only when some problems personal to him are to be settled. But this is not an uncommon feature elsewhere.

4. In terms of composition of union income, it is seen that over a period of time it has not changed materially.

In 1962-63, membership contribution accounted for 71.2% of the total collection, donation 16.5%, sale of periodicals and interest on investment 1.8% and rest accountable by miscellaneous items.

This was the broad pattern earlier also. In the year 1947-48, the contributions from members came to about Rs.3/- per year per member; in 1961-62 the figure stood at Rs. 5/- per year and in 1964-65 it has gone up to Rs. 7/- per year per member. This increase has not meant any real improvement in the finances of unions because of rise in prices and proliferation of unions. Average membership in the year 1947-48 was of the order of 1026; in 1962-63 it touched 508; and in the year 1965-66 it went up to 611. Thus, though the income per head per year has gone up, gains to total funds have been only marginal; the average income per union in the year 1947-48 was of the order of Rs.3495 and by the year 1965-66 it could hardly touch the figure of Rs.4412 (provisional).

5. Section 15 of the Indian Trade Unions Act, 1926 permits expenditure on items like payment of salaries and allowance, cost of administering the union, expenses on the conduct of trade disputes on behalf of the trade union or any member thereof, compensation arising out of the above, allowances to members or their dependants on account of death, old age, sickness, accidents or unemployment provision for educational, social or religious benefits for members etc. The percentage expenditure of unions on some of the important items is given below:-

<u>Items of expenditure</u>	<u>1955-56</u>	<u>1962-63</u>
1. Salaries & Allowances of officials.	18.3	18.9
2. Expenses on Establishment.	22.6	25.6
3. Legal Expenses	4.0	5.0
4. Conducting Trade Disputes.	5.8	4.0

* With frequent recourse to Tribunals/Courts it would appear that the total expenditure on it should have been higher - some unions have the practice of raising funds separately for specific cases. And these funds are reported to be over subscribed.

<u>Items of expenditure</u>	<u>1955-56</u>	<u>1962-63</u>
5. Compensation to members for loss arising out of trade Disputes.	1.1	1.1
6. Sick, funeral, old age benefits, etc.	1.8	2.7
7. Educational, social and other benefits.	1.9	2.6
8. Other items.	44.5	40.1

It will be seen from above that since 1955, the composition of expenditure has not by and large changed. Still in 1962-63, salaries and allowances and establishment charges accounted for 44.5%. Expenditure on direct benefits to workers in terms of social security and other benefits on social service is insignificant.

II

Evidence before the Commission

6. There is more or less unanimity that the trade union finances are in a very unsatisfactory state, owing mainly to causes such as (a) the low extent of unionisation, (b) multiplicity of unions which leads to frittering away of the income and (c) the low rates of subscription. The income of the unions also keeps on fluctuating because members are not regular in their payment of dues.

7. Most State Governments have expressed the view that majority of the unions in India do not have enough finances to fulfil their role in promoting members' interests. To improve finances, some States have suggested an increase in subscription rates together with the facility of check-off of the collection of dues. One State has recommended that grant-in-aid be given to a union which observes the Code of Discipline and conducts its activities in a peaceful and constitutional manner.

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8. Employer's organisations including public sector undertakings have expressed the view that the union finances are poor and to improve them efforts should be made for regular collection of dues, special contribution from the members should be sought, trade unions should undertake to sponsor fund raising programmes and subscriptions be increased.

9. Workers' Organisations have been emphatic that unions do not have adequate finances to discharge their obligations. One Central Organisation has favoured increasing subscription to "50 paise or even one rupee per month per member and the trade union subscription and dues may be recognised as one of the permissible items of deduction under Payment of Wages Act;". Another would like the introduction of check-off system. Some have favoured extension of facilities like exemption of stamp fee in legal matters to reduce union expenditure. Linking subscription to wages with a provision for minimum subscription is another suggestion.

10. Such of the Study Groups which discuss this matter have concluded that the present financial position of most of the unions is weak. The Study Group on Ports and Docks while recognising that the unions in the ports and docks are relatively strong, though not affluent by any standards has suggested that there is need for improving the finances of unions for better organisation and services. According to it "this will follow if the recognition, in all cases without being mere formality becomes real and multiplicity of unions is eliminated or atleast effectively discouraged." The Study Group favours check-off system for the collection of dues. The Study Group on Industrial Relations (Southern Region) wants that the union subscription should not be less than rupee one per month in case of employees whose total emoluments amount to Rs.100/- and more; and 50 paise in the case of

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employees whose total emoluments are less than Rs. 100/- per month. The Study Group on Industrial Relations (Northern Region) has recommended "the payment of a minimum of one per cent of the wages of the worker (basic wage plus dearness allowance) subject to a minimum of rupee one per month as monthly subscription would be within the paying capacity of an ordinary Indian worker. If the union leaders can convince the workers for the need for their joining unions and the benefits that the union can secure for its members there would be no resistance from the workers side to paying subscription at a reasonable rate. The increase in the subscription is likely to enthuse the workers to take greater interest in the affairs and activities of the unions." The Study Group on Industrial Relations (Eastern Region) recommended that "to be effective, unions should take a step to improve their finances, if necessary they should enhance the rate of contributions from members to achieve this end."

Such suggestion as require to be emphasised for the equally difficult problem of regular collection of dues have been made in the note on "check off".

III

Foreign Practices.

12. Comparison with finances of trade unions in the more affluent countries will not be quite appropriate, though regulations regarding union finances in some of these countries will. In U.S.A. there is no provision prescribing any minimum rate of subscription. The Taft Hartley Act enumerates among the unfair labour practices in which unions cannot engage, the charging of excessive or discriminatory dues or initiation fees from members. The actual interpretation of what is excessive or discriminatory charges is left to the

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National Labour Relations Board. The Act also prohibits unions (as well as corporations) to contribute funds for political purposes in connection with any federal election. The Landrum-Griffin Act (1959) provides for detailed regulation of internal union affairs including changes in membership fee. At present majority of union members pay about 4 to 5 dollars per month. 75% of the unions are reported to be charging less than 25 dollars as the initiation fee; in highly remunerated jobs, the unions have put even 100 dollars as initiation fee.

13. In Japan there is no provision prescribing the minimum membership fee and enterprise unions have their own rules; usually the contributions are based on the percentage of earnings with the result that senior members pay more than the younger ones and also men more than women. A study undertaken by the Ministry of Labour in Japan in 1960 on the finances of the unions revealed that normally 1.2% to 2.3% of the monthly wages of the workers go towards union subscription. Apart from the monthly subscription, the Japanese trade unions frequently collect ad hoc contributions. They have separate welfare and strike funds.

14. In Philippines, Republic Act No. 875 lays down that arbitrary or excessive initiation fee shall not be required nor excessive or arbitrary fines. They have also the provision of detailed and strict control on reports of financial transactions, payment of fees, dues and other contributions of members.

15. Trade union finances in USSR are derived mainly from contributions from members. All unions have a common set of rates and union dues are calculated on a graduated scale with Kopecks 50 per Roubles 100 a month for those earning 100 to 500 Roubles a month and 1% on Roubles 700 and over. Since 1959, 0.15%

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of the factories wage fund is paid by the undertaking as contribution to union dues. A strict vigilance is exercised in matter of finance by the Auditing Commission of Central Soviet Federation of Trade Unions.

16. The Malaysian 1940 Trade Unions Enactment has been modelled on British pattern except that it proscribed the establishment of a political fund; but the 1959 Ordinance permitted creation of such a fund by certain unions after a decision is taken by a secret ballot by members, provided contributions are voluntary and no discrimination is practised in the extension of benefit to non-contributors. The Trade Unions Act 1926 of Burma was also modelled on the lines of the U.K. Act. While in Malaysia the 1959 Ordinance (also Malaysia Trade Unions Act, 1965) permitted creation of political funds, in Burma which had similar provisions, has by an Amendment Act of 1959 prohibited such a fund.

"Expenditure on political activities is now allowable only so far as it is directed towards the objectives on which the general funds of unions may be spent." In Malaysia and Burma, there is no statutory provisions for any minimum subscription.

17. The U.K. law does not provide for any minimum subscription. Roughly 80% of the income of the British Trade Unions has been from contributions made by members. As compared to 1938, in 1966 the average contribution of members of registered unions roughly doubled. As a percentage of average weekly earnings, trade unions contribution had declined from 1.02% in 1938 to 0.39% in 1966. This decline according to Dounovan Commission has to some extent been off-set by rising membership. As compared to 1938 in 1966 expenditure of registered unions rose by about 6 times.

Suggestions

18. An important reason for the financial weakness of most unions has been the small membership strength and the

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small, almost token, contributions required of these members. With a relatively low unionisation rate and multiplicity of unions, the fee paying membership is divided into several unions and the meagre finances split up further. Because of mutual rivalries and attempts by rival unions to attract members, the subscription rates are often fixed at as low as 25 paise per month, the minimum prescribed under law. It is not uncommon that even these are not regularly paid or collected. Further, much energy and time of the office bearers of the union are spent in collecting the fees from members every month except where the union is recognised and employer provides facilities for collecting union dues.

19. If unions are to become self sufficient and strong and to perform even their traditional functions, it is imperative that they become financially viable and should have regular sources of income through membership subscriptions and not depend on ad-hoc sources like donations, levies, etc. The argument that the Indian worker is poorly paid and cannot afford to pay anything but a nominal fee for his union membership is not convincing today when the workers' wages as well as his trade union consciousness has improved. The provision for recognition of the majority union as the sole bargaining agent would help reduce multiplicity of unions, the splitting of union fees and the undercutting of union dues. Added responsibilities and rights of sole bargaining would also help unions to grow in prestige and attract membership. If union leaders can convince workers of the need for their joining the union and the benefits that the union can secure for its members, there would be no resistance from the workers' side for paying subscriptions at a reasonable rate. When a worker makes reasonable payment for his union membership, he is more likely to take interest in the affairs and activities of the union; he will also expect a reasonable return from the union.

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Union leaders also will have to be more alert in attending to the workers' grievances and securing redress. Since this will involve considerable time and work, unions will be required to have full time officials, and the present practice of some union leaders being the office bearers of several unions **simultaneously** will gradually diminish.

20. Inorder to improve the finances of unions, following steps need be taken:

- (a) Legislation extending the benefits and facilities to trade unions will not necessarily increase the financial viability of unions, unless unions make positive efforts to increase membership and improve collections.
- (b) Provision for recognition of unions with the sole right to collective bargaining will help consolidate unions and reduce multiplicity, leading to improvement in union finances.
- (c) The minimum membership fee of trade unions should be raised to 50 paise per month; for workers whose emoluments exceed Rs.100 p.m. it should be 1% of wages (including d.a.).
- (d) Recognised union should be given facilities to collect membership dues at the time of disbursement of salaries.
- (e) There should be ^apersuasive provision in the law to permit 'check off' where the employer and union agree to such arrangement.

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Trade Union Legislation

Trade Unions (unions) in the early years faced serious handicaps and were subjected to severe restrictions. Unions faced stiff opposition from employers, their activities were looked upon with suspicion and at times the law of the land came down on them with a heavy hand. In many cases, unions were declared unlawful associations and were prosecuted for conspiracy. It took decades of trials and tribulations before they ceased to be considered as conspiracies and unlawful associations and came to be regarded as legitimate and lawful institutions.

2. A similar situation existed in India but for a while. The prosecution of Madras Labour Union for interfering with the work people and dissuading them from working and thereby causing loss to the company' and similar instances soon gave rise to an agitation for legalising unions. The work of the International Labour Organisation, the influence exerted by the British Trade Union Congress on the general attitude of the Government of India on labour matters and the keen interest taken by the leaders of the National movement in the affairs of labour helped creation of a proper climate in the country in its favour.

3. In order to legalise the activities of the unions in India, to grant immunity from certain criminal and civil liability, to enable unions to undertake and discharge their normal and legitimate obligations and functions and to save the unions funds being defrauded or misappropriated, the Trade Unions Act, 1926, was passed - an Act to provide for registration of trade unions and in certain respects to define the law relating to registered unions.

4. The Act, as amended from time to time still governs the unions in India. While the amending acts of 1928, 1937, 1960 and 1964 were of a relatively minor nature, that of 1947 (which was not enforced) was of a far reaching nature and contained provisions for the compulsory recognition of unions and for penalisation of unfair labour practices.

5. Registration of unions is not compulsory; unregistered unions would not in any way be illegal. But, the benefits, including immunity from civil and criminal liability, as are conferred by the law on registered unions will not be available to unregistered unions.

6. Before a union can be granted the certificate of registration, it is required to comply with certain requirements. Its rules must provide for the object for which it has been established, the purposes for which general funds of the union shall be spent, the procedure for the admission of ordinary, honorary and temporary members, the payment of a minimum subscription of 25 paise per month, the manner of appointment of the executive, the manner of dissolution of the union, etc. At least one half of the total number of office bearers must be persons actually engaged or employed in the industry with which the union is concerned. There are provisions in the Act to indicate the purposes for which the general funds of a union could be used. A union may constitute a separate fund for the protection of the civic and political interests of its members. No member can, however, be compelled to contribute to this fund.

7. The account books of a union and the list of its members are required to be kept open for inspection by an officer or member of the union. Any changes in the name, constitution and rules of the union as well as the office bearers have to be notified to the Registrar of Trade Unions. A union is also required to submit annual returns to the Registrar of Trade Unions

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giving information concerning membership, income, expenditure, assets and liabilities, etc. The financial statement is required to be properly audited. The registration of unions can be cancelled if the Registrar is satisfied that the certificate has been obtained by fraud or mistake or that the union has ceased to exist or has wilfully contravened any provisions of the Act, etc.

8. Although for the limited purposes of the Act, there has been general satisfaction with the law relating to unions; suggestions have been made from time to time to bring about certain further improvements. The aims of these suggestions have been to reduce multiplicity, to facilitate stabilisation of unions and to improve their functioning. Important among these suggestions are:

- (1) There should be provision for compulsory registration of unions;
- (2) The requirement of registration should be made stringent, so as to discourage/prevent mushroom growth of unions;
- (3) The law should provide for recognition of unions;
- (4) The law should also specify the acts of omission and commission which would constitute unfair labour practices on the part of employers and unions;
- (5) The powers of the Registrar of trade unions should be enhanced so as to empower him (a) to step in in the case of disputed elections of office bearers; (b) to deregister a union for wilful violation of the provisions of the union constitution, and repeated non-submission of returns, etc.
- (6) There should be provision to reduce the influence of outsiders in unions.

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II.Evidence before the Commission.

9. The consensus in the evidence reaching the Commission is that the existing trade union legislation has on the whole fulfilled its function of protecting the workers' right to combine and has facilitated the growth of the unions. There appears also to be more or less general acceptance of the need for improving the law in certain directions; for instance in regard to registration of unions, recognition of unions, Registrar's power to register and deregister, etc.

10. State Governments have generally expressed the opinion that the statutory provision that any seven person can form a union and get it registered, while it has facilitated the growth of the movement, has also been responsible for multiplicity of unions. Some prefer amendment of the provision to raise the minimum number required for registration; suggestions ranging from 10% to 25% of the workers as the minimum necessary to form a union have been made. One State Government has gone to the extent of recommending that a union should be liable for deregistration if its membership in any period of 6 months falls below 10%. Other suggestions refer to the prescribing of detailed procedures for maintenance of records, elections of office bearers, reduction of outsiders etc. Some have also recommended that the powers of Registrar should be widened in respect of inspection of accounts, checking the observance of the constitution of the union. Registrar should also be empowered to give decisions in internal disputes concerning election of executives; he should either be allowed to adjudicate in case of a dispute or on his own accord make a reference to a labour court.

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11. Employers' organisations including some of the public sector undertakings also more or less agree that the statutory minimum of workers required for registration is too low. Some have suggested that minority unions should be debarred from raising general disputes and there should be clear demarcation in this respect between the rights of a recognised and unrecognised unions. In regard to widening the powers of the Registrar, opinions more or less similar to the State Governments have been expressed.

12. Workers' organisations, particularly central organisations, have expressed similar opinion on the impact of legislation on the growth of unions and multiplicity of unions. One central organisation has favoured amending the Act on the lines of B.I.R. Act, to discourage multiplicity of unions. It also wants that the aim should be to have one 'good union' for one industry. Another central organisation is in favour of raising the minimum number required for registration of a union to 10% or 100 whichever is less, in the case of units where there is already a registered union functioning; where no union exists, it favours the retention of the present provision. Some unions do not endorse the view that the legislation is responsible for multiplicity of unions; in their view, the cause lies somewhere else and there is no need to amend the Act in regard to the registration of unions.

13. In regard to the powers of the Registrar, one central organisation wants that they should have more powers to verify the veracity of accounts and also the trade union Act be amended "so that the disputes relating to the election of office bearers which are frequent, be either submitted for arbitration to a central body to which the union is affiliated or to the labour court having jurisdiction

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in that area." Another central organisation wants that the Trade Unions Act, be amended to the effect that the Registrar should be required to give his decision in the matter of registration within 30 days from the date of receiving the application for registration by his office.

14. Majority of the Study Groups reporting on the subject are of the view that multiplicity of unions can be effectively checked, if the requirement that any seven persons can form a union is tightened; the solutions offered, however, differ. Some have recommended stricter enforcement of provisions concerning furnishing of annual returns by unions, (Study Group on Industrial Relations, Western Region), widening of Registrar's powers regarding cancellation of registration (Study Group on Industrial Relations, Northern Region), and the number of persons forming a trade union for the purposes of registration can be reasonably increased, say to 10% of employees of the unit, subject to the minimum of 7 persons employed there. (Study Group on Industrial Relations, Eastern Region). Similar opinion has been expressed by the Study Group for Railways. It has observed that "in order to avoid multiplicity of unions, the Trade Unions Act may be amended to provide that unless the union has a membership of a certain minimum percentage say not less than 10% of workers employed in an industry, it should not be eligible for registration under the Trade Unions Act." Study Group Report on Industrial Relations (Northern Region) has suggested that the minimum number should be fixed at 7 persons or 1 per cent of the regular employees in the unit covered, whichever is higher. In addition to existing provisions, the Registrar should have the powers of cancellation of registration of a union for failure on the part of the union, specifically

those relating to holding of election of office bearers and appeals in case of decision of the Registrar should be to the Labour Court than to the Civil Court as at present. Plantation Study Group has recommended that in order to prevent the growth of mushroom unions, Trade Unions Act should be amended to provide for compulsory recognition. Study Group for Ports & Docks has recommended that it is necessary to amend Trade Unions Act in such a manner that in no industry more than one union is registered excepting under extraordinary circumstances.

III

International Experience.

15. The practice of registration to enable workers' organisations to acquire legal personality varies widely from country to country. In some countries, it is purely optional and registration does not confer any special privileges. In some it confers certain special immunities and rights. U.S.A., France, Netherlands, Burma and Pakistan have a system similar to India's. In U.K., Australia, Japan, Norway, Sweden and Denmark, registration is optional; a mere declaration of the constitution of the rules, regulations and the names of the managing committee is sufficient to acquire legal personality. Unions which do not register are not subject to any disability and are not excluded from the immunities accorded by law.

16. In the United Kingdom, registration of a union is optional; registration does not entitle a union to any fundamental privileges and no discrimination in regard to the extension of immunity from certain civil and criminal liabilities is practised between registered and unregistered unions. Nevertheless, since a registered union gets legal

entity separate from its members, unions covering practically 90% of members have got registered. The others have preferred to remain unregistered because simply by getting a certificate from Registrar of Friendly Societies, they do get all the advantages enjoyed by the registered unions, without the obligations placed on registered unions. The question of registration was reviewed by the Donovan Commission, (1968), which recommended that "all unions should as from some convenient future date receive corporate status and be registered. The register now kept by the Registrar of Friendly Societies could be named the Register of Trade Unions and Employers' Associations and existing registered unions would simply remain upon it. The existing unregistered unions could be given a period of time, for example, a year, in which to become registered. As from some convenient future date all unions on the register would be given corporate status. The definition of a trade union would be exclusively related to registered unions. New Unions would be required to register within a stated period after formation".

17. In the United States though registration is optional at the federal level, Section 9(b) of the Taft Hartely Act states that National Labour Relations Board should not make any investigation concerning the representation of employees nor issue a complaint regarding unfair labour practices unless petitioning union has filled forms about rules, regulations and annual statement of accounts of the union with the Secretary of Labour. However, some of the States have provision for compulsory registration.

18. In U.S.S.R. Article 152 of the Labour Code (1927) states that the union is not obliged to register with the State Institution. It must, nevertheless, get registered with Central Federation of unions viz. ACCUC (at present the only

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Federation operating) to which they are affiliated in accordance with the conditions prescribed by the Unions Congress of trade unions. This becomes necessary as under Article 153 of the Code, any associations not registered with Central Federation of Unions shall not be entitled to style themselves as trade unions or undertake administrative and economic functions assigned to unions.

In a number of socialist countries like Albania, Bulgaria, Czechoslovakia, Hungary, etc. registration is indirectly compulsory.

19. In Australia, there is no separate federal law on trade unions. The Commonwealth Conciliation and Arbitration Act 1904 has extensive provisions regarding registration of organisations, conduct of the registered organisation, deregistration of the defaulting organisation, etc. Any unregistered/deregistered union is not entitled to refer a dispute to the Commission or Court. The Act discourages registration of more than one union in an industry. It gives wide powers to the Registrar to refuse registration of another union if a union is already registered.

20. For any union to function in Malaysia, registration is compulsory. If any union does not apply for registration in due time or if the registration of any union is refused or cancelled, the union is deemed to be an unlawful association and shall cease to enjoy any of the rights, immunity or privileges of a registered union. The privileges that are extended to a registered union are similar to those obtainable under the Indian Act. Every union which seeks registration has to comply with certain conditions but there is no provision in the Malaysian Act which requires a union to show a minimum number of workers or percentage of workers as members before asking for registration. Only registered unions can raise

disputes, collect dues etc. In several countries of South and Central America registration is compulsory.

IV.

Suggestions.

21. The present trade union law has helped the growth of the trade union movement, by giving the needed protection to trade union activities. But our experience of the past and requirements of the future in the field of industrial relations, seem to indicate the need for certain modifications/reforms in the present legal set up relating to trade unions. Important among these are:

(a) Compulsory Registration of Unions.

If all unions are required to register and be subject to uniform, common regulations, it would be not only a tidier arrangement, but also make for a qualitative improvement in their organisation and functioning. The fear that compulsory registration will be a temptation for the authorities to impose undue restrictions and outside control does not appear to be well founded. Our own experience bears this out. The unions of the future have to undertake greater responsibilities, and to be able to discharge these responsibilities, they have to be better organised. A preliminary and necessary step in this direction can be to insist on certain regulations which are necessary for their proper and effective functioning. The present restrictions and obligations imposed under the trade union law are intended only to help the unions grow, not to hinder their growth. Compulsory registration will only bring the application of the same standards of obligations to all unions. Registration does not impose any undue hardship on unions. The existing regulations regarding maintenance of accounts, submission of returns, observance of their own constitution etc., which only make for proper

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functioning, will continue and will apply to all unions uniformly. No union which claims to take part in the industrial relations procedures, can at the same time stay out of the purview of the trade union law and its obligations. Thus there is justification for a legal provision for compulsory registration of trade unions.

(b) Requirements for Registration.

It has often been suggested that the ease with which trade unions can be formed (any 7 persons can form a union and get it registered) has been at the root of some of the basic defects in our unions. Multiplicity, small size and poor finances are often attributed to this. One effective way to tackle multiplicity etc. would obviously be through the process of recognition of unions as bargaining agents. Although there is some weight in the argument that in the present state of growth of the Indian Trade Union movement imposition of any further restrictions which make formation of unions more difficult, should be discouraged, it will still be a step in the right direction if higher qualitative restrictions are placed on the starting of unions at least in undertakings where one or more unions already exist. It, therefore, appears appropriate to retain the present number of '7' for starting of new unions generally, while the requirement should be raised to 10% of the regular employees or 100 whichever is lower, in undertakings where already a registered union (s) has been functioning for over a year.

(c) Recognition of Unions.

There should be provision in the law for recognition of trade unions as a sole bargaining agent. (for suggested procedures

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etc. please see note on 'Recognition of Unions').

(d) The law should provide for the penalisation of unfair labour practices on the part of employers and trade unions.

(e) Powers and Functions of the Registrar of Trade Unions

However, in view of the fact that as contemplated recognition of unions is going to be compulsory, it would be appropriate that all unions be required to get registered and a stricter vigilance exercised by the Registrar in the matter of their compliance with the various statutory regulations/requirements. The powers of the Registrar should be widened in order to enforce strictly the maintenance of proper membership accounts as well as the statement of accounts. The maintenance of proper register of a membership will assume greater importance if verification procedure is accepted as one of the criteria for ascertaining membership of unions.

The powers of the Registrar of unions need also be enlarged in regard to cancellation of registration. The Registrar should be empowered to cancel the registration of a union if it is found on a complaint supported by 10% of the members of a union, that a union continues to violate the by-laws of a union, particularly, if a union wilfully submits false information and incorrect returns, fails to hold impartial elections for the constitution of the executive, etc. and the truth of the complaint is established.

If there is a dispute in case of election of office bearers, the Registrar should have the powers to order for the re-poll under his supervision.

The Registrar should be time-bound to take the decision regarding grant/refusal of registration. The decision should be forth-coming within a month of receiving the application by the Registrar. In case of refusal or cancellation of registration, the party should have the right to go in appeal to the Labour

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Court instead of Civil Court. In such cases, labour courts should not take more than 3 months from the date of filing the appeal.

The complaint about the Registrar being influenced by the political wing of government seems to be unfounded, by and large, but to give the parties satisfaction that he is independent, we should make Registration one of the functions of the industrial relations machinery which is intended to be independent of government.

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RC/