tion. The Plan put heavy reliance on works committees for on-the-spot settlement of disputes. It treated them as the keystone of the arch.

When Mr. V. V. Giri became Minister of Labour in 1952 he continued the Ministry's efforts. He championed collective bargaining by strong unions, and deplored adjudication. But two years later, in 1954, he resigned, having lost his battle with the other ministries on this issue. His successor, Mr. Khandubhai Desai, agreed with the other ministries and with the present-day system of adjudication, which remains, for the foreseeable future at least, in command of the field.

Since 1957 a third approach is in the ascendant. This will be discussed under "Tripartism," later.

C. COLLECTIVE BARGAINING

Collective bargaining has developed to some extent in India since Independence. Inspiration for peaceful settlement of differences between management and labour came from Gandhiji, who in his autobiography expressed his philosophy of industrial relations thus:

> Man is an engine whose motive power is the soul. The largest quantity of work will not be done by this curious engine for pay or under pressure. It will be done when the motive force, that is to say the will or the spirit of the creature, is brought to its greatest strength by its own proper fuel, namely by the affections..... Assuming any given quantity of energy and sense in master and servant, the greatest material result obtainable by them will not be through antagonism to each other, but through affection for each other.[1]

Article 19(1)(c) of the Constitution of India guarantees to all citizens the right to form associations or unions and Article 19(4) gives power to the State to impose reasonable restrictions thereon, in the interest of safeguarding the sovereignty and integrity of India or public order or morality. In 1961, in All-India Bank Employees Association v. National Industrial Tribunal[2] it was argued that Article 19(1)(c) guarantees, as a concomitant to its right to form associations or unions, a right to effective collective barganining and a right to strike. But the Supreme Court rejected the argument, saying that "even a very liberal interpretation of Sub-cl (c) of

1. M. K. Gandhi, *The Story of my Experiments with Truth* (1956), as quoted in M. Sur, Collective Bargaining 57 (1965).

2. (1961) II L.L.J. 385, 396 (S.C.).

the Cl. (1) of Art. 19 cannot lead to the conclusion that the trade unions have a guaranteed right to an effective collective bargaining. . . ." But even so the right is one of social importance in India's industrial development.

The Second Five-Year Plan, 1956,[3] said, "For the development of an undertaking or an industry industrial peace is indispensable. Obviously this can best be achieved by the parties themselves. Labour Legislation. . . can only provide a suitable frame work in which employers and workers can function. The best solution to common problems, however, can be found by mutual agreement." The Fourth Five-Year Plan[4] recognises a decade later that "greater emphasis should be placed on collective bargaining and on strengthening the trade union movement for securing better labour-management relations, supported by recourse in large measure to voluntary arbitration."

Collective Bargaining in Modern Industry: One of the reasons why collective bargaining is a comparatively new phenomenon is that production methods before the Industrial Revolution differed so much from those of modern industry that collective bargaining was not necessary. Agriculture was the predominant occupation, as it is still in industrially underdeveloped countries. Agricultural wages and working conditions are hardly amenable to control by collective agreement.[5]

The development of industries created completely new problems. The security which the worker enjoyed in a village community, due to closer contact with his employer and the love and affection of his family, gave way to insecurity, industrial hazards, and urban problems. The oppressive power of management led to the organisation of trade unions. The unions tried to help the workers in resolving their disputes with management and to strive for better working conditions.

In regulating relations between groups the rule that "might makes right" gradually gave way to control by one or more centres of power. Now men are working towards newer techniques by which agreement, rather than coercion, can become the core of the needed regulation. These agreements are often reluctant, no doubt, but less so than is submission to force. Collective bargaining is the technique for voluntary regulation of industrial relations. Freedom of contract is the corresponding technique

3. At 574.

4. *A Draft Outline* 387 (1966).

5. I.L.O., *Collective Bargaining: A Workers' Education Manual* 12-14 (1960) (hereinafter cited as "I.L.O. Collective Bargaining").

in commerce and industry. Democracy is the technique in government; and efforts are beginning at voluntarism in international relations.

What is Collective Bargaining? Collective bargaining is a method by which problems of wages and conditions of employment are resolved amicably (although often reluctantly) peacefully and voluntarily between labour and management. The system is highly developed in many countries and is making headway slowly in India.

The prerequisites for its success are, first, unions which are neither controlled nor seriously influenced by the employers, and, second, some rough equivalence of bargaining power on the two sides of the table. Unorganised workers are usually helpless; they have little or no power to bargain against their employer. To each he can say, "If you don't like my terms, go work somewhere else." Each needs a job, and may have to compete with other workers by offering to work for a pittance. The workers' key to power is to combine. This gives bargaining strength, and the power to resist exploitation and unjust discrimination.[6]

Advantages: Advantages of collective bargaining, in comparison to adjudication, are first, that it is quick and efficient in that the parties do not waste their time in unnecessary litigation; second, that it is more democratic to let the parties resolve their own disputes; and third, that it produces more harmonious relationships between employer and workers.[7] Such harmonious relations benefit workers and employers alike. They contrast sharply, and most favourably, with the bitterness, expense, and delay that mark adjudication.

Disadvantages: Disadvantages of collective bargaining are: first, that the consumer is not represented in the bargaining but yet bears the burden of settlements raising wages and the prices he must pay; second, that collective-bargaining settlements flow more from power politics than from rational and moral thought; and third, that under this system, when the bargaining parties fail to agree, intolerable strikes sometimes occur. Some prohibition, legal or practical, there surely must be against the worst of strikes. And some consideration there must be, too, for the consumer whose interests entitle him to be represented at the bargaining table.

Bargaining Process: The process of reaching agreement by collective bargaining is excessively complicated. It necessitates a protracted and

6. I.L.O. *Collective Bargaining* 1.

7. H. A. Turner, Wage Policies, and Collective Bargaining, *The Problems for Underdeveloped Countries* 35 (1965).

complex inter-change of ideas combining, as Professor Kennedy remarks, "argument, horse trading, bluff, cajolery and threats."[8] "[B]y its very nature [it is] a rough, tough undertaking. Its essence is the reluctant exchange of commitments; both parties want to yield less and get more. It is not qualitatively different from a business deal in which both negotiators have something less than 100 per cent trust in one another. Nor is it much different from the practice of diplomacy...."[9]

The job of the negotiator in the collective bargaining process is as difficult, if not more so, than that of a diplomat. Like a diplomat, he must speak less, convey more. He must keep his mouth shut and ears open, unless the occasion demands speech. He must lay his cards on the table shrewdly. At the same time, he must continuously probe into the strengths and weaknesses of the position of his opposite number. He must be able to change his position in the light of new information obtained and the attitudes of the other side, so that if a showdown has to come the battlefield will be well prepared.

"An important element in the bargaining position... will be its own internal unity of purpose and organisational strength...."[10] Another important element will be the capacity to help split the opposition and so to weaken it. Through propaganda, speeches and arguments, the union must foster the loyalty of its followers on whose determination the outcome of any strike would depend. At the same time it must build up the public's image of itself in its own favour.

The negotiations in a collective bargaining conference depend quite a bit on the ability, intelligence, and manouvering capacity of the negotiators and on their skilful handling of the issues. It is basic that the negotiators must enjoy the full confidence of their own people. They should be authorised, so far as possible, to take crucial decisions on the spot.

Before the actual conference begins, the parties hold separate meetings of their own sides to decide their attitudes on the various issues, to draft the terms of their demands, and to limit the concessions they are prepared to make. These meetings quite often generate more heat and controversy than the actual bargaining sessions. Many demands are put forward by the rank and file. Extreme positions are demanded. Thus the meetings usually

8. Van D. Kennedy, *Unions, Employers and Government* 115 (1966).

9. Neil W. Chamberlain, *Source Book on Labour* 31 (1964).

10. K. Alexander, *Collective Bargaining, in Industrial Labour in India* 387 (V. B. Singh ed. 1963).

face a difficult task of boiling down the issues to a reasonable level in the light of practical possibilities judged by experience. Sometimes, however, stronger positions are taken both to please the rank and file and to allow room for later retreats. This calls for shrewd judgment on whether such retreats can be explained so as to satisfy the lesser union officials.

During the bargaining sessions, all issues or problems raised by the parties are debated. Generally, the conference will be looking forward to a contract that consists of many clauses. At the first meeting, the leaders will submit their claims and make their opening statements. A general discussion or exchange of views will follow, and the order for taking up the various points may be settled. Then, a detailed examination of the various proposals will start. No records of the discussions are usually kept, but each issue on which agreement is reached is carefully noted. If, during the deliberations, a new proposal is introduced, or an existing proposal is changed substantially, a recess may be taken for private consideration. Such adjournments are a common phenomenon in bargaining tactics; on grave issues the rank and file of the union or the board of directors of the Company may need to be consulted.

Once an overall agreement is reached, a provisional contract will be drafted. The conference will consider it, and if both parties are now satisfied, they will adopt it.

Bargaining power: The strengths of the parties really determine the issues rather than the wordy duels, which are largely put on for show. The strength of the employer depends upon (a) the availability of substitute labour (b) the market's demand for his goods and (c) the effect that a closure would have on the company and its customers during a strike. The workers' strength depends upon (a) their capacity to undergo hardship during the strike (b) the availability of alternate employment for them and (c) the financial position of the union, *i.e.*, whether it can maintain and finance the workers during an extended strike. Any element of strength in one party is by the same token an element of weakness in the other.[11]. In addition, an element, frequently overlooked, is the conviction *vel non* of the righteousness of the cause. As Professor Kennedy puts it:

> [A]n important form of strength is conviction. How strongly do the union leaders and members on one hand and the employer group on the other believe in their respective positions? Obviously, the most

11. K. Alexander, *Collective Bargaining in Industrial Labour in India* 384-85 (V. B. Singh ed. 1963).

important determinant here will be the intrinsic merits of those positions. It is hard for people to sustain for very long positions that are costing them heavily when they know those positions to be weak or untenable on grounds of logic, evidence or equity. The parties are especially influenced by the strength or weakness of their own case in comparision with settlements or tribunal awards in other disputes in their own industry and in the light of the general climate of opinion in the country generally or in their own case. The importance of conviction as a source of strength needs to be emphasized because it is often overlooked by those who oppose the test of strength as being based on the principle of 'might makes right.' The factor of conviction introduces a 'right makes might' element into the method as well. And where other determinants of strength are reasonably balanced between two parties conviction can easily be decisive.[12]

Structure of Bargaining: Collective bargaining can be conducted at three levels, plant, industry and national. In the United States it takes place at all these levels in the various industries. The National Labor Relations Board[13] has the power and duty to decide, in contested cases, what union has a majority and so represents all the workers in any particular unit of workers appropriate for bargaining. It holds elections by secret ballot, and reaches its decisions economically, quickly and efficiently. Frequently it also decides disputes about what are those units appropriate for bargaining.

Industry-wide bargaining, both at regional and national level, is common in Scandinavian countries, France, Germany, Italy, Switzerland, the United Kingdom and other European countries.

As collective bargaining is in its initial stages in India, it is hard to say what would be the most appropriate level for bargaining here. It depends on many factors, such as the pace of industrialisation, the means of communication, the scope of industry, and the development of the trade union movement.

If the scope of industry is limited to small units for local consumption, plant-level bargaining would normally be the most fruitful. Eighty-five per cent of the agreements signed in India through 1961 were negotiat-

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12. Van D. Kennedy *Unions, Employers and Government* 117 (1966).

13. A U.S. Government agency, established under the National Labor Relations Act, 1935 (Wagner Act) as amended in 1947 (Taft-Hartley Act).

ed at the plant level.[14] If many enterprises in the same industry are situated in one city, industry-wide bargaining would be economic and useful. An example of this is collective bargaining contracts in the textile industry in Bombay and Ahmedabad. If the industry is spread over a region and the union is quite strong, the bargaining may be conducted for the whole of the region. An example of this is the contract between the United Planters' Association of South India and the Tea Workers Union. If the activities of an industry are spread throughout the country, nation-wide bargaining may be indicated. Examples are the contracts between the railways, post and telegraph, and defence industries and their workers in the public sector; between petroleum companies and Bata Shoe Co. and their workers in the private sector.[15]

Bargaining at each level has advantages and disadvantages. In plant-level bargaining the union is responsive to the rank and file and to their problems. It makes every effort to resolve them as quickly and effectively as it can, for the leaders have to live with the workers. But a disadvantage is that in most of the small industries the unions are weak. Industry-wide bargaining has the advantage of getting uniform terms for the entire industry. It benefits the workers in the smaller firms, as they often can get the better wages and working conditions which a strong union can obtain. The disadvantage is that this does not always give due weight to differences in efficiency and prosperity of the many firms. The more prosperous can usually pay better wages than the less prosperous. If the wages are put too high the weaker firms may have to retrench workers. If the wages are put too low the workers in the stronger firms remain dissatisfied and may reject the agreement. One possible technique, sometimes resorted to, is to lay down general guidelines only, for wages and other working conditions, but to permit variations to meet the needs of local conditions. But this too involves some practical difficulties.

Nation-wide bargaining has some of the same advantages as industry-wide bargaining; in addition it leads to better economic integration and higher living standards. It also may mitigate divisive tendencies of caste, community, language and religion which exist at regional levels. The disadvantages are that nation-wide strikes sometimes may by their chain-reactions paralyse all industries and at critical moments may jeopardize the security of the nation. Nation-wide bargaining may also aggravate the evils of labour monopolies.

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14. *Collective Agreement—A study* 9 (Monograph No. 4; Employers' Federation of India, Bombay, 1962).

15. Van D. Kennedy, *Unions, Employers and Government* 147-48 (1966).

As the consequences of major strikes grow more and more serious, unions and managements come nowadays more and more to employ trained economists, statisticians, accountants, and research workers to compile data on many such matters as costs of living, family budgets, economic conditions, movement of wages, costs, and prices. The data collected are analysed and used as ammunition in collective bargaining negotiations.[16]

Duration: The durations of collective bargaining contracts vary widely. Unions generally favour shorter contracts, while managements favour longer ones. In the United States many of the contracts are for a period of one to three or more years, with options to renew. In the United Kingdom, "open end" contracts which can be renegotiated on notice at any time, are the rule. In the Scandinavian countries, one-year contracts with renewal clauses are usual.

The position in India is not clear. A study of 114 contracts in 1961 by the Employers Federation of India[17] showed that a majority of them were for one to five years, with a strong trend in favour of longer terms. (This may perhaps be evidence of control by employer or of employers' superior bargaining power or both?) The long-term contract has two advantages for management over the short-term one (1) it imparts stability to labour-management relations, and (2) it helps in planning production and expansion programmes based on fixed labour costs (one of the highest items in the budgets of many industries).

Contents or subject matter of collective bargaining contracts: The subjects for collective bargaining are determined by the parties in some countries and by law in others. In Denmark, Germany, Italy, Norway, Sweden, Switzerland, the United Kingdom and the United States, the parties determine their subjects freely (of course within legal limits). In Brazil, Columbia, Equador and some other Latin American countries the law specifies that every contract must include clauses regulating wages, hours, rest periods, holidays, the duration of the agreement, and procedure for its extension. (Compare with this the requirements for standing orders in India.) In France, every national collective contract must contain provisions on freedom of association, freedom of opinion, conditions of employment and dismissal of employees (with particular reference to the prohibition of discrimination on grounds of membership in any particular

16. I.L.O. *Collective Bargaining* 36-37.

17. *Collective Agreements—A Study* 35, Table 4 (Monograph No. 4).

union), length of notice, and organisation of apprenticeship and training. In Canada, every contract must contain a grievance procedure.[18]

In India the selection of subjects, while for the parties to decide, is nevertheless rather narrowly circumscribed by law. For examples, the negotiators of a contract must always keep in mind the provisions of the Factories Act, 1948, the Industrial Employment (Standing Orders) Act, 1946, the Minimum Wages Act, 1948 and the Payment of Wages Act, 1936. These deal with many subjects such as safety precautions, health measures, amenities, conditions of employment, minimum wages and payment of wages. Any contract must naturally be consistent with these acts. The decisions of courts, sometimes interpreting other acts, have also laid down principles on such matters as how bonus must be calculated, retrenchment must be carried out, rationalisation must be undertaken, and disciplinary proceedings must be handled.

Some contracts are short and deal with a few matters, while others are elaborate and deal with many. Usually all contracts in India will contain most or all of the following clauses: (1) a preamble stating the positions of the parties; (2) recognition by the employer of the union as sole bargaining agent and of its right to organise the workers; (3) recognition of the right of management to carry on its normal activities and meet its responsibilities; (4) wages, bonus and dearness allowance; (5) grades, job classification and job evaluation; (6) hours of work, holidays, leave and overtime; (7) dismissal, discharge, termination and retirement from service in so far as it is not covered by the company's standing orders; (8) medical benefits, provident fund, pension and gratuity; (9) joint machinery for the efficient and smooth functioning of the industry, such as a joint production committee, a joint labour relations committee, a job evaluation committee, or a discipline, safety and welfare committee; (10) grievance procedure; (11) no-strike clause, and an undertaking that disputes will be settled through mutual consultation; and (12) the duration and termination of the contract.

The signing of the contract makes a great impression on the rank and file of the union. "Its formal language is the mark of its significance and... a guarantee that the management will carry out its pledged word. It strengthens the position of the union in the eyes of its members, and it provides the basis for a continuing and dignified relationship between the management and the employees.[19]

18. I.L.O., *Collective Bargaining* 46-47.

19. Mary Sur, *Collective Bargaining* 107 (1965).

Enforcement of agreements: The enforcement of bargaining contracts depends in some countries on the good faith of the parties and in others, on that, plus the law. In the United Kingdom, such contracts are called "gentlemen's agreements". To enforce them in a court of law, workers must rely on their individual contracts with the employer, which may in some cases incorporate the larger agreement. In a great many countries of Europe, Latin America and Asia, the effects of the contracts are regulated by special legislation. They can then be enforced in a court of law, either by the union or by the individual worker, through an action for damages for a breach of the contract. Scandinavian countries, Germany, Ireland and some Latin American countries have established special courts to enforce the contracts on the grounds that procedure in ordinary courts is long and costly, and that delay may result in a strike to secure a quick remedy. The actions here must usually be brought by the unions; but in some cases individuals may be allowed to start proceedings.[20]

In India, the collective bargaining contracts can be enforced under Section 18 of the Industrial Disputes Act, 1947, as a settlement arrived at between the workers and the employers. The appropriate government may refer the dispute over a breach of contract to a labour court or to an industrial tribunal.

Grievance Procedure: The day-to-day disputes between individual workers and management, arising out of the meaning or application of collective-bargaining contracts, are generally resolved through an administrative process referred to as grievance procedure. In the United States, most contracts contain detailed grievance machineries. This practice is developing also in India, but slowly. Unions and managements have accepted this method of settling disputes in principle, by their commitment to the Code of Discipline and its model grievance procedure. That model provides for a series of steps: (1) an aggrieved worker may present his grievance verbally to the foreman who must then give his decision within forty-eight hours; (2) if the worker is not satisfied with the decision, he may, either in person or with his departmental representative. present his grievance to the head of the department. The head of the department must give his decision within three days; (3) if the decision is still unsatisfactory, the matter may be referred to the grievance committee. It must decide the issue and make its recommendation to the manager within seven days; management must then render its decision within three days; (4) if the worker is still not satisfied, he may appeal to

20. I.L.O., *Collective Bargaining* 71-72.

the management for revision of its decision. The management must communicate its decision within seven days; and (5) if the union is still unsatisfied the dispute may be referred to voluntary arbitration.

It is noteworthy that this model does not provide for final decision by any impartial third person unless the parties agree, at one time or another, to voluntary arbitration.

Actual grievance handling: Since both parties have a stake in industrial peace, it is of vital importance that every effort be made to process grievances quickly, efficiently, and promptly. For that, the grievance machinery must function smoothly.

According to the model procedure, the union's representatives should consist of a departmental representative and some members of the grievance committee. The company's representatives should consist of the foreman and the departmental officer.

The union's departmental representatives are elected by the workers for a period of one year unless, where there is only one union, its choices are accepted without contested elections. Sometimes representatives of the workers in works committees are authorised to act.

The grievances must be written out in full. If the representatives fail to secure settlements, they must report back to the grievance committee.

The grievance committee is to consist of two or three departmental representatives nominated by the workers and two or three heads of department nominated by the management. The committee must meet frequently. The evidence must be presented to it by means of witnesses, documents and records. The parties must be allowed to ask questions. If an agreement is reached, it must be reduced to writing and both the parties should sign it.

Voluntary Arbitration: Where, as in many countries, voluntary arbitration is used to supplement collective bargaining, either party dissatisfied with the outcome of a grievance can refer it to such arbitration for final decision. The parties select their arbitrator by agreement, or they accept one appointed by an agreed third party.[21]

The parties in the United States, where the system is most highly developed, generally select arbitrators from among businessmen, lawyers,

21. Updegraff and McCoy, *Arbitration of Labour Disputes* 67 (1961).

judges, sociologists, priests or clergymen. University professors with training in law, or industrial engineering, or industrial relations, in economics or in sociology, are also frequently appointed.[22]

The first job of an arbitrator in any country will be to study the collective-bargaining contract and the submission or stipulation, if any, so that he may understand the scope of his task. He must conduct the proceedings in accordance with principles of natural justice, which require that he be impartial; that due notice of the time and place of hearing be given; that examination and cross-examination of witnesses be allowed; that evidence both documentary and oral be admitted; and that the award be responsive to the argument and evidence, and not be perverse.

The award not only is the settlement of a dispute, but also, in some circumstances, furnishes a rule (or interpretation) for the future guidance of the parties.

Section 10A of the Industrial Disputes Act, 1947, deals with voluntary arbitration under that Act. We shall consider it later, in the chapter on the machinery for the prevention and settlement of disputes.

Conclusion : One persuasive view is that if the pace of industrial growth in India is to be increased, her living standards raised, and peace and order in industry maintained, the development of more and better collective bargaining (instead of so much adjudication) needs to be promoted and effectively encouraged. Since Independence official statements, in Five-Year Plans and elsewhere, have stressed this view. But these pronouncements have not had much effect on practice.

The resistance is easy to understand. Many devoted and energetic leaders believe that collective bargaining does not suit Indian conditions today. Their position is strongly arguable, and it harmonizes with what the Parliament has done. If collective bargaining is to serve India well, much constructive thought and experimentation will need to be spent on fitting it to our needs: to making the most of its benefits and minimising its evils. The approach will have to be realistic, pragmatic, practical, and balanced. It will have to get over that tendency to take the word for the deed which Professor Kennedy has well dubbed "tendermindedness."[23] All this poses

22. *Labor Relations and the Law* 802 (3d ed. 1965).

23. Tendermindedness means and includes a combination of two qualities, "one...high mindedness, that is holding high ideals for human and social better-

the toughest sort of challenge to fresh thinking and trying new ideas for safeguarding the consumer, the public, and the nation. The collective bargaining process, if thus developed along novel and imaginative lines, may help in the achievement of these objectives and in implementing the attractive ideal of industrial democracy.

NOTE

On the prospects, consider the following comments by Professor Kennedy,

[P]olicy makers seem to have been learning from experience. Although unsure and lacking in force, the evolution of both policy and practice has had a direction and that has been towards more orderly and effective union-employer relations.

A second indication is that western models of unionism and labour relations still predominate in the thinking of government and among employers and unions. It is true... that there is a persisting belief that the attitudes of workers and managers can be more cooperative under socialism than under capitalism. But the effect of this belief has been to keep the provisions for enforcing government policy weak, not to change its final objectives. The trade union is still perceived as an agency to serve workers and to act independently of government guidance or control. And the union-employer relationship is viewed as one in which important decisions are to be made by autonomous bargaining even though certain cost questions may have to be excluded from the agenda to safeguard the economic stability of a developing society.

A third bit of hopeful evidence is the way collective bargaining has developed in India since 1947. There is significantly more bargaining now than there was ten years ago and in the most advanced situations it has become a solid fact of industrial life having built up an impressive

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ment along with a belief in the ability of men to adapt their behaviour to these ideals. The second... an intellectual trait that flows from disinclination, lack of an appropriate nurturing climate of thought, and lack of the needed training and experience; its result is an inability to put high minded notions and certain kinds of policy choices to the acid test of fact, accumulated knowledge, and rigorous intellectual analysis and to accept the consequences of such tests." *Van D. Kennedy, Unions, Employers and Government* 11; *cf.* 9-35 (1966). A brilliant and thought-provoking description of defects of the Indian society, which of course find their parallels throughout the world.

range of subject matter and a considerable structure of rules. This would seem to prove that there is a place for collective bargaining in Indian industry, that some unions and employers are quite capable of engaging in it and that whatever the deficiencies of government policy they are not preventing this modest kind of development. It is to be noted also that the employers and unions who have developed the most effective bargaining relations tend to be leaders in industry and the labour movement and are likely to serve as models to others.

Finally, the growth of collective bargaining suggests that we should not overlook another influence at work—the inherent institutional thrust that is exerted by unionism and union-employer relations in action. They are not neutral forces carrying on without regard to the environments in which they find themselves. In trying to achieve their respective purposes both unions and employers dislike the disorder and uncertainty resulting from fragmented unionism and lack of appropriate rules of the game. Both tend to oppose government intervention in their affairs. Thus the pressure from within the more organised sector of the labour relations system is in the direction of orderly, autonomous bargaining relations.

Van D. Kennedy, *Unions, Employers and Government* 140-41 (Manaktala, Bombay, 1966).

NOTE : What may be described as the Anglo-American view that non-political unions are essential to industrial progress is not shared by all scholars. Consider the following passages:

> IN UNDER-DEVELOPED countries the close links between political parties and trade unions are as much given factors in the situation as are the workers' poverty and social backwardness. In western countries where a strong trade union movement has developed, trade unions are also linked with the political process and often with particular political parties, but the connection is qualitatively different in certain respects from the connection that exists in under-developed countries such as in India. In most western countries, trade union membership is high, in some industries as high as one hundred per cent, and the working class has a certain economic strength which enables strikes to last long enough to seriously affect the employers. In India trade union membership usually includes only about thirty or forty per cent of the workers in any industry or establishment. Because of low wages and the other factors contributing to working class poverty, workers do not have the economic resources to go on strike for long periods of time. Thus it is very difficult for trade

unions to call successful strikes in India. Even if all the workers stop work on the first day, they start going back on the second.[1] Because of their weakness, Indian trade unions cannot achieve their goals by using conventional trade union methods.

Crouch, Harold, *Trade Unions and Politics in India* 279 (1966).

The working-class trade union leaders in the West have generally seen the workers' interest in rather short-run terms. Although much more sophisticated than Indian workers, western trade union leaders are generally less sophisticated than Indian middle-class leaders. Western leaders tend to demand increased wages and to simply threaten to strike if increases are not granted. They do not generally concern themselves with the less immediate issues, such as the need for economic growth, that often pre-occupy more intellectual leaders. In India, leaders have been concerned with what many western leaders would consider to be intellectual pre-occupations. The pre-occupations of the Indian leaders are largely due to their middle-class, intellectual background, but also due to the conditions in India at the time of the early growth of trade unionism. *Id.* at 280.

Given this concern for issues other than the immediate, it is natural that union leaders should interest themselves in politics because most of the long-run issues affecting the working class are also political issues. In India trade union leaders do not simply make wage claims and threaten to strike; they feel some obligation to justify their actions in terms of economic development and progress towards socialism. *Id.* at 280-81.

Of course such leaders may be insincere and only motivated by personal ambition, as is so often alleged, but it is not necessarily the case. *Id.* at 281.

[W]here the AITUC union was recognized, it was found to be in its interests to act 'responsibly,' while the INTUC, which was the weaker union, wanted to build up its strength with 'irresponsible' slogans. Of course it is unusual for AITUC unions to be recognized.

The degree of 'responsibility' exhibited by individual trade unions, therefore, appears to be less a consequence of any ideological stand taken by the leaders of the union, than a consequence of

1. In 1962, 31 per cent of strikes lasted one day or less, and another 28 per cent for from one to five days. K. N. Vaid, *Industrial Disputes in India* (1965) pp. 30-31.

the particular circumstances in which it finds itself in relation to the other unions, the management and the government. *Id.* at 286.

In the short-run the strength of the opposition unions, which are often communist-led, is not necessarily harmful to either economic growth or to democracy and political stability. The amount of production lost due to strikes in India is insignificant so that the economy is hardly affected (except, for example, by strikes in key industries such as iron and steel or the railways). *Id.* at 289.

See also Millen, B. H., *The Political Role of Labour in Developing Countries* (Brookings Institution, 1963).

D. TRADE UNIONS

The Trade Unions Act, 1926, recognizes the existence and protects the interests of a trade union. It deals with many aspects of the establishment and administration of a union. It does not, however, seek to ensure recognition of unions by employers or to define, prohibit and penalize unfair labour practices. Consequently, employers, especially the unscrupulous ones, all too frequently try to scuttle the unions formed by their workers by refusing to recognize them. The Trade Unions (Amendment) Act, 1947, passed to remedy these defects, was allowed to die because it was opposed by employers, both private and public.

The Act of 1926 provides for registration by trade unions.[1] Although such registration is voluntary, the statutory benefits, such as immunity from criminal conspiracy in trade disputes and from civil suits in certain cases, are made available to registered unions only.[2]

The object of registration, presumably, is to encourage the growth of permanent and stable unions. To register, a union must have an adequate written constitution, and must keep audited accounts. It must, to apply for registration, set forth in its rules, among other things, its objects and the purposes for which its general funds may be used.[3] A registered union obtains a corporate personality and also powers to contract, to take and hold property, and to sue and be sued.[4]

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1. See Chapter II of the Act.
2. See Sections 17 and 18.
3. Section 6.
4. Section 13.