Prof. H.D. Pithawalla

M.R.T.U. & P.U.L.P Act with Collective Bargaining **2018**

C. Jamnadas & Co

THE MAHARASHTRA RECOGNITION OF TRADE UNIONS AND PREVENTION OF UNFAIR LABOUR PRACTICES ACT, 1971

&

PRINCIPLES OF COLLECTIVE BARGAINING

BY

Prof. H. D. Pithawalla B. A. (Hons.) LL.M.

Advocate, Supreme Court of India Advocate & Solicitor, Bombay High Court Solicitor, Supreme Court of England Solicitor, Supreme Court of Hong Kong Professor, Government Law College, Mumbai

C. JAMNADAS & CO.

EDUCATIONAL & LAW PUBLISHERS

Shoppe Link (Dosti Acres), 2nd Floor,

Shop No. 19-20-21-22, Antop Hill, Sheikh Misry Road, Wadala (East), MUMBAI - 400 037 Phone : 2417 1118/2417 1119 E-mail : cjamnadas11@gmail.com

Published by

Rushabh P. Shah

For C. Jamnadas & Co.,

Shoppe Link (Dosti Acres), 2nd Floor,

Shop No. 19-20-21-22, Antop Hill, Sheikh Misry Road, Wadala (East), MUMBAI - 400 037

UP-TO-DATE THIRD EDITION

any error, omission, misprint, *etc.* in the book.
Price : Rs. 100-00

Printed by
K. Bhikhalal Bhavsar
Shree Swaminarayan Mudran Mandir 12, Shayona Estate, Dudheshwar Road, Shahibaug, Ahmedabad-380004 Phone : 079-25626996

PREFACE TO THE THIRD EDITION

It gives us great pleasure to present to the student world, our *Third Edition* of the book on the MRTU & PULP Act, 1971. All the provisions of this Act have been dealt with concisely in a manner that is both lucid and comprehensive. Additionally, the text of this Act is also set out in the *Appendix* to the book. Chapter 10 of the book is devoted to the principles of collective bargaining.

Questions asked at examinations of the University of Mumbai have been set out at the relevant places.

We trust that the book will be useful to all students of labour law. Suggestions, if any, are welcome.

— The Publishers

CONTENTS

Chapter		*Page*
1.	Introductory	1
2.	Authorities under the Act and their powers and duties	5
3.	Recognition of unions	9
4.	Rights and obligations of recognised and unrecognised unions	15
5.	Illegal strikes and lock-outs	19
6.	Unfair labour practices	24
7.	Powers of courts	31
8.	Powers of Industrial and Labour Courts to try offences under the Act	34
9.	Penalties	37
10.	Miscellaneous	40
11.	Principles of collective bargaining	42
Appendix : Text of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971.		58

Chapter 1

INTRODUCTORY

The following *three* topics are discussed in this Chapter:

A. Objects of the Act

B. Extent and application of the Act

C. Definitions.

Question:

*Object of M..R.T.U. and P.U.L.P. Act. (2 marks)*B.U. Nov. 2014 Jan. 2017
What is the "Central Act" under the MRTU & Pulp Act B.U. Nov. 2012 Apr. 2013 Nov. 2013 Apr. 2014
Who is a member under the MRTU & PULP Act? (2 marks) B.U. Oct. 2011 May 2012 Nov. 2014 Apr. 2016

A. Objects of the Act

The *objects* of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act ("MRTU & PULP Act"), 1971, as reflected in its Preamble, are as follows:

(a) to provide for the recognition of trade unions for facilitating collective bargaining for certain undertakings:
(b) to state the rights and obligations of trade unions:
(c) to confer certain powers on unrecognised unions:
(d) to provide for declaring certain strikes and lockouts as illegal strikes and lockouts;
(e) to define and provide for the prevention of certain unfair labour practices;
(f) to constitute courts - as independent machinery
(i) to carry out the purposes of the Act;
(ii) to accord recognition to trade unions; *and*
(iii) to enforce the provisions of the Act relating to unfair labour practices;
(g) to provide for matters connected with the above purposes.

B. Extent and application of the Act (S. 2)

The Act extends to the whole State of Maharashtra, and applies-
(a) to the industries to which the Bombay Industrial Relations Act, 1946, applies; *and*
(b) to any "industry" as defined in S. 2(j) of the Industrial Disputes Act, 1947.

The Act, however, empowers the State Government to direct, by a Notification in the Official Gazette, that the Act shall cease to apply to any of the above industries from such date as may be specified in the Notification.

C. Definitions (S. 3)

Some important terms used in the Act have been defined in S. 3 as under. These definitions apply unless the context requires otherwise.

Bombay Act
Wherever the term “Bombay Act” is used, the reference is to the *Bombay Industrial Relations Act, 1946.*

Central Act
Wherever the term "Central Act” is used, the reference is to the *Industrial Disputes Act, 1947.*

Concern
“Concern" means any premises, including the precincts thereof, where any industry to which the Central Act (as defined above) applies, is carried on.

Court
The term “court” refers to the Industrial Court or the Labour Court, as the case may be.

Employee
An “employee" -

a) in relation to an industry to which the Bombay Act applies - means an employee as defined in S. 3(13) of the Bombay Act; *and*

b) in any other case - means a workman as defined in S. 2(s) of the Central Act and a sales promotion employee as defined in S. 2(d) of the Sales Promotion Employees (Conditions of Service) Act, 1976.

The Supreme Court has observed that the MRTU & PULP Act pre-supposes an existing employer-employee relationship. Therefore, any dispute regarding status, that is, *whether or not* a person is an employee, does *not* fall within the scope of the Act. Such a dispute has to be decided under the Industrial Disputes Act. *(Sarva Shramik Sangh v. Indian Smelting & Refining Co. Ltd.,* 2003 III CLR 949)

Employer
An “employer”, in relation to any industry to which the Bombay Act applies, means an employer as defined in S. 3(14) of the Bombay Act, and in any other case, means an employer as defined in S. 2(g) of the Central Act.

Member
The word “member”, as used in the Act, means a person who is an ordinary member of a union, and has paid a subscription to the union *of not less than 50 paise per calendar month.*

However, no person can be deemed to be a “member” if his subscription is in arrears for a period of more than *three calendar months* during the period of *six months* immediately preceding such time It is clarified that a subscription is deemed to be “in arrears” if it is *not* paid within *three months* after the end of the calendar month in respect of which it is due.

The Supreme Court has clarified that the requirement of the above definition is only about payment of the *subscription amount* and there is no reference to payment of *admission fee* for the membership. (*Mumbai Mazdoor Sabha v. Bennett Coleman & Co. Ltd.,* AIR 1986 SC 1621)

Industry
The word "industry" means -
(a) in relation to an industry to which the Bombay Act applies - an industry as defined in S. 3(19) of the Bombay Act, *and*

(b) in any other case - an industry as defined in S. 2(j) of the Central Act.

Order
The word "order" means an order of the Industrial Court or the Labour Court.

[A reference may be made to the text of the Act at the end of the book for a complete list of all the terms defined in S. 3 of the Act.]

Chapter 2

AUTHORITIES UNDER THE ACT & THEIR POWERS AND DUTIES

Questions:
Write a short note on: The authorities under the MRTU & PULP Act. B.U. May 2012 Nov. 2013 Apr. 2014 Jan. 2017 Apr. 2017
Which are the authorities under MRTU & PULP Act. Discuss their functions and powers. B.U. Apr. 2013
What are the authorities under MRTU & PULP Act? Explain the duties of the authorities. B.U. Apr. 2011
Write a short note on: Duties of Industrial and Labour courts under the MRTU & PULP Act.
B.U.Apr.2008
Write a short note on: Duties of Industrial and Labour Courts and Investigating Officers under the MRTU & PULP Act. B.U.Nov.2010
What are the duties of the Labour Court under the MRTU & PULP Act. (2 marks) B.U. Apr. 2013 Nov. 2013
Write a shot note on: Investigating Officers under the MRTU & PULP Act. B.U. Apr. 2010
What are the duties of Investingating officers under the MRTU & PULP Act. (2 marks) B.U. Nov. 2012

The Act envisages *three authorities:* the Industrial Court, the Labour Court and Investigating Officers. The constitution of these authorities and their respective powers and duties are briefly discussed in this Chapter.

Industrial Court
The Industrial Court is constituted by the State Government by a Notification in the

Official Gazette. It consists of *at least three members,* of whom one is appointed as its President. No member of an Industrial Court can be a person who is connected with the complaint referred to that Court or with any industry directly affected by such a complaint. Moreover, every member of the Court must be a person who is, or has been, a Judge of a High Court or is eligible for being appointed as a Judge of a High Court. However, *one member* may be a person who is *not* so eligible, if the State Government is of the opinion that he possesses expert knowledge of labour or industrial matters. (S. 4)

Duties of the Industrial Court

S. 5 of the Act imposes *seven duties* on an Industrial Court, as under:

(a) to decide an application by a union for grant of recognition to it;

(b) to decide an application by a union for grant of recognition to it in place of a union which has already been recognised under the Act;

(c) to decide an application from another union or an employer for withdrawal or cancellation of the recognition of a union;

(d) to decide complaints relating to unfair labour practices, *except* those falling in Item 1 of Schedule IV to the Act (as for instance, a complaint relating to discharge or dismissal of an employee by way of victimization or in colourable exercise of the employer's rights for patently false reasons, *etc.)*

(e) to assign work and to give directions to the Investigating Officers in matters relating to verification of membership of unions and investigation of complaints relating to unfair labour practices;

(f) to decide references made to it on any point of law by a civil or criminal court; *and*

(g) to decide appeals under S. 42 of the Act. (Under the said section, appeals lie to the Industrial Court against certain orders of the Labour Court specified in that section. A reference may be made to S. 42 discussed in Chapter 8 of the book.)

Labour Court

One or more Labour Courts are constituted by the State Government by Notification in the Official Gazette. Such Courts have jurisdiction in such local areas as may be specified in the Notification.

Persons having the prescribed qualifications are appointed by the State Government to preside over such Courts. To be so appointed, a person must posses all the qualifications prescribed under Art. 234 of the Constitution of India for being eligible to enter the Judicial Service of Maharashtra - except the qualification of age. A person is *not qualified* to be so appointed if he is *more than sixty years of age. (S. 6)*

Powers and duties of the Labour Court

AUTHORITIES UNDER THE ACT

Investigating Officers

The State Government may, by Notification in the Official Gazette, appoint such number of Investigating Officers for any area as it may consider necessary, to assist the Industrial Courts and the Labour Courts in the discharge of their duties. (S. 8)

Powers and duties of Investigating Officers

The powers and duties of Investigating Officers are contained in Ss. 9 and 37 of the Act, and may be stated as follows.

S. 9 of the Act imposes the following *three duties* on an Investigating Officer:
(1) The Investigating Officer is under the control of the Industrial Court and has to exercise powers and functions imposed on him by that Court.
(2) It is the duty of the Investigating Officer to assist the Industrial Court in matters of verification of membership of unions, and to assist the Industrial Courts and the Labour Courts in investigating complaints relating to unfair labour practices.
(3) It is also the duty of an Investigating Officer to report to the Industrial Court or the Labour Court, as the case may be, the existence of any unfair labour practices in any industry or undertaking and the names and addresses of the persons said to be engaged in such practices and any other information which he may deem fit to report to the Industrial Court or the Labour Court, as the case may be.

S. 37 of the Act lays down that an Investigating Officer shall exercise the powers conferred on him by or under the Act and shall perform such duties as may be assigned to him by the Court from time to time.

For the purpose of exercising such powers and performing such duties, an Investigating Officer may enter and inspect the premises listed below and also call for and inspect all relevant documents which he may deem necessary for the due exercise of his powers and the discharge of his duties under the Act. The premises referred to in S. 37 are:

(a) any place used for the purpose of the undertaking;
(b) any place used as the office of any union;
(c) any premises provided by an employer for the residence of his employees.

Such powers of entry and inspection can be exercise at any time during working hours. Outside working hours, such powers can be exercised only after giving reasonable notice to the affected person or persons. Moreover, these powers are to be exercised subject to such conditions as may be prescribed.

Under S. 37, an Investigating Officer can call for and inspect any document which he has reasonable ground for considering it to be relevant to a complaint or for verifying the implementation of any order of the court or for carrying out any duty imposed on him under the Act. For this purpose, the said section confers on him the same powers as are vested in a civil court under the Code of Civil Procedure, 1908, in respect of compelling the production of documents. It is also provided that all particulars contained in, and information from, any document called for or inspected is to be treated as confidential.

After giving reasonable notice, an Investigating Officer may also convene a *meeting of employees* for any purpose under the Act on the premises where they are employed. Additionally, he may require the employer to affix a written notice of such meeting at a conspicuous place in the premises, as he may order. Such a notice must contain all the required particulars, namely, the date, time and place of the meeting, the employees (or class of employees) who may attend such meeting and the purpose for which the

meeting is called.

The above power of an Investigating Officer to call meetings of employees is, however, subject to one limitation: No meeting of the employees can be convened on the premises of the employer without his consent during the continuance of a lock-out which is *not* illegal. [S. 37(4)]

Lastly, an Investigating Officer is given the right to appear in any proceedings under the Act. [S. 37(5)]

Chapter 3

RECOGNITION OF UNIONS

Questions:
Explain the procedure for obtaining recognition of a trade union under the MRTU & PULP Act.
B.U.Apr.2008 Apr. 2015
Write a short note on: Procedure for recognition of a union under the MRTU & PULP Act.
B.U. Oct. 2011 Nov. 2014
Discuss the provisions of the MRTU & PULP Act relating to recognition and cancellation of unions under the Act.
B.U.Nov.2008 Jan 2017
Discuss cancellation of recog- trade union under the MRTU & PULP Act. B.U.Nov.2007

Applicability of Chapter 3

The provisions of this Chapter apply to all undertakings wherein fifty or more employees are employed in such an undertaking, *or* were so employed on any day in the *last twelve months.* However, by a Notification in the Official Gazette, the State Government can also apply the provisions of this Chapter to any undertaking with a number *lesser than fifty* (as may be specified in the Notification). However, the State Government must give an advance notice of at least *sixty days* of its intention to do so.

If, at any time, the number of employees in an undertaking to which this Chapter applies, falls below fifty *continuously for a period of one year,* the provisions of this Chapter cease to apply to it. (S. 10)

Lastly, it is clarified that this Chapter does *not* apply to any undertaking in any industries to which the provisions of the Bombay Industrial Relations Act, 1946, apply.

Recognition of unions

S. 11 of the Act allows any union to apply to the Industrial Court for recognition under the Act (in the prescribed form) if, for the entire period of *six calendar months* preceding the calendar month in which the application is made, the union has enjoyed a membership of *not less than 30%* of the total number of employees employed in the undertaking.

When an application is made for recognition of a union in a group of concerns in any industry situated in the same local area and which is notified to be one undertaking, the application is to be disposed of, as far as possible, within *three months* from the date of receipt of the application. In any other case, the same is to be disposed of within *four months.*

Furthermore, the applicant-union must show that:

(a) It possesses the required percentage of members.

(b) Its constitution is in conformity with S. 18, Rule 4 and the requirements of Form A.

(c) It has made provisions for governmental audit.

(d) It has made provisions for periodical meetings of its executive committee.

The Bombay High Court has pointed out that the date of considering the membership of 30% is the date on which the union has applied for registration. *(Kamgar Utkarsha Sabha v. Bennett Coleman & Co. Ltd.,* 1994 III LLJ 798)

In the above case, the Bombay High Court also observed that once a union is recognised, its recognition is *not* to be displaced only because of *temporary or transitory fluctuations* in its membership.

The application for registration is to be made in Form A annexed to the MRTU & PULP Rules, 1975, and must be accompanied by the prescribed fees (currently Rs. 5).

S. 12 of the Act lays down that, when such an application is received and the prescribed fees (as above) have been paid, if the Industrial Court, on a preliminary scrutiny, finds the application to be in order, it must cause notice thereof to be displayed on the notice board of the undertaking. The notice must specify the date on which the application is intended to be considered and must call upon other unions (if any) and the affected employers and employees to show cause, within the prescribed time, as to why recognition should *not* be granted to the applicant-union.

After considering the objections, if any, and after holding such inquiry in the matter as it deems fit, if the Industrial Court comes to the conclusion that all the conditions for registration (as laid down in S. 11, above) have been satisfied and further that the applicant-union has also complied with the conditions specified in S. 19 of the Act, the Industrial Court grants a certificate of recognition to the applicant-union in the prescribed Form B, appended to the MRTU & PULP Rules, 1975.

If, however, the said Court comes to the conclusion that another union has the largest number of employees in that undertaking and that such a union has notified its claim to the Industrial Court of being registered as a recognised union for that undertaking, the Court can grant recognition to that other union if it satisfies the conditions of Ss. 11 and 19 of the Act. For this purpose, the other union is deemed to have applied to the Industrial Court for recognition in the same calendar month in which the applicant-union filed its application.

In no case, however, can there be more than one recognised union in respect of the same undertaking. One union may, however, be recognised for more than one undertaking under S. 18 of the Act.

It is also provided that no recognition can be given by the Industrial Court to any union:

(a) if the Industrial Court is satisfied that the application was *not made bona fide* in the interest of the employees, but has been made in the interest of the employer and to the prejudice of the employees' interests; *or*

(b) if such union had, at any time within *six months* prior to the date of the application, instigated, aided or assisted the commencement or continuance of an illegal strike.

The Bombay High Court has observed that the provisions of Ss. 11 and 12 of the Act, relating to recognition of unions are intended to avoid a "mushroom growth" of unions and to secure industrial peace. (*Kamgar Utkar Sabha v. Benett Coleman & Co.,* 1985 1 CLR 118)

In one case, a company had two trade unions. One of them made an application under S. 11 of the Act to be registered as a recognised union as it had more than 30% membership. When this union was recognised, the other union challenged the order granting recognition. The Bombay High Court accepted the plea of the other union when it was

shown that several "members" of the recognised union could *not* considered to be "members", as they were in arrears for three calendar months or more. Even if they later paid their subscription for the whole year, they could only claim that they had rejoined the union. (*Shramik Sena v. Blue Star Workers' Union,* 2006 II CLR 591)

The Bombay High Court has also *held* that when deciding the status of a recognised union, members whose names also appear in the lists of other unions are to be excluded. (*Shramik Utkarsha Sabha v. Maharashtra Film, Stage & Cultural Dev. Corp. Ltd.,* 2008 III CLJ 167)

Cancellation of recognition

Under S. 13 of the Act, the Industrial Court is empowered to cancel the recognition of a union, after giving it notice to show cause, if such Court is satisfied that-

a) the union was recognized under mistake, misrepresentation or fraud
b) the union's membership has fallen below the minimum required under S.11 (that is, 30% of the total number of employees employed) for a continuous period of *six calendar months* excluding the month in which a strike (*not* being an illegal strike) extended for more than 14 days;
c) the union failed to observe the conditions specified in S. 19;
d) *the union is not being conducted bona fide* in the interest of the employees, but in the interest of the employer to the prejudice of the employees' interests;
e) the union has instigated, aided or assisted the commencement or continuance of an illegal strike (as defined under S. 24(1) of the Act);
f) the union's recognition under the Trade Union's Act, 1926 is cancelled;

g) another union has been recognised in its place.

The word “mistake” used in clause (a) above covers a *mistake of fact* as well as a *mistake of law. (Association of Engineering Workers v. Dockyard Labour Union,* 1992 II CLR 382)

Likewise, if the Industrial Court is satisfied that the union has committed any practice which is, or has been declared as, an unfair labour practice under the Act, it may cancel its recognition after giving the union a notice to show cause and after holding an inquiry. However, the Court may, having regard to the circumstances in which such practice was committed, instead of canceling the recognition, suspend all or any of the rights of the union under S. 20(1) or S. 23 of the Act for a specified period.

The Bombay High Court has *held,* in one case, that the Industrial Court was justified in cancelling the recognition of a union on the ground that its membership had, for a continuous period of six months, fallen below the minimum stipulated in S. 11 of the Act. (*Mazdoor Congress v. S. Samant,* 1984 II LLN 706)

According to the Bombay High Court, the *nature of the industry* in which a strike was instigated (a hospital, in the present case), is to be given due weight when considering the question of cancellation of recognition of a union. (*Nagrik Sahakari Runalaya Karmachari Union v. Nagrik Sahakari Runalaya Maryadid Ltd.,* 1983 LIE 1645)

It must also be noted that the cancellation of a union’s recognition does *not* relieve the union or its members from any penalty or liability incurred under the Act prior to such cancellation. (S. 16)

If the recognition of a union has been cancelled on ground (b) above *or* on the ground that it was recognised under a mistake, it is open to the union to apply to the Industrial Court once again for its recognition. However, such an application can be made only after *three months* have elapsed from the date of cancellation. If, on the other hand, the recognition had been cancelled on any other ground, the union is *not* entitled to apply for re- recognition within a period of *one year* from the date of the cancellation - *unless* permitted to do so by the Industrial Court. (S. 15)

Recognition of another union

It may happen that, after a union is registered under the Act, another union may wish to be registered in place of the MRTU-2 recognised union on the ground that it has the largest membership of employees in that undertaking.

S. 14 provides for such cases and lays down that such other union may apply to the Industrial Court for being registered as a recognised union if *two years* have elapsed since the date of registration of the recognised union. The Court can, in such cases, send a notice to the recognised union, calling upon it to show cause, within a period of *thirty days,* as to why the union making the subsequent application should *not* be recognised in its place.

If, when the above notice period expires, the Industrial Court finds, on a preliminary scrutiny, that the application made to it is in order, it may cause a notice to be displayed on the notice board of the undertaking, declaring its intention to consider the application on a specified date, and calling upon other unions, if any, and the affected employers and employees, to show cause within the prescribed time, as to why recognition should *not* be granted to such other union.

After considering the objections, if any, and after holding such inquiry in the matter as it deems fit, if the Industrial Court comes to the conclusion that all the conditions of Ss. 11 and 19 have been satisfied *and further that* the membership of such a union is larger than that of the recognized union, it shall recognize the union applying in place of the recognized union and issue a certificate of recognition to it in the prescribed form.

In such cases, when an application is made for recognition of a union in a group of concerns in any industry situated in the same local area and which is notified to be one undertaking, the application is to be disposed of, as far as possible, within *three months* from the date of receipt of the application. In any other case, the same is to be disposed of within *four months.*

Chapter 4

RIGHTS AND OBLIGATIONS OF RECOGNISED AND UNRECOGNISED UNIONS

Questions:
State the obligations and rights of recognized unions under the MRTU & PULP ACT B.U. Apr 2009, Nov. 2009, Apr. 2010, May 2012, Apr. 2014
Write a short note on : Rights of recognised unions. B.U.Apr.2010
Write a short note on: Discuss the rights of an unrecognized union under the MARU & PULP Act. B.U.Nov. 2007
Write a short note on: Rights of an unrecognized union B.u. Nov. 2008 1993 Apr. 2013

Ss. 19 to 21 of the Act provide for the rights and obligations of *recognised unions* and S. 22 of the Act confers certain rights on *unrecognised unions.* A provision is also made in S. 23 as regards employees appearing or acting on behalf of a recognised union in certain proceedings.

Rights and obligations of recognised unions
S. 20 of the Act confers on authorised officers, members of the office staff and members of a recognised union, the right:
(a) to collect sums payable by members to the union on the premises where wages are paid to them;
(b) to put up a notice board on the premises of the undertaking in which its members are employed and to affix notices thereon;
(c) for the purpose of prevention or settlement of an industrial dispute -
-to hold discussions on the premises of the undertaking with the concerned employees who are members of the union - but in a way that does *not* interfere with the

working of the undertaking;

-to inspect, if necessary, any place in the undertaking where an employee is employed;

(d) to appear on behalf of any employee or employees in any domestic or departmental inquiry held by the employer.

It is also provided that if there is a *recognised union* for an undertaking, -

(i) that union alone has the right to appoint its nominees to represent workmen in the Works Committee under S. 3 of the Industrial Disputes Act, 1947; and

(ii) no employee can be allowed to appear or act or be allowed to be represented in any proceedings under the Industrial Disputes Act, except through the recognised union. (This clause (ii) does *not,* however, apply to proceedings in which the legality or propriety of an order of dismissal, discharge, removal, retrenchment, termination of service or suspension of an employee is under consideration.)

The Supreme Court has *held* that clause (ii) above is *not* violative of Art. 19 of the Constitution of India. (*Balmer Lawrie Workers' Union v. Balmer Laurie & Co. Ltd.,* AIR 1985 SC 311)

The Bombay High Court has *held* that when there is a recognised union, only that union can enter into a settlement with the employer. No other union - or even the employees independently - can enter into such a settlement. *(Mazdoor Congress v. S. R. Shinde,* 1983 Mah. L. J. 909)

Proceedings relating to certain unfair labour practices

As regards proceedings relating to unfair labour practices specified in Items 2 and 6 of Schedule IV of the Act (see below), no employee of an undertaking to which the Industrial Disputes Act applies can appear or act or be allowed to be represented in such proceedings, except through the recognised union. If, of course, there is no recognised union, the employee may himself act or appear in such proceedings. (S. 21)

The unfair labour practices referred to in Items 2 and 6 of Schedule IV are as follows:

Item 2 : Abolishing work of a regular nature being done by employees and giving such work to contractors - as a measure of breaking a strike.

Item 6: Employing employees as *badlis,* casuals or temporaries and continuing them as such for years - with the object of depriving them of the status and privileges of permanent employees.

Obligations of a recognised union

Under S. 19 of the Act, the rules of any union seeking recognition under the Act must provide for the following *four* matters, which must be duly observed by the union, namely,

1. The membership subscription should *not* be *less than 50 paise per month.*
2. The Executive Committee must meet at intervals of *not more than three months.*
3. All resolutions passed by the Executive Committee or the general body of the undertaking must be recorded in a *minute book* kept for this purpose.
4. An *auditor* appointed by the State Government may audit the accounts of the union *at least once in every financial year.*

The Supreme Court has *held* that there is sufficient compliance of the first condition above, if the constitution of a union provides for subscription of Rs. 24 for the year or Rs. 12 for six months. In other words, the subscription need *not necessarily* be on a monthly basis; it can be an annual or semi-annual subscription also. (*Mumbai Mazdoor Sabha v. Bennett Coleman & Co. Ltd.,* AIR 1986 SC 1621)

Rights of unrecognised unions

Certain limited rights are conferred by S. 22 of the Act on *unrecognised* unions. Subject to the rules made by the State Government in this behalf and subject to such conditions as may be prescribed, such unions have a right -

(a) to meet and discuss with an employer (or any person appointed by him), the grievances of any individual member, relating to his discharge, removal, retrenchment, termination of service or suspension; *and*

(b) to appear on behalf of any of its members employed in that undertaking, in any domestic or departmental inquiry held by the employer.

The Supreme Court has *held* that the provisions of clause (b) above do *not* violate the principles of natural justice.*(Crescent Dyes & Chemicals Ltd. v. R. N. Tripathi,1993 (2) SCC115)*

The Bombay High Court has *held* that an unrecognised union is entitled to represent casual workmen in the absence of a recognised union, so that a weak employee can effectively present his case against a mighty employer through a union. (*Maharashtra State Road Transport Corp. v. Kishore Kondiram Jagade,* 2005 (4) MLJ 798)

Status of employees of recognised unions acting or appearing in certain proceedings

Under S. 23 of the Act, *not more than two employees of a recognised union,* duly authorised by the union in writing, can be deemed to be on duty on the days on which they appear or act on behalf of the union in any proceedings under the Industrial Disputes Act or the Bombay Industrial Relations Act, provided such proceedings actually take place on those days. Such employees must produce a certificate from the authority or court where they had appeared to the effect that they have so acted or appeared on the days specified in the certificate. On production of such a certificate, they are entitled to be paid the salary and allowances which would have" been payable to them on such days if they had attended duty on those days.

The Bombay High Court has clarified the scope of S. 23 of the Act and has *held* that only two employees per union - and *not* two employees per matter represented by the union - can be permitted to attend proceedings under the Act. (*Hindustan Lever Ltd. v. Hindustan Lever Employees' Union,* 2000 I LLJ 783)

Chapter 5

ILLEGAL STRIKES AND LOCK-OUTS

Questions:
Write a short note on: Illegal strike under the MRTU & PULP Act. B.U. Nov. 2010 May 2012
Explain illegal strike and look out under the MRTU & PULP Act. B.U. Nov. 2013
Give two examples of illegal strike under the MRTU & PULP Act. B.U. Apr. 2014

Illegal strikes

Under S. 24(1) of the Act, the term *"illegal striker* covers the following *nine* kinds of strikes, namely, —

(a) a strike which is commenced or continued without giving to the employer, notice of strike in the prescribed form *or* within *fourteen days* of giving such notice;
(b) a strike which is commenced or continued in cases where there is a recognised union - without obtaining the vote of the majority of the members of the union in favour of the strike before the notice of strike is given;
(c) a strike which is commenced or continued during the pendency of conciliation proceedings under the Industrial Disputes Act or the Bombay Industrial Relations Act and *seven days* after the conclusion of such proceedings in respect of matters covered by the notice of strike;
(d) a strike which is commenced or continued in cases where a submission in respect of any of the matters covered by the notice of strike is registered under S. 66 of the Bombay Industrial Relations Act and before such submission is lawfully revoked;
(e) a strike which is commenced or continued, in cases where an industrial dispute in respect of any of the matters covered by the notice of strike has been referred to the arbitration of a Labour Court or the Industrial Court *voluntarily* during such arbitration proceedings *or* before the date on which the arbitration proceedings are complete *or* the date on which the award of the arbitrator comes into force, *whichever is later,*
(f) a strike which is commenced or continued during the pendency of arbitration proceedings before an arbitrator under the Industrial Disputes Act and before the date on which the arbitration proceedings are concluded, *if* such proceedings are in respect of any of the matters covered by the notice of strike;
(g) a strike which is commenced or continued in cases where an industrial dispute has been referred to the arbitration of a Labour Court or the Industrial Court under Ss. 72, 73 or 73-A of the Bombay Industrial Relations Act, during such arbitration proceedings *or* before the date on which the arbitration proceedings are complete *or* the date on which the award of the arbitrator comes into force, *whichever is later* - provided such proceedings are in respect of any of the matters covered by the notice of strike;
(h) a strike which is commenced or continued in cases where an industrial dispute has been referred to the adjudication of an Industrial Tribunal or a Labour Court under the Industrial Disputes Act, during the pendency of such proceedings and before the conclusion of such proceedings, *if* such proceedings are in respect of any of the

matter covered by the notice of strike;

(i) a strike which is commenced or continued during any period in which any settlement or award is in operation in respect of any of the matters covered by the settlement or award.

S. 25 of the Act then provides that if the employees of any undertaking have proposed to go on a strike or have commenced a strike, the State Government or the employer of the undertaking may make a reference to the Labour Court for a declaration that such a strike is illegal.

Any such declaration is to be made in open court and is to be recognised as binding and followed in all proceedings under the Act. If, however, a strike declared to be illegal Under S. 25 of the Act is withdrawn within *forty-eight hours* of such declaration, such a strike is *not* deemed to be illegal under the Act.

The Bombay High Court has *held* that a strike which is withdrawn before a declaration is made by the court is *not an illegal strike* under the Act. (*Harignaga Security Services Ltd. v. Member, Industrial Court,* 1990 MLJ 868)

Illegal lock-outs

Under S. 24(2) of the Act, a lockout is to be treated as an "*illegal lockout'* in the following *eight* cases, namely, —

(a) a lock-out which is commenced or continued without giving to the employees, a notice of lock-out in the prescribed form *or* within *fourteen days* of giving such notice;

(b) a lock-out which is commenced or continued during the pendency of conciliation proceedings under the Bombay Industrial Relations Act or the Industrial Disputes Act and *seven days* after the conclusion of such proceedings, in respect of any of the matters covered by the notice of lock-out;

(c) a lock-out which is commenced or continued during the 'period when a submission in respect of any of the matters covered by the notice of lock-out is registered under S. 66 of the Bombay Industrial Relations Act *before* such a submission is lawfully revoked;

(d) a lock-out which is commenced or continued where an industrial dispute in respect of a matter covered by the notice of lock-out has been referred to the arbitration of a Labour Court or the Industrial Disputes Act v*oluntarily* under S. 58(6) or S. 71 of the Bombay Industrial Relations Act:

-during the arbitration proceedings, *or*

-before the date on which the arbitration proceeding is completed, *or*

-before the date on which the award of the arbitrator comes into operation, *whichever is later,*

(e) a lock-out which is commenced or continued during the pendency of arbitration proceedings before an arbitrator under the Industrial Disputes Act and before the date on which the arbitration proceedings are concluded, *if* such proceedings are in respect of any of the matters covered by the notice of lock-out;

(f) a lock-out which is commenced or continued in cases where an industrial dispute has been referred to the arbitration of a Labour Court or the Industrial Court

compulsorily under ,Ss. 72, 73 or 73-A of the Bombay Industrial Relations Act:
-during the arbitration proceedings, *or*
-before the date on which such proceeding is completed, *or*
-before the date on which the award comes into operation, -
whichever is later -

if such proceedings are in respect of any of the matters covered by the notice of lock-out.

(g) a lock-out which is commenced or continued in cases where an industrial dispute has been referred to the adjudication of the Industrial Tribunal or Labour Court under the Industrial Disputes Act during the pendency of such proceedings and before the conclusion of such proceedings - if such proceedings are in respect of any of the matters covered by the notice of lock-out;

(h) a lock-out which is commenced or continued during any period in which any settlement or award is in operation, in respect of any of the matters covered by the settlement or award.

S. 24 of the Act also lays down that clauses (f) and (g) above will *not* apply to the following *two* cases, namely -

(i) any lock-out where the employer has offered in writing to submit the industrial dispute to arbitration under S. 58(6) of the Bombay Industrial Relations Act or S. 10-A of the Industrial Disputes Act and -
-the union has *not* accepted the offer, *or*
- the union has accepted the offer, but has disagreed on the choice of the arbitrator and has *not* agreed to submit the dispute to arbitration without naming an arbitrator as provided in the Bombay Industrial Relations Act, and thereafter the dispute has been referred to arbitration of the Industrial Court under S. 73-A of the said Act; *and*

(ii) any lock-out where the employer has offered in writing to submit the industrial dispute to arbitration under S. 10-A of the Industrial Disputes Act, and while disagreeing on the choice of the arbitrator, the union does *not* agree to submit the dispute to arbitration of the arbitrator recommended by the State Government, and thereafter, the dispute has been referred for adjudication of the Industrial Tribunal or the Labour Court, as the case may be, under the Industrial Disputes Act.

The Bombay High Court has *held* that there can be a lock-out even in cases *where there is only one employee in that establishment.* The reference to “employees” includes the singular, and for a lock-out, it is not *necessary* that the number of employees has to be more than one. (*Dilip Trading Co. v. Vasant Balu Patil,* 2002 III CLR 597)

Under S. 25 of the Act, if the employer of any undertaking has proposed a lock-out or has commenced a lock-out, the State Government of the recognised union (and, where there is no recognised union, any other union of the employees of that undertaking) may make a reference to the Labour Court for a declaration whether such a lock-out is illegal.

Any such declaration is to be made in open court and is to be recognised as binding and is to be followed in all proceedings under the Act. If, however, a lock-out declared to be illegal under S. 25 of the Act is withdrawn within *for* forty-*eight hours* of such declaration,

such a lock-out is *not* deemed to be illegal under the Act.

Chapter 6

UNFAIR LABOUR PRACTICES

Questions:

What is an unfair labour practice undertheMRTU& PULP Act? Briefly explain the procedure for dealing with complaints relating to unfair labour practices under the Act. B.U.Nov.2010

What a short note on: Unfair labour practices on the part of the employer under the MRTU & PULP Act.

B.U.Nov.2009 Apr.2011 Apr. 2015 Nov. 2015 Apr. 2016 Jan. 2017 Apr. 2017

Write a short note on: Procedure for dealing with complaints relating to unfair trade practices under the MRTU & PULP Act. B.U. Oct. 2011

Write a short note on: Procedure for dealing with complaints relating to unfair labour practices under The MRTU & PULP Act. B.U. Nov 2009

S. 26 of the Act lays down that *"unfair labour practice"* means any of the labour practiced listed in Schedules II, III and IV of the Act, which may be analysed as follows:

Schedule II: *Six* unfair labour practices on the part of the *employers*

Schedule III: *Six* unfair labour practices on the part of *trade*

Schedule IV: *Ten general* unfair labour practices on the part of the *employers.*

The *six* labour practices on the part of the *employers* which are regarded as unfair labour practices under *Schedule II* of the Act are as follows:

1. To interfere with, restrain or coerce employees in the exercise of their right to organise, form, join or assist a trade union and to engage in concerted activities for the purposes of collective bargaining or other mutual aid or protection, that is to say -

(a) threatening employees with discharge or dismissal if they join a union;

(b) threatening a lock-out or closure if a union should be organised;

(c) granting wage increase to employees at crucial periods of union oragnisation, with a view to undermining the efforts of the union at organisation.

2. To dominate, interfere with or contribute support - financial or otherwise - to any union, that is to say -

(a) an employer taking an active interest in organizing a union of his employees; and

(b) an employer showing partiality or granting favour to one of several unions attempting to organise his employees or to its members, where such a union is not a recognised union.

3. To organise employer sponsored unions.

4. To encourage or discourage membership in any union by discriminating against any employees, that is to say -

(a) discharging or punishing an employee because he urged other employees to join or organise a union;

(b) discharging or dismissing an employee for taking part in any strike (not being an illegal strike under the Act);

(c) changing seniority rating of employees because of union activities;

(d) refusing to promote employees to higher posts on account of their union activities;
(e) giving unmerited promotions to certain employees with a view to sow discord amongst the other employees, or to undermine the strength of their union;
(f) discharging office bearers or active union members on account of their union activities.
5. To refuse to bargain collectively, in good faith, with the recognised union.
6. Proposing or continuing a lock-out which is deemed to be an illegal lock-out under the Act.

Schedule III of the Act contains *six* labour practices indulged by *trade unions* which amount to unfair labour practices, namely, the following:

1. To advise or actively support or instigate any strike deemed to be illegal under the Act.
2. To coerce employees in the exercise of their right to selforganisation or to join unions or to refrain from joining any union, that is to say (a)

(a) for a union or its members to picketing in such a manner that non-striking employees are physically debarred from entering the workplace;
(b) to indulge in acts of force or violence or to hold out threats of intimidation in connection with a strike against non-striking employees or against managerial staff.

3. For a recognised union to refuse to bargain collectively in good faith with the employer.
4. To indulge in coercive activities against certification of a bargaining representative.
5. To stage, encourage or instigate such forms of coercive actions such as willful "go slow", squatting on the work premises after working hours or "*gherao"* of any of the members of the managerial staff.
6. To stage demonstrations at the residence of the employers or the managerial or other staff members.

***Schedule IV of* the Act then lists *ten general unfair labour practices* on the part of the *employers,* as under:**

1. To discharge or dismiss employees -

(a) by way of victimization;
(b) not in good faith, but in the colourable exercise of the employer's rights;
(c) by falsely implicating any employee in a criminal case on false evidence or on concocted evidence;
(d) for patently false reasons;
(e) on untrue or trumped up allegations of absence without leave;
(f) in utter disregard of the principles of natural justice in the conduct of domestic enquiry or with undue haste;
(g) for misconduct of a minor or technical character, without having any regard to the nature of the particular misconduct or the past record of service of the employee, so as to amount to a shockingly disproportionate punishment.

2. To abolish the work of a regular nature being done by employees, and to give such work to contractors as a measure of breaking a strike.
3. To transfer an employee *mala ride* from one place to another under the guise of following management policy.
4. To insist upon individual employees, who were on legal strike, to sign a good conduct bond, as a pre-condition to allow them to resume work.

5. To show favouritism or partiality to one set of workers, regardless of merits.
6. To employ employees as *"badlis,* casuals or temporaries, and to continue them as such for years, with the object of depriving them of the status and privileges of permanent employees.
7. To discharge or discriminate against any employee for filing charges or testifying against an employer in any enquiry or proceeding relating to any industrial dispute.
8. To recruit employees during a strike which is not an illegal strike.
9. Failure to implement an award, settlement or agreement.
10. To indulge in acts of force or violence.

The Supreme Court has *held* that awarding a shockingly disproportionate punishment to an employee is an act of illegal victimisation falling under Schedule IV of the Act. *(Colour Chem Ltd. v. Alaspurkar,* AIR 1998 SC 948)

S. 27 expressly prohibits unfair labour practices, in the following words: "*No employer or union and no employees shall engage in any unfair labour practice."*

S. 28 then lays down the *procedure for dealing with unfair labour practices,* as under:
• If any person has engaged in, or is engaging in, any unfair labour practice, -
- any union, *or*
- any employee, *or*
- any employer, *or*
- any Investigating Officer -

may file a complaint before a Court competent to deal with a complaint under S. 5 *or* S. 7 of the Act, namely, the Industrial Court or the Labour Court.

- Such a complaint must be filed within *ninety days* of the occurrence of the unfair labour practice. However, if *sufficient cause* is shown, the Court may entertain a complaint even after the said period.
- The Court must take a decision on such a complaint, as far as possible, within a period of *six months* from the date of receipt of the complaint.
- If it considers it necessary to do so, the Court may first direct investigation into the complaint to be made by an Investigating Officer, who must submit his report within such time as be specified in the direction.
- When investigating any such complaint, the Investigating Officer may visit the undertaking where the practice is alleged to have been committed and make such inquiries as he considers necessary. He may also make efforts to promote a settlement of the complaint.
- After such investigation, the Investigating Officer must submit his report to the Court, setting out the full facts and circumstances of the case and the efforts made by him to settle the complaint. A copy of this report is to be made available to the complainant and the party complained against, on payment of the prescribed fees.
- If, on receipt of the report, the Court finds that the complaint has *not* been satisfactorily settled *and* that the facts and circumstances of the case require that the matter should be further considered by it, the Court proceeds to do so and gives its decision thereon.

•The decision of the Court is in the form of a written order which is *final* and *cannot* be called in question in any civil or criminal court. The order becomes enforceable from the date specified in it, and copies of the order are to be forwarded to the State Government and such officer of the State Government as may be prescribed.

• Under S. 29 of the Act, such an order is binding on:

(a) all parties to the complaint;
(b) all parties who were summoned to appear as parties to the complaint - whether they actually appeared or not - *unless* the Court is of tho opinion that they were improperly made parties;
(c) the heirs, successors and assigns of the employer in respect of the undertaking in question - in cases where an employer is a party to the complaint; *and*
(d) where the party referred to in clause (a) or clause (b) above is composed of employees - all persons who, on the date of the complaint, are employed in the undertaking in question and all persons who may be subsequently so employed.

Case law

1. The Bombay High Court has *held* that it is *not necessary* that a motive or *mens rea* must be present in each and every case of an unfair labour practice. *(Executive Engineer, Public Works & Health Dept., Nagpur v. P. D. Kalsait,* 1985 MLJ 338)
2. The Supreme Court has *held* that a *mere threat* to discharge or dismiss an employee if he joins a union is, by itself, an unfair labour practice. (*Hindustan Lever Ltd. v. A. V. Kate,* AIR 1996 SC 285)
3. According to the Supreme Court, non-compliance of a statutory provision will be regarded as unfair labour practice under Sch. IV of the Act. (S. *G. Chemicals & Dyes Trading Employees' Union v. S. G. Chemicals & Dyes Trading Ltd.,* 1986 (2) Scc 624)
4. When no threat of force is used on a workman to accept VRS (Voluntary Retirement Scheme) benefits by the Managing Director of a company, it *cannot* be said that the acceptance of the Scheme by the workman amounts to an "unfair labour practice". (*Permanent Magnets Ltd. v. V. G. Patekar,* 2001 I CLR 789)
5. An isolated change of the day constituting the weekly off of a workman does *not* amount to a change in his working conditions and *cannot* be considered to be an "unfair labour practice". (*Baja} Tempo Ltd. v. Bharatiya Kamgar Sena,* 2002 II CLR 129)
6. A closure of a factory after giving a proper notice of Jock-out is *not* an "unfair labour practice" if the factory is closed permanently in a *bona ride* manner. *(Maharashtra General Kamgar Union v. Indian Gum Industries Ltd.,* 2000 II CLR 509)
7. The Bombay High Court has *held* that even if there is a settlement between the management and the workmen in respect of a dispute, an unfair labour practice does *not* cease to be so. The test is whether, on the date of the complaint, an unfair labour practice had been committed or *not. (Rajendra Zumber Jagtap v. Baramati Taluka Sahkar Kamgar Sabha,* 2002 II CLR 137)
8. In another case, the Bombay High Court has *held* that failure to pay earned wages to a worker is an unfair labour practice, and the pendency of proceedings in respect of

a sick industrial undertaking is no excuse for non-payment of wages. (*Rashtriya Kamgar Sanghatana v. GKW Ltd.,* 2005 I LLJ, 322)

9. However, refusal to negotiate with a union is *not* an unfair labour practice, even if such a union is recognised under the Act. (*Thane Bank Karmachari Sangh v. Thane Bharat Sahakari Bank Ltd.,* 2002 I CLR 823)
10. So also, termination of the services of a probationer during the probation period *cannot* be termed an unfair labour practice under the Act. (*Hindustan Computers Ltd. v. Miss Natty Rose Pesso,* 2008 I CLR 926)

Chapter 7

POWERS OF COURTS

Powers of Industrial and Labour Courts

Under S. 30 of the Act, when an *Industrial Court* or **a** *Labour Court* is of the view that any person named in a complaint has engaged, or is engaging, in any unfair labour^ practice, it may, in its order, (a) declare

(a) declare that an unfair labour practice has been engaged, or is being engaged, by that person and may specify the names of other persons who are also engaging in such a practice;

(b) direct all such persons to cease and desist from such unfair labour practice and also take such affirmative action as may be necessary to effectuate he provisions of the Act;

Such affirmative action may include payment of reasonable compensation to employees affected by such an unfair labour practice and/or reinstatement of the affected employees, with or without back wages.

(c) where a recognised union has engaged in unfair labour practices, the Court may order that its recognition be cancelled or that any of its rights under S. 20(1) or S. 23 of the Act be suspended.

In a fit case, the Court may also pass an *interim injunction* as it may deem just and proper, pending its final decision in the matter. This provision is made in the Act, so that the Court may give temporary relief in the matter to the affected persons by directing temporary withdrawal of the labour practice complained of. Any such interim injunction may also be reviewed by the Court from time to time, on an application made to it in this regard.

For the purpose of holding an inquiry or proceeding under the Act, the Industrial Court or

the Labour Court is conferred the same powers as are vested in courts in respect of:

a) proof of facts by affidavits;
b) summoning and enforcing the attendance of any person and examining him on oath;
c) compelling the production of documents; *and*
d) issuing commissions for examination of witnesses.

The Court also has the power to call upon any party to the proceedings to furnish in writing, any information which is considered relevant for such proceedings. [S. 30(4)]

The Court is also empowered under the Act to decide all connected matters, namely, all matters arising out of an application or complaint referred to it under any of the provisions of the Act. [S. 32]

The Industrial Court may also sit in Benches consisting of one or more of its members. However, no Bench can consist of only one member who has *not* been, and at the time of his appointment, was *not* eligible for appointment as a Judge of the High Court. [S. 33]

Provision is also made for constituting a Full Bench of the Industrial Court, consisting of three or more members. The order of a Full Bench on any question of law is declared to be binding and must be followed in all proceedings under the Act. [S. 35]

Consequences of non-appearance of parties

If, despite notice of hearing being served on him, a party does *not* appear before the Court, the Court may *either* adjourn the hearing or proceed *ex parte* in the matter and pass such order as it thinks fit. When an *ex parte* order is passed, the aggrieved party may apply to the Court, within *thirty days* of receipt of the order, to set it aside. If *sufficient cause* is shown for non-appearance, the Court may set aside the *ex parte* order. However, before doing so, notice must be served on the opposite party.[S.31]

Payment of costs

Whena Court passes an order, it may direct by whom the whole or any part of the costs of the proceedings are to be paid. Such costs *cannot,* however, include the fees ofany legal advisor engaged by a party. [S. 33(5)]

If such costs are not paid, the Court's order may be produced before the Court of the Civil Judge within the local limits of whose jurisdiction the person directed to pay costs has a place of residence or business. In cases where such a place is within the local limits of the jurisdiction of theHigh Court, such an order is to be produced before the Small Causes Court at Bombay. Thereafter, the Court of the Civil Judge or the Small Causes Court, as the case may be, can execute the order directing payment of costs in the same manner and following the same procedure as if such an order was a decree for payment of money made by that Court in a suit
(S.34)

Chapter 8

POWERS OF INDUSTRIAL AND => LABOUR COURTS TO TRY OFFENCES UNDER THE ACT

Questions:
Which Court can take 'cognizance' of offence under M.R.T.U. & P.U.LP. Act?(2 marks)
B.U. Apr. 2015

Whereas Chapter 7 makes provisions regarding the *general powers* of the Industrial and Labour Courts under the Act, this Chapter deals with their *powers to try offences* under the Act.

Powers of Labour Courts
Every offence punishable under the Act can be tried by a Labour Court within the limits of whose jurisdiction the offence is committed. (S. 38)

However, the Labour Court can take cognizance of an offence under the Act only if a complaint of the facts constituting such offence is made by the affected person or a recognised trade union or on a report in writing filed by an Investigating Officer. (S. 39)

The Supreme Court has *held* that an unrecognised union is *not* competent to file a complaint under S. 39 of the Act. *(Patil v. Member, Industrial Court,* AIR 1997 SC 1429)

As regards all offences punishable under the Act, the Labour Court has all the powers which a Presidency Magistrate has in Greater Bombay and a Magistrate of the First Class has elsewhere under the Code of Criminal Procedure, 1973. When trying such offences, a Labour Court must follow the procedure laid down in the said Code for a summary trial in which an appeal lies. Other provisions of the said Code also apply to such trials, as far as may be. (S. 40)

Notwithstanding the provisions of the said Code, a Labour Court can pass any sentence under the Act in excess of its powers under the said Code. (S. 41)

Powers of the Industrial Court
Power to hear appeals
Under S. 42 of the Act, the Industrial Court can hear an appeal

a) against a *conviction* by a Labour Court - by the person convicted;
b) against an *acquittal* by a Labour Court - by the complainant;
c) for *enhancement of a sentence* awarded by the Labour Court - by the State Government.

All such appeals are to be filed within *thirty days* from the date of the conviction, acquittal or sentence, as the case may be, unless *sufficient cause* is shown to the Industrial Court for the delay.

A copy of the order passed by the Industrial Court in appeal is to be sent to the Labour Court. (S. 43)

Power of superintendence

Under S. 44 of the Act, the Industrial Court exercises superintendence over all Labour Courts and may

a) call for returns
b) make general rules regulating the practice and procedure of Labour Courts;
c) prescribe forms in which books, entries and accounts are to be kept by the Labour Courts; *and*
d) settle a Table of Fees for processes issued by a Labour Court or by the Industrial Court.

Power to transfer proceedings
The Industrial Court has the power, by an order in writing (containing therein the reasons therefor) to withdraw any proceeding under the Act pending before a Labour Court and transfer it to another Labour Court, which may dispose of such matter proceeding *either de novo or* from the stage it was so transferred. (S. 45),

Bar on civil and criminal proceedings
No order of the Industrial Court or a Labour Court in appeal in respect of any offence under the Act can be called in question in any *criminal court.* (S. 46)

Likewise, no *civil court* can entertain a suit which forms the subject-matter of a complaint or application to the Industrial or Labour Court under the Act or which has formed the subject-matter of an interim or final order of the Industrial or Labour Court under the Act. (S. 60)

Chapter 9

PENALTIES

Questions
Discuss contempt of Industrial and Labour Courts under the MRTU & PULP Act.B.U.Apr.2007

Chapter 9 of the Act contains certain penalties for offences under the Act as under:

Penalty for disclosure of confidential information

If any Investigating Officer or any person present at, or concerned in, any proceeding under the Act willfully discloses any information or the contents of any document in contravention of the provisions of this Act, he becomes punishable with fine which may extend to Rs. 1,000. (S. 47)

Penalty for contempt of Industrial or Labour Court
The Act deals with *four distinct cases of contempt* of the Industrial Court or a Labour Court ("the Court"), as under.

Firstly, under S. 48(1) of the Act, if a person fails to comply with the order of the Court

under S. 30(1)(b) or S. 30(2) of the Act, he becomes punishable -

-with imprisonment which may extend to three months *or*

-with fine which may extend to Rs. 5,000.

All offences under S. 48(1) of the Act are cognizable offences. (S. 55)
Secondly, under S. 48 (2), if any person -
(a) is ordered by the Court to produce or deliver any document or furnish any information, intentionally omits to do so, although legally bound to do so; *or*
(b) is required by the Court to bind himself by an oath or affirmation to state the truth, but refuses to do so; *or*
(c) is legally bound to state the truth on any subject to the Court, but refuses to answer any question put to him; or
(d) intentionally offers any insult or causes any interruption to the Court at any stage of its judicial proceedings —

such a person is liable to be punished -

-with imprisonment which may extend to six months

or

-with fine which may extend to Rs. 1,000

or

-both.

Thirdly, under S. 48(3), if any person refuses to sign any statement made by him when required to do so by the Court, he becomes punishable -

- with imprisonment for a term which may extend to three months

or

- with fine which may extend to Rs. 500

or

- both.

Fourthly, if any offence under S. 48(2) or S. 48(3) above is committed in the view or presence of the Court, the Court may, after recording the facts and the statement of the accused (as provided in the Code of Criminal Procedure, 1973) forward the case to a Magistrate having jurisdiction in the matter and the Magistrate can then proceed to hear the complaint against the accused person in the manner provided in the said Code.

It is also provided that if any person commits any act or publishes any writing which is calculated to improperly influence the Court or to bring such Court or a Judge thereof into disrepute or contempt or to lower its (or his) authority, such a person is deemed to be guilty of contempt of court. [S. 48(5)]

When there is contempt of the *Industrial Court,* the said Court must record the facts constituting such contempt and make a report in that behalf to the High Court. In cases of contempt of a *Labour Court,* such a report is to be made by the Labour Court and sent to the Industrial Court, which may forward the same to the High Court if it considers it expedient to do so. When any intimation or report of a contempt is received by the High

Court, it must deal with such contempt *as if* it were a contempt of the High Court itself.

Penalty for obstructing officers and failure to produce documents, *etc.*

If any person -

a) willfully prevents or obstructs any officer, member of the office staff or member of any union, from exercising any of the rights conferred by the Act; *or*

b) refuses entry to an Investigating Officer to any place which he is entitled to enter; *or*

c) fails to produce any document which he is required to produce; *or*

d) fails to comply with any requisition or order issued to him under the Act or the Rules made thereunder, —

he is punishable with fine which may extend to Rs.500.

Recovery of money due from employer

When any money is payable by an employer to an employee under an order passed by the Industrial Court or a Labour Court, the employee himself or any other person authorised by him in writing or in the case of his death, his assignee or heir, may submit an application to the Court for recovery of such money. If the Court is satisfied that such money is due, it may issue a Certificate for such amount to the Collector, who must proceed to recover the same in the same manner as arrears of land revenue. Such an application must, however, be made within a period of *one year* from the date on which the money has become due. An application may be entertained even after the expiry of this period if *sufficient cause* is shown for the delay. [S. 50]

Recovery of fines

If any fine is imposed under this Chapter (that is, Chapter 9 of the Act), it can be recovered as arrears of land revenue. [S. 51]

Chapter 10

MISCELLANEOUS

Chapter 10 of the Act contains miscellaneous provisions pertaining to the Act, which may be summed up as under:

Returns to be filed by recognised unions

Every recognised union must submit a periodical return of its membership to the Industrial Court and the Labour Court within such dates and in such manner as may be prescribed. (S. 52)

Modification of Schedules

As seen earlier, Schedules II, III and IV of the Act contain lists of unfair labour practices. With changing times, such lists may require a modification. S. 53, therefore, empowers the State Government to make any addition to or alteration in such Schedules, after obtaining the opinion of the Industrial Court in the matter. Such additions or alterations are to be made by way of a notification in the Official Gazette and are to be placed before the State Legislature, as soon as possible after the notification is issued.

Before any such modification is made, a draft of the modification is to be published for the information of all persons likely to be affected thereby, and their objections and suggestions are to be considered.

Certain officers deemed to be public servants
All Investigating Officers and all members and staff members of the Industrial Court and the Labour Court are deemed to be public servants within the meaning of S.21 of the Indian Penal Code, 1860. (S. 56)

Protection for action taken in good faith
S. 57 of the Act provides that no suit, prosecution or other legal proceeding can lie against any person for anything which is done, or purported to be done, in good faith under the Act.

Bar of proceedings
Under S. 59 of the Act, if any proceeding is instituted under the Act in respect of a matter falling under the purview of the Act, no authority can entertain any proceeding in respect of that matter under the Industrial Disputes Act, 1947 or the Bombay Industrial Relations Act, 1946.

Bar of suits
No civil court can entertain any suit which forms the subject- matter of a complaint or application to the Industrial Court or the Labour Court under the Act. (S. 60)

Power to make rules
S. 61 authorises the State Government to make rules for carrying out the purpose of the Act. Such rules are to be made by notification in the Official Gazette and are subject to the condition of previous publication. These rules are also to be placed before both the houses of the State Legislature, which has the power to abrogate or modify any such rule.

Chapter 11

COLLECTIVE BARGAINING

Questions:

What is collective bargaining? State the object and scope of collective bargaining B.U. Apr.2008 Nov.2008

Explain in details collective bargaining B.U. Nov 2015, Apr 2017

Write a short note on; Object of collective bargaining. B.U.Apr.2010

Discuss the reasons for the growth of collective bargaining B.U. Nov 2007

What is collective bargaining? Explain the essential ingredients of collective bargaining. What are the advantages of collective bargaining? B.U.Apr.2011

What is collective bargaining? How can collective bargaining be successful? B.U.Apr.2007

*What is collective bargaining? Discuss the merits and demerits of collective bargaining.*B.U.Nov.2006 Apr.2009 Nov.2009 Apr.2010 Nov.2010 Apr.2013 Apr.2014 Nov. 2014

Explain fully the concept of Collective Bargaining along its merit and demerits. B.U. Jan. 2017

Discuss the advantages and disadvantages of collective bargaining. B.U.Apr.2007 Apr. 2015 Apr. 2016

What is collective bargaining? Explain the essential conditions for successful collective bargaining. What are the advantages and disadvantages of collective bargaining. B.U. May 2012

The concept of collective bargaining is discussed in this Chapter under the following *eight* heads:

1. What is collective bargaining
2. Origins of collective bargaining
3. Essential features or ingredients of collective bargaining
4. Collective bargaining differentiated from other modes of settling industrial disputes
5. Subject-matter of collective bargaining : Contents of a collective bargaining agreement.
6. Essential conditions for successful collective bargaining
7. Advantages and disadvantages of collective bargaining : Merits and demerits of collective bargaining
8. Has collective bargaining really worked?

1. What is collective bargaining

Collective bargaining is a process of negotiations between employers and representatives employees, aimed at reaching agreements that regulate working conditions. It is a process where workers, as a group, try to secure their terms and conditions of employment through negotiations. Although the term “collective bargaining” was first used in 1891 by the economic theorist, *Sidney Webb,* collective negotiations and agreements between employers and their workers have existed since the rise of trade unions during the nineteenth century.

Thus, collective bargaining basically represents a democratic way of life in industry. It is a process of negotiation between representatives of the employer and those of the workers for the purpose of establishing mutually agreeable conditions of employment. It is a technique adopted by two parties to reach an understanding acceptable to both

through the process of discussion and negotiation.

The International Labour Organisation (ILO) has defined collective bargaining as negotiation about working conditions and terms of employment between an employer and a group of employees or one or more employee-organisations, with a view to reaching an agreement wherein the terms serve as a code for defining the rights and obligations of each party in their relations with one another. In its Convention No. 98 of 1949, ILO has described collective bargaining as “voluntary negotiation between employers or employers’ organizations and workers’ organizations, with a view to the regulation of terms and conditions of employment by collective agreements”.

Collective bargaining thus involves discussions and negotiations between two groups as to the terms and conditions of employment. It is called *‘collective’* because both the employer and the employee act as a group rather than as individuals. It is known as *'bargaining* because the method of reaching an agreement involves proposals and counter proposals, offers and counter offers and other negotiations.

Unfortunately, the term ‘bargaining’ may imply that the process is one of *haggling,* which is more appropriate to onetime relationships such as a one-time purchase or a claim to damages. While collective bargaining may sometimes take the form of haggling, ideally it should involve adjusting the long-term relationships of the parties in a way that is satisfactory to all concerned.

In June 2007, the Supreme Court of Canada extensively reviewed the rationale for regarding collective bargaining as a *human right* in *Facilities Subsector Bargaining Association v. British Columbia.* It observed that the right to bargain collectively with an employer enhances the human dignity, liberty and autonomy of workers by giving them an opportunity to influence the establishment of workplace rules and thereby gain some control over a major aspect of their lives, namely their work. According to the court, collective bargaining permits workers to achieve a form of *workplace democracy* and ensures that *the rule of law* prevails in the workplace.

2. Origins of collective bargaining

The roots of collective bargaining lie in the *nineteenth century,* when workers began to agitate for more rights in their places of employment. Many skilled traders started using their skills as bargaining tools to force their employers to reasons for the meet their workplace needs. Other workers relied on sheer numbers, creating general strikes to protest against poor working conditions. Several labour pioneers started to establish a collective bargaining system so that labour negotiations could run more smoothly.

Typically, the employees are represented by a union. The first step in collective bargaining is actually joining a union, agreeing to abide by the rules of the union, and electing union representatives to solve grievances arising in the course of employment. In general, experienced people from i the union assist the employees in putting together a draft of a contract, and help them present their grievances and suggestions to the employer. Numerous meetings between representatives of the employer and his employees are held until the two come to mutually agreed terms.

As the contract is being negotiated, the employees also have inputs on it through their union officers. Thus, the agreement reflects the combined desires of *all the employees,* along with limitations that the employer wishes to put in place. The result is a powerful document which usually reflects cooperative effort. In some cases, however, the union or the employer may resort to undesirable tactics such as going on strike or declaring a lock-out, in order to push the agreement through.

For workers, collective bargaining is an excellent tool. Many workplaces benefit from unionisation, which allows workers to speak together as a body to assert their rights. Employers also benefit from collective bargaining agreements, which set out clear expectations of both the parties. The experience of collective bargaining can also be a learning experience for both the sides, as it encourages employers and employees alike to consider each other's positions.

3. Essential features or ingredients of collective bargaining

The following are regarded as the *ten essential ingredients of collective bargaining*:

a) Parties to the negotiation
b) Serious intention to reach an agreement
c) The subject-matter of collective bargaining
d) Collective nature of the negotiation process
e) Continuous nature of the negotiation process
f) Bipartite nature of the negotiation process
g) Discipline
h) Flexibility
i) Implementation
j) Collective bargaining and collective agreement are *not* the same.

(a)**Parties to the negotiation**

The negotiation involved in collective bargaining is between the employer, a group of employers or an association or organisation of employers on one side and the employees, a group of employees or one or more employee unions or organisations on the other. The *structure* of collective bargaining that becomes an essential feature of a particular industry may be the result of years of deliberation or the outcome of a historical accident.

The concepts of *bargaining level* and *bargaining unit* are important concepts in collective bargaining. The two are closely related to each other and influence the level at which bargaining takes place. Both these concepts play a vital role in the process of bargaining.

(b) **Serious intention to reach an agreement**

One of the most basic features of the negotiation involved in collective bargaining is the serious intention on the part of *both the sides* to arrive at an agreement. *This does not*

imply that, in every case, an agreement between the employer and the employees is invariably arrived at. *What it does imply* is that, in every case, the negotiations are carried on to arrive at such an agreement - *whether or not* an agreement is, in fact, finally arrived at.

(c)**The subject-matter of collective bargaining**

Although collective bargaining is most often concerned with the terms and conditions of employment, such as wages, working hours, grievance procedures, *etc.,* sometimes it may involve general problems like the recognition or nonrecognition of a particular union, arbitration or conciliation proceedings to settle differences between the parties, restraint imposed on workers from setting up Joint Committees and similar matters.

(d)**Collective nature of the negotiation process**

Basically, collective bargaining is a collective process. It does *not* involve interaction between an employer and an employee on a one-to-one basis. Rather, it is a process in which representatives of both sides meet to reach a mutually acceptable agreement.

(e)**Continuous nature of the negotiation process**

Collective bargaining is a continuous process which aims at establishing a stable relationship between the employer and his employees. It is *not* a process which can work in fits and starts. Although the agreement between the parties may be signed on a periodical basis (as for instance, once every year or once in two years), the threads underlying collective bargaining make themselves visible on a continuous basis.

(f)**Bipartite nature of the negotiation process**

Basically, collective bargaining is a bipartite process between me employer on one side and the employees on the other. However, in many developing countries, the State plays an important role in getting the parties to reach a settlement. The role of the State is more evident in cases where the parties fail to reach a settlement and where the settlement arrived at in the end would possibly contravene some policy of the government.

(g)**Discipline**

The process of collective bargaining aims at achieving discipline in the industry. Such discipline may first be evident only in one factory or in a group of factories, but ultimately, the discipline seeps into the entire industry.

(h)**Flexibility**

Flexibility is one ingredient without which collective bargaining *cannot* work. Both the parties must adopt a flexible approach in the course of the negotiations. If either side - or both sides - stick firmly to their demands and refuse to bulge, collective bargaining *cannot* succeed. Willingness on the part of *both the sides* to make at least *some* concessions in favour of the other side is the secret of success of collective bargaining.

(i)**Implementation**

Needless to state, the negotiations are carried on between the parties *not only* to arrive at an agreement, *but also* with a view to implement the same in the future. If either party to collective bargaining is *not* serious about implementing his or its commitments, it is

like a person entering into a solemn contract only with the intention of committing a breach thereof. Unpleasant litigation would be the only outcome in such cases.

(j)**Collective bargaining and collective agreement are *not* the same**
Although the terms 'collective bargaining' and 'collective agreement' are sometimes used to mean one and the same thing, there is a difference between the two expressions. Collective bargaining refers to the *process* or *means,* whereas a collective agreement is the *result* of the process of collective bargaining. Needless to say, collective bargaining may *not* always lead to a collective agreement.

4. Collective bargaining differentiated from other modes of settling industrial disputes
As seen above, collective bargaining is a process of settling industrial disputes by discussions leading to a mutual agreement between the employer and his employees. However, *it is only one of the forms of settling such disputes.* Industrial disputes can also be settled, by *conciliation* or by *arbitration* - voluntary or compulsory.

Collective bargaining involves a voluntary meeting of the parties without the intervention or medium of a third party. In *conciliation,* a Conciliator uses his good offices to bring about a mutual understanding between the parties and this is the main difference between the two forms of dispute settlement. However, it may also happen that, as a result of collective bargaining, the parties do *not* reach any acceptable settlement, but agree to refer their dispute to a mutually acceptable arbitrator.

In *arbitration* - whether voluntary or compulsory - the dispute is referred to a third party and the decision of the arbitrator is final and binding on the parties. The result of an arbitration is often a 'win-lose' situation and may be displeasing - and even unacceptable - to one of the parties. Very often, *both* the parties are dissatisfied with the result.

Sometimes, the law may require particular types of disputes to be compulsorily referred to an arbitrator or a Tribunal, whose decision is binding on the parties. This is referred to as *compulsory arbitration or adjudication* and has the same deficiencies as are found in voluntary arbitration.

In some systems of law, it is provided that the parties to industrial disputes must first resort to collective bargaining. The government then decides whether the parties have used the process of collective bargaining in a sincere effort to resolve the outstanding disputes and whether the full potentialities and benefits of collective bargaining have been exhausted. If it is of the view that this has *not* happened, it then refers the matter to compulsory arbitration or adjudication. This method has worked successfully and has averted strikes and lock-outs where parties had *not* reached an agreement as a result of collective bargaining.

5. Subject-matter of collective bargaining: Contents of a collective bargaining agreement
Several matters are involved in the discussions and negotiations during collective bargaining. If the process is successful, an agreement is signed by both the sides to

record the points on which they have arrived at a mutually agreed decision. The terms of such an agreement fall into *two broad categories,* namely, (a) the standards of agreement which are directly applicable between the particular employer and his employees, and (b) topics which regulate the relationship between the parties and which have no bearing on the individual relationship between that employer and his employees.

The usual topics which fall under the *first category* are:

1) Wages- whichmay take the form of a *fixed monthly wage* or a *time-rate* (as for instance, Rs. 100 an hour for affixing labels on certain bottles, irrespective of the number of bottles) or a *piece-rate* (as for instance, Rs. 100 for affixing labels on 60 bottles, irrespective of the time taken). There may also be other incentive modes of payment for workers, as for instance, productivity-linked bonus, *etc.* A provision may also have to be made for the procedure to be applied when fixing *rates for new jobs.*

2) Increments to be given to the employees - and whether such increments would be on a fixed basis or whether they would be related to rates of inflation, cost of living index, *etc.*

3) Hours of work, which would include overtime work, rates of payment for overtime, regulation of shifts and working hours, night shifts, rest period, provisions and facilities provided during night shifts, *etc.*

4) Annual holidays, paid and unpaid holidays and payment for work done on holidays.

5) Privilege leave, sick leave and leave of absence for other reasons, as for instance, to enable an employee who is an office-bearer of a trade union to take part in legitimate trade union activities, *etc.*

6) Provisions made by the employer with reference to the health and safety of his employees.

7) Rights attached to seniority and principles to be followed in case of lay-off and re-hiring of employees.

8) Principles to be followed in case of probation and confirmation of workers, the period of probation, *etc.*

9) Dismissal of workers and other punishments for committing acts of indiscipline and the method of investigating such acts.

10)Number of apprentices and procedures for their training.

11)'Fringe benefits' made available to employees, including living quarters, house rent allowance, retirement plans, allowances for hospitalisation, schooling, *etc.*

Matters which fall under the *second category* referred to above do *not* have a bearing on the individual employer- employee relations, but seek to regulate the relationship between the employer and his employees, as for instance:

1. Prohibition of strikes and lock-outs during the period of an agreement arrived at by a process of collective bargaining.
2. Duration of such an agreement and the possibility of its continuance even after the expiry of the agreed period.
3. Methods of settling disputes, if any, as regards the meaning and interpretation of the

terms of such an agreement.

4. The procedure to be adopted for negotiating a new agreement after the expiry of the existing agreement.
5. Establishment of fair procedural norms and methods to be adopted for increasing production and reducing waste.
6. Procedures to be adopted for joint consultations.

6. Essential conditions for successful collective bargaining

The following are generally regarded as essential conditions for successful collective bargaining:

(a) Favourable political climate

Collective bargaining will work best when there is a political climate in which both the government and public opinion are genuinely convinced that *collective bargaining is the best method of settling industrial disputes.*

In countries where the government in power is hostile to the trade union movement, there are no chances for collective bargaining to succeed. If an agreement is arrived at as a result of collective bargaining, the implementation of such an agreement may become difficult. Under the National Socialist Regime in Germany, trade unions had been banned in such a political environment, there would be no place whatsoever for collective bargaining.

At the other extreme, there are countries where trade unions and the process of collective bargaining are actively encouraged. Such countries often also have legislation to assist the process of collective bargaining. In climates such as these, collective bargaining is bound to flourish.

Somewhere in-between are countries where the government is *not* actually hostile to the concept of collective bargaining, but is indifferent towards it. If no positive encouragement is given to the process and if there is no helpful intervention on the part of the authorities, collective bargaining may *not* be able to flourish in such states.

(b) Freedom of association

Collective bargaining gained popularity only after the futility of individual bargaining was exposed. Since the very idea of collective bargaining presupposes a collective organisation of employees, the freedom of the workers to unite themselves into trade unions is an essential precondition of this concept. If such freedom is *not* guaranteed by constitutional and statutory provisions, collective bargaining *cannot* succeed. This freedom implies *not only* the right of the workers to form unions, *but also* the right of the *employers* to organise themselves into larger associations, as for instance an association of manufacturers of pharmaceutical products.

This freedom of association would also Imply that workmen have a choice *whether or not* to form trade unions and every workman also has a choice *whether or not* to join a

particular union.

It hardly need be said that the possibility of company- sponsored unions is always a threat to the success of collective bargaining.

(c)Stability of workers' organisations

The freedom and opportunity given to the workers to form trade unions is, however, *not* enough. For collective bargaining to succeed, it is also necessary that the workers form *strong and stable trade unions.* If there is no such union which represents the majority of the workers, its bargaining power *vis-a-vis* the management will be greatly affected. Moreover, even the employees would hesitate to commit themselves to such a union because of its weakness and lack of representative character. Additionally, the employer and the authorities would also be hesitant to recognise such trade unions.

Again, if there is intense rivalry amongst the trade unions, this adversely affects the trade union movement, and consequently, the success of collective bargaining. Politicians often jump into the picture, and this guarantees the failure of the process of collective bargaining.

(d) **Willingness to give and take**

Collective bargaining, like any other form of bargaining, is a process of mutual benefit and advantage to both the sides. It can succeed only if there is an attitude of willingness and compromise on the part of *both* the parties. If one of the parties only wants to 'take' and does *not* want to 'give', collective bargaining *cannot* be a grand success. The enormous resources available to the employer and the needs and wants of his workmen have to be properly balanced. A mutually acceptable conclusion can be reached only when *both parties* display some amount of *flexibility, understanding* and *adjustment.*

(e) Absence of unhealthy or unfair practices

The attitude of fair play and 'give and take" are, as seen earlier, absolutely necessary for the success of collective bargaining. If collective bargaining is based on mutual respect and regard between the employer and his employees, it can succeed. If, however, either side resorts to unhealthy or unfair practices (as for instance, unjustified go-slows on the part of the workmen or victimization of union leaders on the part of the employer), collective bargaining *cannot* be expected to succeed. Again if the employer resorts to a lock-out or the workers resort to a strike in violation of an existing agreement between the parties, the concept of collective bargaining suffers in the process.

7. Advantages and disadvantages of collective bargaining: Merits and demerits of collective bargaining

Advantages / Merits of collective bargaining

(1) Firstly, collective bargaining has the advantage of settlement through dialogue and consensus, rather than through conflict and confrontation. It differs from arbitration where the solution is based on a decision of a third party. Arbitration may displease one party because it usually involves a win-lose situation; sometimes, it may even

displease both the parties.

(2) Secondly, collective bargaining agreements often institutionalise settlement through dialogue. For instance, a collective agreement may provide for methods by which disputes between the parties will be settled. In that event, the parties know beforehand that *if* they are in disagreement, there is an agreed method by which such disagreement will be resolved.

(3) Next, collective bargaining is a form of participation. Both parties participate in deciding what proportion of the 'cake' is to be shared by the parties. It is a form of participation *also because* it involves a sharing of rule- making power between employers and unions in areas which in earlier times were regarded as management prerogatives, *e.g.* transfer, promotion, redun -dancy, discipline, modernisation, production norms, *etc.*

However, in some countries like *Singapore and Malaysia,* transfers, promotions, retrenchments, lay-offs and work assignments are excluded by law from the scope of collective bargaining.

(4) Collective bargaining agreements sometimes prohibit or limit the settlement of disputes through trade union action. Such agreements have the effect of guaranteeing industrial peace - at least for the duration of the agreements.

(5) Collective bargaining is an essential feature in the concept of *social partnership* towards which labour relations should strive.

(6) Collective bargaining has valuable by-products relevant to the relationship between the two parties. For instance, a long course of successful and *bona fide* dealings leads to the generation of trust. It contributes towards mutual understanding by establishing a continuing relationship.

(7) In societies where there is a multiplicity of unions and shifting union loyalties, collective bargaining and consequent agreements tend to stabilise union membership. For instance, where there is a collective agreement, employees are less likely to change union affiliations frequently.

(8) Collective bargaining also has the effect of improving industrial relations. This improvement can be at different levels. The continuing dialogue tends to improve relations at the workplace level between workers and the union on the one hand and the employer on the other. It also establishes a productive relationship between the union and the employers' organisation where the latter is involved in the negotiation process.

(9) Collective bargaining can lead to a high-performance workplace, where labour and management jointly engage in problem-solving and address issues on an equal standing.

(10) Collective bargaining also provides a legally based bilateral relationship.

(11) In collective bargaining, the management's rights are clearly spelt out and this is a definite advantage to the employer.

(12) On the other hand, the employees' rights' are also protected by a binding collective bargaining agreement.

(13) If multi-year contracts are entered into as a result of collective bargaining, such contracts may provide budgetary predictability on salary and other compensation issues.

(14) It is also generally accepted that collective bargaining promotes fairness and

consistency in employment policies and personnel decisions within and across institutions.

(15) Collective bargaining also enables the employees to choose whether or *not* they want union representation.

(16)A strong labour-management partnership may also promote the workforce development needed for engaging the technology revolution.

(17)Collective bargaining is an open means of airing grievances in an orderly manner. Employees who have issues regarding certain aspects of their work can address them in a calm and collective environment.

(18)Collective bargaining also redresses the imbalance of power. Employers generally have a major power within society and the use of collective bargaining restores the balance between employees and employers.

(19)Collective bargaining manages conflict. The conflict between the social partners can be managed through negotiation, which in turn promotes harmony in society.

(20)Collective bargaining encourages industrial peace and averts strikes, thus providing a suitable environment for FDI (foreign direct investment).

Disadvantages / Demerits of collective bargaining

As seen above, collective bargaining has several benefits.
However, these benefits come at a price. The disadvantages
and demerits of collective bargaining may be listed as under:

1. When an agreement is signed as a result of collective bargaining, the management's authority and freedom often get restricted by negotiated rules.
2. Collective bargaining often creates significant potential for polarisation between employees and employers.
3. Often, there is a disproportionate effect of the relatively few active employees on the vast majority of the employees.
4. It often increases bureaucratisation and a longer time is needed for decision-making.
5. In some cases, collective bargaining increases participation by external entities like politicians, arbitrators, State Labour Relations Board, *etc.* and gives them a fairly important role in final decisions.
6. Collective bargaining has sometimes had the effect of protecting the *status quo,* thereby inhibiting innovation and change. This is particularly the case when the change involves privatisation of an industry.
7. In collective bargaining, it often gets more difficult for employees at smaller campuses to have their voices heard.
8. Collective bargaining often results in higher management costs associated with negotiating and administering the agreements.
9. It generally eliminates the ability of management to make unilateral changes in wages, hours, and other terms and conditions of employment - even in genuine cases.
10. This form of negotiation restricts the management's ability to deal directly with individual employees.
11. Collective bargaining often results in increased dependence on the private sector for certain services, particularly those requiring technological competence.
12. Contract administration (which is a resultant of collective bargaining) often becomes a very difficult process to manage and significantly changes the skills required of managers and supervisors.
13. Employees in India often do *not* have the capacity or the skill required to make good bargains in the course of collective bargaining. This may be due to ignorance illiteracy and other similar causes.
14. Collective bargaining may be an excellent solution for labour disputes, but it lacks representation of the public interest at the bargaining table. When unions and companies agree on huge wage increases (as is often the case), it sometimes leads to a rise in prices and the consumer ultimately has to shoulder the burden of their agreement.
15. Collective bargaining in a capitalist society may lead to both wage and grade drift. A wage drift leads to higher wage costs for employers and higher inflation within the economy, which in turn leads to higher interest rates and lower investment.

8. Has collective bargaining really worked?

The answer to this question is: *Most definitely.* Surveys by the Bureau of Labour Statistics of the government indicate that, on an average, union workers enjoy a 36.4% greater wage-and-benefit package as compared to unorganised workers. In wages

alone, workers belonging to trade unions enjoy, on an average, a 21.4 % better paycheck than unorganised workers. One must *not* forget that.

When workers act together, they win. When they do not, the employer wins.

APPENDIX

The Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 MAHARASHTRA ACT NO. I OF 1972

Questions
Write a short note on: Recognition of Trade Unions under MRTU & PULP Act? B.U. Apr. 2015
What is an 'order' *under the MRTU& PULP Act ? (2 Mark) B.U. Apr 2011*

PREAMBLE
An Act to provide for the recognition of trade unions for facilitating collective bargaining for certain undertakings, to state their rights, and obligations; to confer certain powers on unrecognised unions; to provide for declaring certain strikes and lock-outs as illegal strikes and lock-outs; to define and provide for the prevention of certain unfair labour practices; to constitute courts (as independent machinery) for carrying out the purposes of according recognition to trade unions and for enforcing the provisions relating to unfair practices; and to provide for matters connected with the purposes aforesaid.

WHEREAS, by Government Resolution, Industries and Labour Department, No. IDA. 1367-LAB-ll, dated the 14th February 1968, the Government of Maharashtra appointed a Committee called "the Committee on Unfair Labour Practices" for defining certain activities of employers and workers and their organisations which should be treated as unfair labour practices and for suggesting action which should be taken against employers or workers, or their organisations, for engaging in such unfair labour practices;

AND WHEREAS, after taking into consideration the report of the Committee, Government is of opinion that it is expedient to provide for the recognition of trade unions for facilitating collective bargaining for certain undertakings; to state their rights and obligations; to confer certain powers on unrecognised unions; to provide for declaring certain strikes and lock-outs as illegal strike^ and lock-outs; to define and provide for the prevention of certain unfair labour practices; to constitute courts (as independent machinery) for carrying out the purposes of according recognition to trade unions and for enforcing provisions relating to unfair practices; and to provide for matters connected with the purposes aforesaid;

It is hereby enacted in the twenty-second Year of the Republic of India as follows:

1. SHORT TITLE
This Act may be called the Maharashtra Recognition of Trade Unions and Prevention of

Unfair Labour Practices Act, 1971.

2. EXTENT, COMMENCEMENT AND APPLICATION

(1) This Act extends to the whole of the State of Maharashtra.

(2) It shall come into force on such date as the State Government may, by notification in the Official Gazette, appoint; and different dates may be appointed for different areas and for different provision of this Act.

(3) Except as otherwise hereinafter provided, this Act shall apply to the industries to which the Bombay Industrial Relations Act, 1946, for the time being applies, and also to any industry as defined in clause (j) of section 2 of the Industrial Disputes Act, 1947, and the State Government in relation to any industrial dispute concerning of such industry is the appropriate Government under that Act:

Provided that the State Government may, by notification in the Official Gazette, direct that the provisions of this Act shall cease to apply to any such industry from such date as may be specified in the notification; and from that date, the provisions of this Act shall cess or to apply to that industry and, thereupon, section 7 of the Bombay General Clauses Act, 1904, shall apply to such cess or, as if this Act has been repealed in relation to such industry by a Maharashtra Act.

Note

As observed by the Supreme Court, the Bombay Industrial Relations Act and this Act do not operate in different fields, as there is communality in their objects; both Acts are complimentary to each other. *(Shramik Uttarsh Sabha v. Raymond Woolen Mills Ltd.,* AIR 1995 SC 1137)

3. DEFINITIONS

In this Act, unless the context requires otherwise,

(1) “Bombay Act” means the Bombay Industrial Relations Act, 1946;

(2) “Central Act” means the Industrial Disputes Act, 1947;

(3) “concern” means any premises including the precincts thereof where any industry to which the Central Act applies is carried on;

(4) “Court” for the purposes of Chapters VI and VII means the Industrial Court, or as the case may be, the Labour Court :

(5) “employee” in relation to an industry to which the Bombay Act for the time being applies, means an employee as defined in clause (13) of section 3 of the Bombay Act; and in any other case, means a workman as defined in clause (s) of section 2 of the Central Act;

(6) “employer” in relation to an industry to which the Bombay Act applies, means an employer as defined in clause (14) of section 3 of the Bombay Act; and in any other case, means an employer as defined in clause (g) of section 2 of the Central Act;

(7) “Industry” in relation to an industry to which the Bombay Act applies means an industry as defined in clause (19) of section 3 of the Bombay Act, and in any other case, means an industry as defined in clause (j) of section 2 of the Central Act;

(8) “Industrial Court” means an Industrial Court constituted under section 4;

(9) "Investigating Officer" means an officer appointed under section 8;
(10)"Labour Court" means a Labour Court constituted under section 6;
(11)"member" means a person who is an ordinary member of a union, and has paid a subscription to the union of not less than 50 paise per calendar month :

Provided that, no person shall at any time be deemed to be a member, if his subscription is in arrears for a period of more than three calendar months during the period of a six months immediately preceding such time, and the expression "membership" shall be construed, accordingly.

Explanation: A subscription for a calendar month shall, for the purpose of this clause, be deemed to be in arrears, if such subscription is not paid within three months after the end of the calendar months in respect of which it is due;
(12)"order" means an order of the Industrial or Labour Court;
(13)"recognised union" means a union which has been issued a certificate of recognition under Chapter III;
(14)"Schedule" means a Schedule to this Act;' "
(15)"undertaking" for the purposes of Chapter III, means any concern in industry to be one undertaking for the purpose of that Chapter :

Provided that, the State Government may notify a group of concerns owned by the same employer in any industry to be undertaking for the purpose of that Chapter;
(16) "unfair labour practices" means unfair labour practice as defined in section 26;
(17) "union" means a trade union of employees, which is registered under the Trade Unions Act, 1926;
(18) Words and expressions used in the Act and not defined therein, but defined in the Bombay Act or, as the case may be, the Sales Promotion Employees (Conditions of Service) Act, 1976, shall in relation to an industry to which the provisions of the Bombay Act apply, have the meanings assigned to them by the Bombay Act or, as the case may be, the Sales Promotion Employees (Conditions of Service) Act, 1976; and in any other case, shall have the meanings assigned to them by the Central Act or, as the case may be, the Sales Promotion Employees (Conditions of Service) Act, 1976.

CHAPTER II

AUTHORITIES UNDER THIS ACT

Questions:
Write a short note on: Industrial Court under MRTU & PULP Act. B.U. Nov. 2015
Any two duties of Labour Court under m.r.t.u. & PULP Act (2 Marks) B.U. Apr 2017
Any two duties of investigating officer under M.R.T.U. & P.U.L.P Act 1971 (2 Marks) B.U. Apr 2017

4. INDUSTRIAL COURT

(1) The State Government shall by notification in the Official Gazette, constitute an Industrial Court.
(2) The Industrial Court, shall consist of not less than three members, one of whom shall be the President.
(3) Every member of the Industrial Court shall be a person who is not connected with the complaint referred to that Court, or with any industry directly affected by such complaint:

Provided that, every member shall be deemed to be connected with a complaint or with an industry by reason of his having shares in a company which is connected with, or likely to be affected by, such complaint, unless he discloses to the State Government the nature and extent of the shares held by him in such company and in the opinion of the State Government recorded in writing, such member is not connected with the complaint or the industry.

(4) Every member of the Industrial Court shall be a person who is or has been a Judge of a High Court or is eligible for being appointed a Judge of such Court:

Provided that, one member may be a person who is not so eligible, if he possesses in the opinion of the State Government expert knowledge of labour or industrial matters.

5. DUTIES OF INDUSTRIAL COURT

It shall be the duty of the Industrial Court -

a) to decide an application by a union for grant of recognition to it;
b) to decide an application by a union for grant of recognition to it in place of a union which has already been recognised under this Act;
c) to decided an application from another union or an employer for withdrawal or cancellation of the recognition of a union;
d) to decide complaints relating to unfair labour practices except unfair labour practices falling in item 1 of Schedule IV;
e) to assign work, and to give directions to the Investigating Officers in matters of verification of membership of unions and investigation of complaints relating to unfair labour practices;
f) to decide references made to it on any point of law either by any civil or criminal court; and
g) to decide appeals under section 42.

6. LABOUR COURT

The State Government shall, by notification in the Official Gazette, constitute one or more Labour Courts, having jurisdiction in such local areas, as may be specified in such notification, and shall appoint persons having the prescribed qualifications to preside over such Courts:

Provided that no person shall be so appointed, unless he possesses qualifications (other than the qualification of age), prescribed under Article 234 of the Constitution for being eligible to enter the judicial service of the State of Maharashtra; and is not more than sixty years of age.

7. DUTIES OF LABOUR COURT

It shall be the duty of the Labour Court to decide complaints relating to unfair labour practices described in item 1 of Schedule IV and to try offences punishable under this Act.

8. INVESTIGATING OFFICERS

The State Government may, by notification in the Official Gazette, appoint such number of Investigating Officers for any area as it may consider necessary, to assist the Industrial Court and Labour Courts in the discharge of their duties.

9. DUTIES OF INVESTIGATING OFFICERS

1) The Investigating Officer shall be under the control of the Industrial Court, and shall exercise powers and perform duties imposed on him by the industrial Court.
2) It shall be the duty of an Investigating Officer to assist the Industrial Court in matters of verification of membership of unions, and assist the Industrial and Labour Courts for investigating into complaints relating to unfair labour practices.
3) It shall also be the duty of an Investigating Officer to report to the Industrial Court, or as the case may be, the Labour Court, the existence of any unfair labour practices in any industry or undertaking, and the name and address of the persons said to be engaged in unfair labour practices and any other information which the Investigating Officer may deem fit to report to the Industrial Court, or as the case may be, the Labour Court

CHAPTER III

Recognition of Unions

10. Application of chapter III

(1) Subject to the provisions of sub-sections (2) and (3), the provisions of this Chapter shall apply to every undertaking, wherein fifty or more employees are employed, or were employed on any day of the preceding twelve months:

Provided that, the State Government may, after giving not less than sixty days' notice of its intention so to do, by notification in the Official Gazette, apply the provisions of this Chapter to any undertaking, employing such number of employees less than fifty as may be specified in the notification.

(2) The provisions of this Chapter shall not apply to undertakings in industries to which the provisions of the Bombay Act for the time being apply.

(3) If the number of employees employed in any undertaking to which the provisions of this Chapter apply at any time falls below fifty continuously for a period of one year, those provisions shall cease to apply to such undertaking.

11. APPLICATION FOR RECOGNITION OF UNION

(1) Any union (hereinafter referred to as the “applicant-union”) which has, for the whole of the period of six calendar months immediately preceding the calendar month in which it so applies under this section, a membership of not less than thirty per cent of the number of employees employed in any undertaking may apply in the prescribed form to the Industrial Court for being registered as a recognised union for such undertaking.

(2) Every such application shall be disposed of by the Industrial Court as far as possible within three months from the date of receipt of the application, where a group of concerns in any industry which is notified to be one undertaking for which recognition is applied for is situated in the same local area; and in any other case, within four months.

Explanation: ‘Local area’ for the purposes of this subsection means the area which the State Government may, by notification in the Official Gazette, specify in the notification

12. RECOGNITION OF UNION

(1) On receipt of an application from a union for recognition under section 11 and on payment of the prescribed fees, not exceeding rupees five, the Industrial Court shall, if it finds the application on a preliminary scrutiny to be in order, cause notice to be displayed on the notice board of the undertaking, declaring its intention to consider the said application on the date specified in the notice, and calling upon the other union or unions, if any, having membership of employees in that undertaking and the employers and employees affected by the proposal to show cause, within a prescribed time, as to why recognition should not be granted to the applicant-union.

(2) If, after considering the objections, if any, that may be received under sub-section (1) from any other union (hereinafter referred to as “other union”) or employers or employees, if any, and if after holding such enquiry in the matter as it deems fit, the Industrial Court comes to the conclusion that the conditions requisite for registration specified in section 11 are satisfied, and the applicant-union also complies with the conditions specified in section 19 of this Act, the Industrial Court shall, subject to the provisions of this section, grant recognition to the applicant-union under this Act, and issue a certificate of such recognition in such form as may be prescribed.

(3) If the Industrial Court comes to the conclusion, that any of the other unions has the largest membership of employees employed in the undertaking, and the said other union has notified to the Industrial Court its claim to be registered as a recognised union for such undertaking, and if it satisfies the conditions requisite for recognition specified in section 11, and also complies with the conditions specified in section 19 of this Act, the Industrial Court shall, subject to the provisions of this section, grant such recognition to the other union, and issue a certificate of such recognition in such form as may be prescribed.

Explanation: For the purpose of this sub-section, the other union shall be deemed to have applied for recognition in the same calendar month as the applicant-union.

(4) There shall not, at any time, be more than one recognised union in respect of the

same undertaking.

(5) The Industrial Court shall not recognise any union, if it is satisfied that the application for its recognition is not made *bona fide* in the interest of the employees, but is made in the interest of the employer, to the prejudice of the interest of the employees.

(6) The Industrial Court shall not recognise any union, if, at any time, within six months immediately preceding the date of the application for recognition, the union has instigated, aided or assisted the commencement or continuation of a strike which is deemed to be illegal under this Act.

13. CANCELLATION OF RECOGNITION AND SUSPENSION OF RIGHTS

(1) The Industrial Court shall cancel the recognition of a union if after giving notice to such union to show cause why its recognition should not be cancelled, and after holding an inquiry, it is satisfied,

I. that it was recognised under mistake, misrepresentation or fraud; or

II. that the membership of the union has, for a continuous period of six calendar months, fallen below the minimum required under section 11 for its recognition:

Provided that, where a strike (not being an illegal strike under the Central Act) has extended to a period exceeding fourteen days in any calendar month, such month shall be excluded in computing the said period of six months:

Provided further that, the recognition of a union shall not be cancelled under the provisions of this subclause, unless its membership for the calendar month in which show cause notice under this section was issued was less than such minimum; or

III. that the recognised union has, after its recognition, failed to observe any of the conditions specified in section 19; or

IV. that the recognised union is not being conducted *bona fide* in the interest of employees, but in the interests of employer to the prejudice of the interest of employees; or

V. that it has instigated, aided or assisted the commencement or continuation of a strike which is deemed to be illegal under this Act; or

VI. that its registration under the Trade Unions Act, 1926, is cancelled; or

VII. that another union has been recognised in place of a union recognised under this Chapter.

(2) The Industrial Court may cancel the recognition of a union if, after giving notice to such union to show cause why its recognition should not be cancelled, and after holding an inquiry, it is satisfied, that it has committed any practice which is, or has been declared as, an unfair labour practice under this Act:

Provided that, if having regard to the circumstances in which such practice has been committed, the Industrial Court is of opinion, that instead of cancellation of the recognition of the union, it may suspend all or any of its rights under sub-section (1) of section 20 or under section 23, the Industrial Court may pass an order accordingly, and specify the period for which such suspension may remain in force.

14. RECOGNITION OF OTHER UNION

(1) If any union makes an application to the Industrial Court for being registered as a recognised union in place of a recognised union already registered as such

(hereinafter in this section referred to as the “recognised union”) for an undertaking, on the ground that it has the largest membership of employees ' employed in such undertaking, the Industrial Court shall if a period of two years has elapsed since the date of registration of the recognised union, call upon the recognised union by a notice in writing to show cause, within thirty days of the receipt of such notice, as to why the union now applying should not be recognised in its place. An application made under this sub-section shall be accompanied by such fee not exceeding rupees five as may be prescribed:

Provided that, the Industrial Court may not entertain any application for registration of a union, unless a period of one year has elapsed since the date of disposal of the previous application of that union.

(2) If, on the expiry of the period of notice under subsection (1), the Industrial Court finds, on preliminary scrutiny, that the application made is in order, it shall cause notice to be displayed on the notice board of the undertaking, declaring its intention to consider the said application on the date specified in the notice, and calling upon other union or unions, if any, having membership of employees in that undertaking, employer and employees affected by the proposal to show cause within a prescribed time as to why recognition should not be granted.

(3)If, after considering the objections, if any, that may be received under sub-section (2) and if, after holding such enquiry as it deems fit (which may include recording of evidence of witnesses and hearing of parties), the Industrial Court comes to the conclusion that the union applying complies with the conditions necessary for recognition specified in section 11 and that its membership was, during the whole of the period of six calendar months immediately preceding the calendar months, in which it made the application under this section, larger than the membership of the recognised union, then the Industrial Court shall, subject to the provisions of section 12 and this section, recognise the union applying in place of the recognised union, and issue a certificate of recognition in such form as may be prescribed.

(4) If the Industrial Court comes to the conclusion that any of the other unions has the largest membership of employees in the undertaking, and such other union has notified to the Industrial Court its claim to be registered as a recognised union for such undertaking, and if, such other union satisfies the conditions requisite for recognition under section 11 and complies with the conditions specified in section 19 of this Act, the Industrial Court shall grant such recognition to such other union, and issue a certificate of such recognition is such form as may be prescribed.

Explanation: For the purpose of this sub-section, the other union shall be deemed to have applied for recognition in the same calendar month as the applicant-union.

(5) Every application under this section shall be disposed of by the Industrial Court as far as possible, within three months, from the date of receipt of the application, where a group of concerns in any industry which is notified to be one undertaking for which recognition is applied for is situated in the same local area; and in any other case, within four months.

Explanation: “Local area” for the purposes of this subsection means the area which the State Government may, by notification in the Official Gazette, specify in such notification.

15. APPLICATION FOR RE-RECOGNITION

(1) Any union the recognition of which has been cancelled on the ground that it was recognised under a mistake or on the ground specified in clause (ii) section 13, may, at any time after three months from the date of such cancellation and on payment of such fees as may be prescribed apply again to the Industrial Court for recognition; and thereupon the provisions of sections 11 and 12 shall apply in respect of such application as they apply in relation to an application under section 11.

(2) A union, the recognition of which has been cancelled on any other ground, shall not, save with the permission of the industrial Court, be entitled to apply for re-recognition within a period of one year from the date of such cancellation.

16. **LIABILITY OF UNION OR MEMBERS NOT RELIEVED BY CANCELLATION**

Notwithstanding anything contained in any law for the time being in force, the cancellation of the recognition of a union shall not relieve the union or any member thereof from any penalty or liability incurred under this Act prior to such cancellation.

17. **PUBLICATION OF ORDER**

Every order passed under sections 12, 13, 14 or 15 shall be final, and shall be caused to be published by the Industrial Court in the prescribed manner.

18. **RECOGNITION OF UNION FOR MORE THAN ONE UNDERTAKING**

Subject to the foregoing provisions of this Chapter, a union may be recognised for more than one undertaking.

CHAPTER IV

OBLIGATIONS AND RIGHTS OF RECOGNISED UNIONS, OTHER UNIONS AND CERTAIN EMPLOYEES

Questions

Write a short note on: Rights of Unrecognised Unions under MRTU & PULP Act. **B.U. Apr. 2015**

19. **OBLIGATIONS OF RECOGNISED UNION**

The rules of a union seeking recognition under this Act shall provide for the following matters, and the provisions thereof shall be duly observed by the upon, namely: -

(i) the membership subscription shall be not less than fifty paise per month;

(ii) the Executive Committee shall meet at intervals of not more than three months;

(iii) all resolutions passed, whether by the Executive Committee or the general body of the union, shall be recorded in a minute book kept for the purpose;

(iv) an auditor appointed by the State Government may audit its account at least once in each financial year.

20. RIGHTS OF RECOGNISED UNION

(1) Such officers, members of the office staff and members of a recognised union as may be authorised by or under rules made in this behalf by the State Government

shall, in such manner and subject to such conditions as may be prescribed, have a right -

(a) to collect sums payable by members to the union on the premises, where wages are paid to them;

(b) to put up, or cause to be put up, a notice-board on the premises of the undertaking in which its members are employed and affix, or cause to be affixed, notice thereon;

(c) for the purpose of the prevention or settlement of an industrial dispute -

(i) to hold discussions on the premises of the undertaking with the employees concerned, who are the members of the union but so as not to interfere with the due working of the undertaking;

(ii) to meet and discuss, with an employer or any person appointed by him in that behalf, the grievances of employees employed in his undertaking;

(iii) to inspect, if necessary, in an undertaking any place where any employee of the undertaking is employed;

(d) to appear on behalf of any employee or employees in any domestic or departmental inquiry held by the employer.

(2) Where there is a recognised union for any undertaking,

(a) that union alone shall have the right to appoint its nominees to represent workmen on the Works Committee constituted under section 3 of the Central Act;

(b) no employee seal be allowed to appear or act or be allowed to be represented in any proceedings under the Central Act (not being a proceeding in which the legality or propriety of an order of dismissal, discharge, removal, retrenchment, termination of service, or suspension of an employee is under consideration), except through the recognised union; and the decision arrived at, or order made, in such proceeding shall be binding on all the employees in such undertaking; and accordingly, the provisions of the Central Act, that is to say, the Industrial Disputes Act, 1947, shall stand amended in the manner and to the extent specified in Schedule I.

21. RIGHT TO APPEAR OR ACT IN PROCEEDINGS ' RELATING OF CERTAIN UNFAIR LABOUR PRACTICES

(1) No employee in an undertaking to which the provisions of the Central Act for the time being apply, shall be "allowed to appear or act or allowed to be represented in any proceedings relating to unfair labour practices specified in items 2 and 6 of Schedule IV of this Act ; except through the recognised union:

Provided that, where there is no recognised union to appear, the employee may himself appear or act in any proceeding relating to any such unfair labour practices.

(2) Notwithstandinganything contained in the Bombay Act no employee in any industry to which the provisions of the Bombay Act for the time being apply, shall be allowed to appear or act or allowed to be represented in any proceeding relating to unfair labour practices specified in items 2 and 6 of Schedule IV of this Act except through the representative of employees entitled to appear under section 30 of the Bombay Act.

22. **RIGHTS OF UNRECOGNISED UNIONS**

Such officers, members of the office staff and members of any union (other than a recognised union) as may be authorised by or under the rules made in this behalf by the State Government shall, in such manner and subject to such conditions as may be prescribed, have a right -

(i) to meet and discuss with an employer or any person appointed by him in that behalf, the grievances of any individual member relating to his discharge, removal, retrenchment, termination of service and suspension;

(ii) to appear on behalf of any of its members employed in the undertaking in any domestic or departmental inquiry held by the employer.

23. EMPLOYEES AUTHORISED BY RECOGNISED UNION TO APPEAR OR ACT IN CERTAIN PROCEEDINGS TO BE CONSIDERED AS ON DUTY

Not more than two members of a recognised union duly authorised by it in writing who appear or act on its behalf in any proceeding under the Central Act or the Bombay Act or under this Act shall be deemed to be on duty on the days on which such proceedings actually take place, and accordingly, such member or members shall, on production of a certificate from the authority or the court before which he or they appeared or acted to the effect that he or they so appeared or acted on the days specified in the certificate, be entitled to be paid by his or their employer his or their salary and allowances which would have been payable for those days as if he or they had attended duty on those days.

Explanation: For the purpose of this section “recognised union” includes a representative union under the Bombay Act.

CHAPTER V

ILLEGAL STRIKES AND LOCK-OUTS

Questions
***Explain Illegal Strike and Lockout under M.R.T.U. & P.U.L.P. Act, 1971*.B.U. Apr. 2016**

24. ILLEGAL STRIKE AND LOCK-OUT

In this Act, unless the context requires otherwise, -

(1) “Illegal strike” means a strike which is commenced or continued -

a) without giving to the employer notice of strike in the prescribed form, or within fourteen days of the giving of such notice;

b) where there is a recognised union, without obtaining the vote of the majority of the members of the union, in favour of the strike before the notice of the strike is given;

c) during the pendency of conciliation proceeding under the Bombay Act or the Central Act and seven days after the conclusion of such proceeding in respect of matters covered by the notice of strike;

d) where submission in respect of any of the matters covered by the notice of strike is registered under section 66 of the Bombay Act, before such submission is lawfully revoked;
e) where an industrial dispute in respect of any of the matters covered by the notice of strike has been referred to the arbitration of a Labour Court or the Industrial Court voluntarily under sub-section (6) of section 58 or section 71 of the Bombay Act, during the arbitration proceedings or before the date on which the arbitration proceedings are completed or the date on which the award of the arbitrator comes into operation, whichever is later;
f) during the pendency of arbitration proceedings before an arbitrator under the Central Act and before the date on which the arbitration Proceedings are concluded, if such proceedings are in respect of any of the matters covered by the notice of strike;
g) in cases where an industrial dispute has been referred to the arbitration of a Labour Court or the Industrial Court under sections 72, 73 or 73-A of the Bombay Act, during such arbitration proceedings or before the date on which the proceeding is completed or the date on which the award of the Court comes into operation, whichever is later, if such proceedings are in respect of any of the matters covered by the notice of strike;
h) in cases where an industrial dispute has been referred to the adjudication of the Industrial Tribunal or Labour Court under the Central Act, during the pendency of such proceeding before such authority and before the conclusion of such proceeding, if such proceeding is in respect of any of the matters covered by notice of strike :

Provided that, nothing in clauses (g) and (h) shall apply to any strike, where the union has offered in writing to submit the industrial dispute to arbitration under sub-section (6) of section 58 of the Bombay Act or Section 10-A of the Central Act, and

I. the employer does not accept the offer; or
II. the employer accepts the offer but disagreeing on the choice of the arbitrator, does not agree to submit the dispute to arbitration without naming an arbitrator as provided in the Bombay Act, and thereafter, the dispute has been referred for arbitration of the Industrial Court under section 73-A of the Bombay Act, or where the Central Act applies, while disagreeing on the choice of the arbitrator, the employer does not agree to submit the dispute to arbitration of the arbitrator recommended by the State Government in this behalf, and thereafter, the dispute has been referred for adjudication of the Industrial Tribunal or the Labour Court, as the case may be, under the Central Act; or during any period in which any settlement or award is in operation, in respect of any of the matters covered by the settlement or award.

(2) "Illegal lock-out" means a lock-out which is commenced or continued
(a) without giving to the employees, a notice of lockout in the prescribed form or within fourteen days of the giving of such notice;
(b) during the pendency of conciliation proceeding under the Bombay Act or the Central Act and seven days after the conclusion of such proceeding in respect of any of the matters covered by the notice of lock-out;

(c) during the period when a submission in respect of any of the matters covered by the notice of lock-out is registered under section 66 of the Bombay Act, before such submission is lawfully revoked;

(d) where an industrial dispute in respect of matter covered by the notice of lock-out has been referred to the arbitration of a Labour Court or the Industrial Court voluntarily under sub-section (6) of section 58 or section 71 of the Bombay Act, during the arbitration proceeding or before the date on which the arbitration proceeding is completed or the date on which the award of the arbitrator comes into operation, whichever is later;

(e) during the pendency of arbitration proceedings before an arbitrator under the Central Act and before the date on which the arbitration proceedings are concluded, if such proceedings are in respect of any of the matters covered by the notice of lock-out;

(f) in cases where an industrial dispute has been referred to the arbitration of a Labour Court or the Industrial Court compulsorily under sections 72, 73 or 73-A of the Bombay Act, during such arbitration proceeding or before the date on which the proceeding is completed, or the date on which the award of the Court comes into operation, whichever is later, if such proceedings are in respect of any of the matters covered by the notice of lock-out; or

(g) in cases where an industrial dispute has been referred to the adjudication of the Industrial Tribunal or Labour Court under the Central Act, during the pendency of such proceeding before such authority and before the conclusion of such proceeding, if such proceeding is in respect of any of the matters covered by the notice of lock-out:

Provided that nothing in clauses (f) and (g) shall apply to any lock-out where the employer has offered in writing to submit the industrial dispute to arbitration under sub-section (6) of section 58 of the Bombay Act, or section 10-A of the Central Act; and

I. the union does not accept the offer;

II. the union accepts the offer, but disagreeing on the choice of the arbitrator, does not agree to submit the dispute to arbitration without naming an arbitrator as provided in the Bombay Act, and thereafter, the dispute has been referred for arbitration of the Industrial Court under section 73-A of the Bombay Act; or where the Central Act applies, while disagreeing on the choice of the arbitrator the union does not agree to submit the dispute to arbitration of the arbitrator recommended by the State Government in this behalf and thereafter, the dispute has been referred for adjudication of the Industrial Tribunal or the Labour Court, as the case may be, under the Central Act;

(h) during any period in which any settlement or award is in operation, in respect of any of the matters covered by the settlement or award.

25. **REFERENCE OF LABOUR COURT FOR DECLARATION WHETHER STRIKE OR LOCK-OUT IS ILLEGAL**

(1) Where the employees in any undertaking have proposed to go on strike or have commenced a strike, the State Government or the employer of the undertaking may make a reference to the Labour Court for a declaration that such strike is illegal.

(2) Where the employer of any undertaking has proposed a lock-out or has commenced a lock-out, the State Government or the recognised union, or, where there is or recognised union, any other union of the employees in the undertaking may make a reference to the Labour Court for a declaration whether such lock-out will be illegal. *Explanation*: For the purposes of this section, recognised union includes a representative union under the Bombay Act.
(3) No declaration shall be made under this section save in the open Court.
(4) The declaration made under this section shall be recognised as binding and shall be followed in all proceedings under this Act.
(5) Where any strike or lock-out declared to be illegal under this section is withdrawn within forty-eight hours of such declaration, such strike or lock-out shall not, for the purposes of this Act, be deemed to be illegal under this Act.

CHAPTER VI

UNFAIR LABOUR PRACTICES

26. UNFAIR LABOUR PRACTICES

In this Act, unless the context requires otherwise, 'unfair labour practices' mean any of the practices listed in Schedule II, III and IV.

27. PROHIBITION ON ENGAGING IN UNFAIR LABOUR PRACTICES

No employer or union and no employees shall engage in any unfair labour practice.

28. PROCEDURE FOR DEALING WITH COMPLAINTS RELATING TO UNFAIR LABOUR PRACTICES

(1) Where any person has engaged in or is engaging in any unfair labour practice, then any union or any employee or any employer or any Investigating Officer may, within ninety days of the occurrence of such unfair labour practice, file a complaint before the Court competent to deal with such complaint either under section 5, or as the as the case may be, under section 7, of this Act:

Provided that, the Court may entertain a complaint after the period of ninety days from the date of the alleged occurrence, if good and sufficient reasons are shown by the complainant for the late filing of the complaint.
(2) The Court shall take a decision on every such complaint as far as possible within a period of six months from the date of receipt of the complaint.
(3) On receipt of a complaint under sub-section (1), the Court may, if it so considers necessary, first cause an investigation into the said complaint to be made by the Investigating Officer, and direct that a report in the matter may be submitted by him to the Court, within the period specified in the direction.
(4) While investigating into any such complaint, the Investigating Officer may visit the undertaking where the practice alleged is said to have occurred, and make such enquiries as he considers necessary. He may also make efforts to promote settlement of the complaint.

(5) The Investigating Officer shall, after investigating into the complaint under sub-section (4) submit his report to the Court, within the time specified by it, setting out the full facts and circumstances of the case, and the efforts made by him in settling the complaint. The Court shall, on demand and on payment of such fee as may be prescribed by rules, supply a copy of the report to the complainant and the person complained against.

(6) If, on receipt of the report of the Investigating Officer, the Court finds that the complaint has not been settled satisfactorily, and that facts and circumstances of the case require, that the matter should be further considered by it, the Court shall proceed to consider it, and give its decision.

(7) The decision of the Court, which shall be in writing, shall be in the form of an order. The order of the Court shall be final and shall not be called in question in any civil or criminal court.

(8) The Court shall cause its order to be published in such manner as may be prescribed. The order of the Court shall become enforceable from the date specified in the order.

(9) The Court shall forward a copy of its order to the State Government and such officers of the State Government as may be prescribed.

29. PARTIES ON WHOM ORDER OF COURT SHALL BE BINDING

An order of the Court shall be binding on -

(a) all parties to the complaint; *

(b) all parties who were summoned to appear as parties to the complaint, whether they appear or not, unless the Court is of opinion that they were improperly made parties;

(c) in the case of an employer who is a party to the complaint before such Court in respect of the undertakings to which the complaint relates, his heirs, successors or assigns in respect of the undertaking to which the complaint relates; and

(d) where the party referred to in clause (a) or clause (b)is composed of employees, all persons, who on the date of the complaint, are employed in the undertaking to which the complaint relates and all persons who may be subsequently employed in the undertaking.

CAPTER VII

POWERS OF COURTS

30. POWERS OF INDUSTRIAL AND LABOUR COURTS

(1) Where a Court decides that any person named in the complaint has engaged in, or is engaging in, any unfair labour practice, it may in its order-

(a) declare that an unfair practice has been engaged in or is being engaged in by that person, and specify any other person who has engaged in, or is engaging in the unfair labour practice;

(b) direct all such persons to cease and desist from such unfair labour practice, and take such affirmative action (including payment of reasonable compensation to the employee or employees affected by the unfair labour practice, or reinstatement of the employee or employees with or without back wages, or the payment of reasonable compensation), as may in the opinion of the Court be necessary to effectuate the policy of the Act;

(c) where a recognised union has engaged in or is engaging in, any unfair labour practice, direct that its recognition shall be cancelled or that all of any or its rights under sub-section (1) of section 20 or its right under section 23 shall be suspended.

(2) In any proceeding before it under this Act, the Court, may pass such interim order (including any temporary relief or restraining order) as it deems just and proper (including directions to the person to withdraw temporarily the practice complained of, which is an issue in such proceeding), pending final decision:

Provided that, the Court may, on an application in that behalf, review any interim order passed by it.

(3) For the purpose of holding an enquiry or proceeding under this Act, the Court shall have the same powers as are vested in Courts in respect of -

(a) proof of facts by affidavit;

(b) summoning and enforcing the attendance of any person, and examining him on oath;

(c) compelling the production of documents; and

(d) issuing commissions for the examination of witnesses.

(4) The Court shall also have powers to call upon any of the parties to proceedings before it to furnish in writing, and in such forms as it may think proper, any information, which is considered relevant for the purpose of any proceedings before it, and the party so called upon shall thereupon furnish the information to the best of its knowledge and belief, and if so required by the Court to do so, verify the same in such manner as may be prescribed.

31. **CONSEQUENCES OF NON-APPEARANCE OF PARTIES**

(1) Where in any proceeding before the Court, if either party, in spite of notice of hearing having been duly served on it, does not appear, when the matter is called on for hearing the Court may either adjourn the hearing of the matter to a subsequent day, or proceed *ex parte,* and make such order as it thinks fit.

(2) Where any order is made *ex parte* under sub-section (1), the aggrieved party may, within thirty days of the receipt of the copy thereof, make an application to the Court to set aside such order.

If the Court is satisfied that there was sufficient cause for non-appearance of the aggrieved party, it may set aside the order so made, and shall appoint a date for proceeding with the matter:

Provided that, no order shall be set aside on any such application as aforesaid, unless notice thereof has been served on the opposite party

32. **POWER OF COURT TO DECIDE ALL CONNECTED MATTERS**

Notwithstanding anything contained in this Act, the Court shall have the power to decide all matters arising out of any application or a complaint referred to it for the decision under any of the provisions of this Act.

33. **REGULATIONS TO BE MADE BY INDUSTRIAL COURT**

(1) The Industrial Court may make regulations consistent with the provisions of this Act and rules made thereunder regulating its procedure.

(2) In particular, and without prejudice to the generality of the foregoing power, such regulations may provide for the formation of Benches consisting of one or more of its members (including provision for formation of a Full Bench consisting of three or more members) and the exercise by such Bench of the jurisdiction and powers vested in them:

Provided that, no Bench shall consist only of a member, who has not been, and at the time of his appointment, was not eligible for appointment as a Judge of a High Court.

(3) Every regulation made under this section shall be published in the Official Gazette.

(4) Every proceeding before the Court shall be deemed to be a judicial proceeding within the meaning of sections 192, 193 and 228 of the Indian Penal Code, 1860.

(5) The Court shall have power to direct by whom the whole or any part of the costs of any proceeding before it shall be paid: *Provided that,* no such costs shall be directed to be paid for the service of any legal adviser engaged by any party.

34. **EXECUTION OF ORDER AS TO COSTS**

An order made by the Court regarding the costs of a proceeding may be produced before the Court of the Civil Judge within the local limits of whose jurisdiction any person directed by such order to pay any sum of money has a place of residence or business, or where such place is within the local limits of the ordinary civil jurisdiction of the High Court, before the Court of small Causes of Bombay, and such Court shall execute such order in the same manner and by the same procedure as if it were a decree for the payment of money made by itself in a suit.

35. **LAW DECLARED BY INDUSTRIAL COURT TO BE BINDING**

The determination of any question of law in any order, decision, or declaration passed or made, by the Full Bench of the Industrial Court constituted under the regulations made under section 33 shall be binding and shall be followed in all proceedings under this Act.

36. **AUTHORISED OFFICER TO APPEAR IN ANY PROCEEDING BEFORE COURT**

The State Government may authorise, and direct any officer of Government to appear in any proceeding before the Court by giving notice to such Court; and on such notice being given, such officer shall be entitled to appear in such proceeding and to be heard by the Court.

37. **POWERS OF INVESTIGATING OFFICERS**

(1) An Investigating Officer shall exercise the powers conferred on him by or under this Act, and shall perform such duties as may be assigned to him, from time to time, by the Court.

(2) For the purpose of exercising such powers and performing such duties, an investigating Officer may, subject to such conditions as may be prescribed, at any time during working hours, and outside working hours after reasonable notice, enter and inspect

a) any place used for the purpose of any undertaking;
b) any place used as the office of any union;
c) any premises provided by an employer for the residence of his employees; and shall be entitled to call for and inspect all relevant documents which he may

deem necessary for the due discharge of his duties and powers under this Act.

(3) All particulars contained in, or information obtained from, any document inspected or called for under subsection (2) shall, if the person, in whose possession the document was, so requires, be treated as confidential.

(4) An Investigating Officer may, after giving reasonable notice, convene a meeting of employees for any of the purposes of this Act, on the premises where they are employed, and may require the employer to affix a written notice of the meeting at such conspicuous place in such premises as he may order, and may also himself affix or cause to be affixed such notice. The notice shall specify the date, time and place of the meeting, the employees or class of employees affected, and the purpose for which the meeting is convened:

Provided that, during the continuance of a lock-out which is not illegal, no meeting of employees affected thereby shall be convened on such premises without the employer's consent.

(5) An Investigating Officer shall be entitled to appear in any proceeding under this Act.

(6) An Investigating Officer may call for and inspect any document which he has reasonable ground for considering to be relevant to the complaint or to be necessary for the purpose of verifying the implementation of any order of the Court or carrying out any other duty imposed on him under this Act, and for the aforesaid purposes the Investigating Officer shall have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908, (V of 1908) in respect of compelling the production of documents.

CHAPTER VIII

POWERS OF LADOUR COURT AND INDUSTRIAL COURT TO TRY OFFENCES UNDER THE ACT

38. POWERS OF LABOUR COURT IN RELATION TO OFFENCES

(1) A Labour Court shall have power to try offences punishable under this Act.

(2) Every offences punishable under this Act shall be tried by a Labour Court within the limits of whose jurisdiction it is committed.

39. COGNIZANCE OF OFFENCE

No Labour Court shall take cognizance of any offence except on a complaint of facts constituting such offence made by the person affected thereby or a recognised union or on a report in writing by the Investigating Officer.

40. POWERS AND PROCEDURE OF LABOUR COURTS IN TRIALS

In respect of offences punishable under this Act, a Labour Court shall have all the powers under the Code of Criminal Procedure, 1898, of Presidency Magistrate in Greater Bombay and a Magistrate of the First Class elsewhere, and in the trial of every such offence, shall follow the procedure laid down in Chapter XXII of the said Code for a summary trial in which an appeal lies; and the rest of the provisions of the said Code shall, so far as may be, apply to such trial.

Note

The reference to the (old) Code of Criminal Procedure Code may be read as a reference

to the Criminal Procedure Code, 1973.

41. **POWERS OF LABOUR COURT TO IMPOSE HIGHER PUNISHMENT**

Notwithstanding anything contained in section 32 of the Code of Criminal Procedure, 1898, it shall be lawful for any Labour Court to pass any sentence authorised under this Act in excess of its powers under section 32 of the said Code.

Note

The reference to s. 32 the (old) Code of Criminal Procedure Code may be read as a reference to s. 39 of the Criminal Procedure Code, 1973.

42. **APPEAL**

1) Notwithstanding anything contained in section 40, an appeal shall lie to the Industrial Court -
   a) against a conviction by a Labour Court, by the person convicted;
   b) against an acquittal by a Labour Court in its special jurisdiction, by the complainant;
   c) for enhancement of a sentence awarded by a Labour Court in its special jurisdiction, by the State Government.

2) Every appeal shall be made within thirty days from the date of the conviction, acquittal or sentence, as the case may be:

Provided that the Industrial Court may, for sufficient reason, allow an appeal after the expiry of the said period

43. **POWERS OF INDUSTRIAL COURT**

(1) The Industrial Court in an appeal under section 42 may confirm, modify, to, or rescind any order of the Labour Court appealed against, and may pass such order thereon as it may deem fit.

(2) In respect of offences punishable under this Act, the Industrial Courts shall have all the powers of the High Court of Judicature at Bombay under the Code of Criminal Procedure, 1898.

(3) A copy of the order passed by the Industrial Court shall be sent to the Labour Court.

Note

The reference to the (old) Code of Criminal Procedure Code may be read as a reference to the Criminal Procedure Code, 1973.

44. **INDUSTRIAL COURT TO EXERCISE SUPERINTENDENCE OVER LABOUR COURTS**

The Industrial Court shall have superintendence over all Labour Courts and may-

a) call for returns;
b) make and issue general rules and prescribe forms for regulating the practice and procedure of such Courts in matters not expressly provided for by this Act and in particular, for securing the expeditious disposal of cases;
c) prescribe form in which books, entries and accounts shall be kept by officers of any such Courts; and
d) settle a table of fees payable for process issued by a Labour Court or the Industrial Court.

45. **POWER OF INDUSTRIAL COURT TO TRANSFER PROCEEDINGS**

The Industrial Court may, by order in writing, and for reasons to be stated therein, withdraw any proceeding under this Act pending before a Labour Court, and transfer the same to another Labour Court for disposal and the Labour Court to which the proceeding is so transferred may dispose of the proceeding, but subject to any special direction in the order of transfer, proceed either *de novo* or from the stage at which it was so transferred

46. **ORDERS OF INDUSTRIAL OR LABOUR COURT NOT TO BE CALLED IN QUESTION IN CRIMINAL COURTS**

No order of a Labour Court or an order of the Industrial Court in appeal in respect of offences tried by it under this Act shall be called in question in any criminal court.

CHAPTER IX

PENALTIES

47. **PENALTY FOR DISCLOSURE OF CONFIDENTIAL INFORMATION**

If an Investigating Officer or any person present at, or concerned in, any proceeding under this Act willfully discloses any information or the contents of any document in contravention of the provisions of this Act, he shall, on conviction, on a complaint made by the party who gave the information or produced the document in such proceeding, be punished with fine which may extend to one thousand rupees.

48. **CONTEMPTS OF INDUSTRIAL OR LABOUR COURTS**

1) Any person who fails to comply with any order of the Court under clause (b) of sub-section (1) or sub-section (2) of section 30 of this Act shall, on conviction, be punished with imprisonment which may extend to three months or with fine which may extend to five thousand rupees.
2) If any person, -

a) when ordered by the Industrial Court or a Labour Court to produce or deliver up any document or to furnish information being legally bound so to do, intentionally omits to do so; or
b) when required by the Industrial Court or a Labour Court to bind himself by an oath or affirmation to state the truth refuses to do so;
c) being legally bound to state the truth on any subject to the Industrial Court or a Labour Court refuses to answer any question demanded of him touching such subject by such Court; or
d) intentionally offers any insult or causes any interruption to the Industrial Court or a Labour Court ,at any stage of its judicial proceeding, - he shall, on conviction, be punished with imprisonment for a term which may extend to six months or with fine which may extend to one thousand rupees or with both.

3) If any person refuses to sign any statement made by him, when required to do so, by the Industrial Court or a Labour Court, he shall, on conviction, be punished

with imprisonment for a term which may extend to three months or with fine which may extend to five hundred rupees or with both.

4) If any offence under sub-section (2) or (3) is committed in the view or presence of the Industrial Court or as the case may be, a Labour Court, such Court may, after recording the facts constituting the offence and the statement of the accused as provided in the Code of Criminal Procedure, 1898 forward the case to a Magistrate having jurisdiction to try the same, and may require security to be given for the appearance of the accused person before such Magistrate or, if sufficient security is not given, shall forward such person in custody to such Magistrate. The Magistrate to whom any case is so forwarded shall proceed to hear the complaint against the accused person in the manner provided in the said Code of Criminal Procedure.
5) If any person commits any act or publishes any writing which is calculated to improperly influence the Industrial Court, or a Labour Court or to bring such Court or amember or a Judge thereof into disrepute or contempt or to lower its or his authority, or to interfere with the lawful process of any such Court, such person shall be deemed to be guilty of contempt of such Court.
6) In the case of contempt of itself, the Industrial Court shall record the facts constituting such contempt, and make a report in that behalf to the High Court;
7) In the case of contempt of a Labour Court, such Court shall record the facts constituting such contempt, and make a report in that behalf to the Industrial Court; and thereupon, the Industrial Court may, if it considers it expedient to do so, forward the report to the High Court.
8) When any intimation or report in respect of any contempt is received by the High Court under subsections (6) or (7), the High Court shall deal with such contempt as if it were contempt of itself, and shall have and exercise in respect of it the same jurisdiction, powers and authority in accordance with the same procedure and practice as it has and exercises in respect of contempt of itself.

Note

The reference to the (old) Code of Criminal Procedure Code (in sub-section (4) above), may be read as a reference to the Criminal Procedure Code, 1973.

49. PENALTY FOR OBSTRUCTING OFFICERS FROM CARRYING OUT THEIR DUTIES AND FOR FAILURE TO PRODUCE DOCUMENTS OR TO COMPLY WITH REQUISITION OR ORDER

Any person who willfully, -

I. prevents or obstructs officers, members of the office staff, or members any union from exercising any of their rights conferred by this Act;
II. refuses entry to an Investigating Officer to any place which he is entitled to enter;
III. fails to produce any document which he is required to produce; or
IV. fails to comply with any requisition or order issued to him by or under the provisions of this Act or the rules made thereunder; shall, on conviction, be punished with fine which may extend to five hundred rupees.

50. **RECOVERY OF MONEY DUE FROM EMPLOYER**

Where any money is due to an employee from an employer under an order passed by the Court under Chapter VI, the employee himself or any other person authorised by him in writing in this behalf, or in the case of death of the employee, his assignee or heirs may, without prejudice to any other mode of recovery, make an application to the Court for the recovery of money due to him, and if the Court is satisfied that any money is so due, its shall issue a certificate for that amount to the Collector, who shall, proceed to recover the same in the same manner as an arrear of land revenue:

Provided that, every such application shall be made within one year from the date on which the money became due to the employee from the employer:

Provided further that, any such application may be entertained after the expiry of the said period of one year, if the Court is .satisfied that the applicant had sufficient cause for not making the application within the said period.

51. **RECOVERY OF FINES**

The amount of any fine imposed under this Chapter shall be recoverable as arrears of land revenue.

CHAPTER X

MISCELLANEOUS

52. **PERIODICAL RETURNS TO BE SUBMITTED TO INDUSTRIAL AND LABOUR COURTS**

Every recognised union shall submit to the Industrial Court and Labour Court on such dates and in such manner as may be prescribed periodical returns of its membership

53. **MODIFICATIONS OF SCHEDULES**

1) The State Government may, after obtaining the opinion of the Industrial Court, by notification in the Official Gazette, at any time make any addition to, or alteration in, any Schedule II, III or IV and may in the like manner, delete any item therefrom:

   Provided that before making any such addition, alteration or deletion, a draft of such addition, alteration or deletion shall be published for the information of all persons likely to be affected thereby, and the State Government shall consider any objections or suggestions that may be received by it from any person with respect thereto.

2) Every such notification shall, as soon as possible after its issue, be laid by the State Government before the Legislature of the State

54. **LIABILITY OF EXECUTIVE OF UNION**
Where anything is required to be done by any union under this Act, the person authorised in this behalf by the executive of the union, and where no person is so authorised, every member of the executive of the union shall be bound to do the same, and shall be personally liable, if default is made in the doing of any such thing.

Explanation: For the purpose of this section, the “executive of a union" means the body whatever name called to which the management of the affairs of the union is entrusted.

55. **OFFENCE UNDER SECTION 48(1) TO BE COGNIZABLE**
The offence under sub-section (1) of section 48 shall be cognizable.

56. **CERTAIN OFFICERS TO BE PUBLIC SERVANTS**
Investigating Officers, a member of the Industrial or Labour Court and a member of the staff of any such Court shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code, 1860.

57. **PROTECTION OF ACTION TAKEN IN GOOD FAITH**
No suit, prosecution or other legal proceeding shall lie against any person for anything which is in good faith done or purported to be done by or under this Act.

58. **PENDING PROCEEDINGS**
Any proceeding pending before the State Government or before any tribunal or any other authority, or any proceedings relating to the trial of offences punishable under the provisions of the Central Act or Bombay Act before the commencement of this Act shall be continued and completed as if this Act had not been passed and continued in operation, and any penalty imposed in such proceedings shall be recorded under such Central, or as the case may be, Bombay Act.

59. **BAR OF PROCEEDINGS UNDER BOMBAY OR CENTRAL ACT**
If any proceeding in respect of any matter falling within the purview of this Act is instituted under this Act, then no proceeding shall at any time be entertained by any authority in respect of that matter under the Central Act or, as the case may be, the Bombay Act; and if any proceeding in respect of any matter within the purview of this Act is instituted under the Central Act, or as the case may be, the Bombay Act, then no proceedings shall at any time be entertained by the Industrial or Labour Court under this Act.

60. **BAR OF SUITS**
No Civil court shall entertain any suit which forms or which may form the subject-matter of a complaint or application to the Industrial Court or Labour Court under this Act; or which has formed the subject of an interim or final order of the Industrial Court or Labour Court under this Act.

61. RULES

(1) The State Government may, by notification, in the Official Gazette and subject to the condition of previous publication, make rules for carrying out the purposes of this Act.

(2) Every rule made under this section shall be laid as soon as may be after it is made before each House of the State Legislature, while it is in session for a total period of thirty days which may be comprised in one session or in two successive sessions, and if, before the expiry of the session in which if is so laid or the session immediately following, both Houses agree in making any modification in the rule or both House agree that the rule should not be made, and notify such decision in the Official Gazette, the rule shall, from the date of publication of such notification, have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment, shall be without prejudice to the validity of anything previously done or omitted to be done under that rule.

SCHEDULE I

See Section 20 (2)]

The Industrial Disputes Act, 1947

1. In Section 3. to sub-section (1), the following proviso shall be added namely:

"Provided that, where there is a recognised union for any undertaking under any law for the time being in force then the recognised union shall appoint its nominees to represent the workmen who are engaged in such undertaking.

Explanation—In the proviso to sub-section (1), the expression 'undertaking' includes an Establishment'.

2. in Section 10. in sub-section (2), after "appropriate Government" insert "on such application being made by a union recognised for any 'undertaking under any law for the time being in force, and in any other case".

3. In Section 10-A-

a) in sub-section (1) after the words " workman" the words "and where under any law for the time being in force, there is a recognised union in respect of any undertaking, the employer and such recognised union" shall be inserted ;

b) to sub-section (3A), the following proviso shall be added namely:—

"Provided that, nothing in this sub-section shall apply, where a dispute has been referred to arbitration in pursuance of an agreement between the employer and the recognised union under-sub-section (1) of this section."

c) in sub-section (4A), after the words, brackets, figure and letter "sub-section (3A), the words "or where there is a recognised' union for any undertaking under any law for the time being in force and an industrial dispute has been referred to arbitration" shall be inserted.

4. In Section 18,—

a) to sub-section (1), the following proviso shall be added, namely:—

"Provided that, where there is a recognised union for any undertaking under any law for the time being in force, then such agreement (not being an agreement in respect of dismissal, discharge, removal, retrenchment, termination of service, or suspension of an employee) shall be arrived at between the employer and the recognised union only; and such agreement shall be binding on all persons referred to in clause (e) and clause (d) of sub. section (3) of this section".

b) in sub-section (3), after the words, figure and letter "Section 10-A" the words "or an arbitration in a case where there is a recognised union for any undertaking under any law for the time being in force" shall be inserted.

5. In Section 19,—

a) after sub-section (2), the following sub-section shall be added, namely:—

"(2A) Notwithstanding anything contained in this section, where a union has been recognised under any law for the time being in force, or where any other union is recognised in its place under such law, then notwithstanding anything contained in sub-section (2), it shall be lawful to any such recognised union to terminate the settlement after giving two months' written notice-to the employer in that behalf'.

b) to sub-section (7), the following shall be added, namely:—

"and where there is a recognised union for any undertaking under any law for the time being in force, by such recognised union."

6. In .Section 36, sub-section (1), the following shall be - added;, namely:.—

"Provided that, where there is a recognised union for any undertaking under any law for the time being in force, no workman in such undertaking shall be entitled to be represented as aforesaid in any such proceeding (not being a proceeding in which the legality of propriety of an order of dismissal, removal, retrenchment, termination or service, or suspension of an employee is under consideration) except by such recognised union."

SCHEDULE II

Unfair labour practices on the part of the employers

1. To interfere with, restrain or coerce employees in the exercise of their right to organize, form, join or assist a trade union and to engage in concerted activities for the purposes of collective bargaining or other mutual aid or protection, that is

to say—

a) threatening employees with discharge or dismissal, if they join a union ;
b) threatening a lock-out or closure, if a union should be organised;
c) granting wage increase to employees at crucial periods of union organisation, with a view to undermining the efforts of the union at organisation.

2. To dominate, interfere with, or contribute support-financial or otherwise-to any union, that is to say, -
   a) an employer taking an active interest in organising a union of his employees; and
   b) an employer showing partiality or granting favour to one of several unions attempting to organise his employees or to its members, where such a union is not a recognised union.
3. To establish employer sponsored unions.
4. To encourage or discourage membership in any union by discriminating against any employees, that is to say—
   a) discharging or punishing an employee because he urged other employees to join or organise a union ;
   b) discharging or dismissing an employees for taking part in any strike (not being a strike which is deemed to be an illegal strike under this Act) ;
   c) changing seniority rating of employees because of union activities;
   d) refusing to promote employees to higher posts on account of their union activities ;
   e) giving unmerited promotions to certain employees with a view to sow discord amongst the other employees, or to undermine the strength of their union;
   f) discharging office bearers or active union members, on account of their union activities.
5. To refuse to bargain collectively, in good faith, with the recognised union.
6. Proposing or continuing a lock-out deemed to be illegal under this Act.

SCHEDULE III

Unfair labour practices on the Part of Trade Unions

1. To advise or actively support or instigate any strike deemed to be illegal under this Act.
2. To coerce employees in the exercise of their right to self organisation or to join unions or refrain from joining any union, that is to say—
   a) for a union or its members to picketing in such a manner that non-striking employees are physically debarred from entering the workplace;
   b) to indulge in acts of force or violence or to hold out threats of intimidation in connection with a strike against non-striking employees or against managerial staff
3. For a recognised union to refuse to bargain collectively in good faith with the

employer.

4. To indulge in coercive activities against certification of a bargaining representative.
5. To stage, encourage or instigate such forms of coercive actions such as willful "go-slow", squatting on the work premises after working hours or "*gherao*" of any of the , members of the managerial staff.
6. To stage demonstrations at the residence of the employers or the managerial or other staff members

SCHEDULE IV

General unfair labour practices on the part of employers

Question:

Give the unfair labour practices on the part of an employer. (2 marks)B.U. Apr 2014

1. To discharge or dismiss employees;
   a) by way of victimisation;
   b) not in good faith, but in the colourable exercise of the employer's rights;
   c) by falsely implicating any employee in a criminal case on false evidence or on concocted evidence;
   d) for patently false reasons;
   e) on untrue or trumped up allegations of absence without leave;
   f) in utter disregard of the principles of natural justice, in the conduct of domestic enquiry or with undue haste;
   g) for misconduct of a minor or technical character, without having any regard to the nature of the particular misconduct or the past record of service of the employee, so as to amount to a shockingly disproportionate punishment.
2. To abolish the work of a regular nature being done by employees, and to give such work to contractors as a measure of breaking a strike.
3. To transfer an employee *mala fide* from one place to another, under the guise of following management policy.
4. To insist upon individual employees, who were on legal strike, to sign a good conduct bond, as a pre-condition to allowing them to resume work.
5. To show favouritism or partiality to one set of workers, regardless of merits.
6. To employ employees as *badlis,* casuals or temporaries and to continue them as such for years, with the object of depriving them of the status and privileges of permanent employees.
7. To discharge or discriminate against any employee for filing charges or testifying against an employer in any enquiry or proceeding relating to any industrial dispute.
8. To recruit employees during a strike which is not an illegal strike.
9. Failure to implement an award, settlement or agreement.
10. To indulge in acts of force or violence.

END