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### A critical analysis on efficacy of mechanism to industrial disputes resolution in India

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#### A B S T R A C T

The problem of industrial dispute is common to almost all the developed and developing countries of the world. Industrialization has tended to create a hiatus between management and workers, owing to the absence of workers ownership over means of production this gap has led to industrial friction and conflicts, which ultimately cause industrial disputes. Conflict resolution is an essential part of any well-functioning labour market and industrial relations system. This article highlights the legal and practical aspects of industrial dispute resolution in India. Presence of a powerful collective bargaining machinery and proactive communication between the management and the unions not only minimizes the grievances but also promotes healthy industrial relations.

#### Introduction

The Law Relating to industrial disputes, in this country, is known as 'industrial' law. Industrial disputes are disputes relating to an "industry". But the question, "what is 'industry'?" is the badger in the bag of industrial law. Its definition uses the most elastic and over-lapping terms as its constituents. Generally, employment disputes are divided into two categories: individual and collective disputes. Collective disputes can further be divided into two sub-categories: rights disputes and interests' disputes.

With respect to resolving these different types of disputes (leaving aside litigation

and other kinds of judicial action), there are essentially three options: conciliation, mediation and arbitration. The need to resolve the labour disputes efficiently, effectively and equitably for the benefit of all the parties involved and the economy at large.

#### International Labour Standards (Conventions and Recommendations)

The main ILO instrument dealing with dispute prevention and settlement is the Voluntary Conciliation and Arbitration Recommendation, 1951 (No. 92). It recommends that voluntary conciliation "should be made available to assist in the

prevention and settlement of industrial disputes between employers and workers.” It also recommends that parties should refrain from strikes or lockouts while conciliation or arbitration procedures are in progress, without limiting the right to strike.

Dispute resolution is further addressed under the Collective Bargaining Convention, 1981 (No. 154), which provides that bodies and procedures for the settlement of labour disputes. One objective of dispute resolution is in fact to promote the mutual resolution of differences between workers and employers and, consequently, to promote collective bargaining and the practice of bipartite negotiation. Also, 1967 (No. 130) addresses dispute resolution at the enterprise level, including rights disputes over alleged violations of collective agreements.

### **Origin and History of Industrial Disputes Resolution Mechanism**

The legislative history of industrial disputes can be traced from the year 1890. The earliest legislation in India was Bengal Regulation VII of 1819. Under this legislation the breach of contract treated as criminal offence and this was also followed by Merchant Shipping Act (I of 1859) and the Workmen’s Breach of Contract Act, 1860. However, the development and growth of central legislative measures to govern industrial legislation in India can be examined and studied from employers and Workmen’s Disputes Act, 1860 to the present Industrial Dispute Act, 1947 which is being followed now.

There were violent disturbances and conflicts and death of one of the contractors took place in the year 1859 consequent to disputes or differences between European Railway Contractors and their workmen in Bombay Presidency relating to the failure

and delay in payment of wages. In this connection on the request of the Bombay Government, the Government of India enacted the Employers and Workmen’s (Disputes) Act, 1860.

The Trade Disputes Act, 1929 was codified for five years as an experimental measure. The Act was amended in 1932 and was made permanent by the Trade Disputes (Extending) Act, 1934. Since 1937 the scope of trade disputes legislation was considerably extended both at the Centre and in a number of provinces, and substantial progress was made building up permanent machinery for the speedy and amicable settlement of industrial disputes. The Trade Disputes Amendment Act of 1938 provided for the appointment of conciliation officers charged with the duty of mediating in or promoting the settlement of trade disputes. The Act also included water transport and tramways under Public Utility Services and made the provisions concerning illegal strikes and lock-outs less restrictive.

The Second World War brought about rapid changes in the whole economic structure and also in the field of industrial relations. In May, 1942 another notification was issued, vesting much the same powers in the Provincial Governments, and in August Essential Services Maintenance Ordinance was promulgated prohibiting strikes and lock-outs without 14 days’ previous notice.

### **Dispute Resolution in the Indian Context**

In the Indian context, since disputes are resolved under the ID Act, the emergence of the non-union firms would have no effect on the dispute resolution framework of conciliation, arbitration and adjudication in some specific cases. Under section 2A of the ID Act, “where any dispute or difference

between that workman and his employer connected with, or arising out of, such discharge, dismissal, retrenchment or termination shall be deemed to be an industrial dispute notwithstanding that no other workman nor any union of workmen is a party to the dispute”.

In fact the fairness perceptions may stem from all three kinds of justice that constitute organizational justice; distributive justice which focuses on the fairness of distribution of outcomes, procedural justice, which is concerned about the fairness of the processes by which outcomes are distributed, and interactional justice that deals with the fairness of interpersonal interactions and communications. Moreover, despite the presence of several industrial acts, the grievance procedures do not receive much attention due to complexities arising out of inarticulate treatment and lack of understanding of issues in bargaining, joint consultation, and grievance redressal by all the actors in the industrial relations system. Unions protect workers directly from arbitrary discipline while providing management with a means of managing the work force that does not call on the use of overt sanctions since industrial action performed an additional voice function.

Based on the preceding discussion it appears that union density, employees' prolificacy to raise disputes, managements' propensity to make decisions unilaterally and employee attitudes such as intention to quit would be interlinked with both direct and indirect effects. It is therefore likely that union density would have direct effects on employees' prolificacy to raise disputes, management's propensity to take unilateral decisions and employee's intention to quit such that a high union density would be associated with high prolificacy on part of employees to raise disputes, low propensity

of management to take unilateral decisions and low intention to quit.

### **The objects of the Industrial Disputes Resolution Mechanism are given below:**

This study attempts to examine some vital dimensions of the industrial disputes:

1. To examine the types of industrial disputes in India;
2. To analyse the dominating causes of Industrial disputes;
3. To provide for prevention of industrial disputes through works committees;
4. To provide for investigating the industrial disputes through Court of Inquiry;
5. To provide for the settlement of industrial disputes through a three tier system of Labour Courts, Industrial Tribunals and National Tribunals;
6. To study the management attitude towards labour To impose prohibition on commencement or continuation of strike and lock out during specified period;
7. To provide for payment of compensation in case of lay – off, Retrenchment and Closure;
8. To define and prohibit the unfair labour practices.
9. Offering suggestions and implications for improvement.

### **Causes Consequences and Settlement of Industrial Disputes**

Industrial Disputes Act provides for machinery for just and equitable settlement of Industrial disputes by adjudication, negotiation and conciliation. It promotes measures for securing and preserving amity and good relations between employer and workmen. It helps prevention of illegal strikes and lockouts, and provides provision for relief to workmen in the case of layoff

and retrenchment. It promotes a base or collective bargaining also.

### **Causes of Industrial Disputes**

The problem of industrial unrest is inherent in the industrial system. The main features of industrial work anywhere are that (a) it involves division of labour; (b) it is a group activity; (c) it is carried under control. Broadly speaking, the causes of industrial disputes can be classified as: 1) Economic causes; 2. Management causes; 3. Political causes; a brief description of each is given below:

#### **1. Economic causes**

Economic causes include questions pertaining to wages, bonus and allowances, retrenchment of workmen by the employer rationalisation and automation, faulty retrenchment system, leave and so on. Low wages, irrespective of rising prices, demand for a rise in D.A., intolerable working and living conditions, issues pertaining to hours of work, etc. are some other economic causes that provoked a number of strikes in India. The worker factors responsible for industrial unrest have been: (1) Inter union rivalries, (2) Economic and political environment that exercise adverse effects on workers attitudes, and (3) Indiscipline amongst workers.

#### **2. Managerial causes**

Some of the causes of discontent are inherent in the industrial system, itself such as:

- (1) Workers do not get any opportunity for self-expression; or
- (2) Their social needs are not fulfilled; that is. the position of workers within in informal groups formed in industrial undertakings

and problems of conflict within the groups may not be taken into account.

(3)Lack of communication on one hand, between the workers and management may turn petty quarrels into industrial unrest and on the other; the problem of discipline in industrial units may assume serious dimensions. The other managerial factors responsible for industrial unrest have been as –

1. Mental inertia on the part of management and labour.
2. Management's general attitude of hatred towards their workers,
3. Lack of competence on the supervisor and other managers in human relations.
4. Management's desire to pay comparatively lesser amount of bonus or dearness allowance against the desire of workmen.
5. Efforts to introduce modernization without prior or appropriate environment.
6. Excessive work load and inadequate welfare facilities.
7. Defective policy of lay-off.
8. Denial of the workers right to recognize union.
- 9.Unfair practices like victimization or termination of services without assigning any reasons.
10. Lack of definite wage policy and stabilization of prices.
11. Lack of a proper policy of union recognition.
12. Denial of worker's right to organise, etc.

#### **3. Political causes**

Industrial disputes are partly political also. Some important political strikes I organized by industrial workers in India. Prior to independence, as early , there was a mass strike in Mumbai against the sentence of imprisonment strikes occurred on account of

actions taken against, for participating in demonstrations, trial of political leaders, etc. After the independence also, some strikes have occurred owing to agitations of political parties on questions like re-organisation action of States, National Language, etc. Percentage distribution of industrial disputes by causes as published by the Ministry of Labour.

### **Impact/Effect/Consequences of Industrial Disputes**

Industrial law is no exception to the shifting emphasis of the modern law towards statutory law. The Industrial Disputes Act, 1947 is therefore, the matrix, the charter, as it were, to the industrial law. This Act and other analogous State statutes provide the machinery for regulating the rights of the employers and employees to lock-outs and strikes and foster investigation and settlement of industrial disputes in peaceful and harmonious atmosphere by providing scope for collective bargaining by negotiations and mediation and, failing that, by voluntary arbitration or compulsory adjudication by the authorities created under these statutes with the active participation of the unions.

The consequences of Industrial disputes are many, a brief description is given

(1) Disturb the economic, social and political life of a country: When labour and equipment in the whole or any part of an industry are rendered idle by strike or lockout, national dividend suffers in a way that injures economic welfare.

(2) Loss of Output: Loss of output in an industry which is directly affected by a dispute, but other industries are also affected adversely, as stoppage of work in one

industry checks activity in other industries too.

(3) Decline in the demand for goods and services: Strikes reduces the demand for the goods that other industries make, if the industry in which stoppage has occurred is one that furnishes raw materials semi-finished goods or service largely used in the products of other industries.

(4) Lasting loss to the workers: There is a lasting injury to the workers in the form of work being interrupted due to the strikes which involves a loss of time which cannot be replaced. The wages are lost and the workers can least afford to lose them especially when the average earning of a worker is not very high.

(5) Increase in indebtedness: This increases the indebtedness among the workers and not only the old debts become heavier but fresh debts may also be incurred.

(6) Loss of health of family members: The workers and their family members also suffer from loss of health due to mental warrious resulting from loss of wages.

(7) Problem to consumers: Strikes and lockouts create problem to consumers also. Articles of their requirements are not available in time, and the prices of such articles reach high due to black marketing activities.

(8) Loss to the management/employer: When workers stop working, the plant and machinery remain idle. The fixed express are to borne by the employer even when the production stops. This way the employer suffers from great loss.

(9) Bad effect on labour relations: Strikes and lockouts bring bad effects on industrial relations. With the result the workmen and the employer always be in mental tension.

(10) Obstruction to economic growth: Strikes creates many kinds of violence which obstruct the growth of economy.

In the All India Bank Employees Association v. I. T, the Supreme Court held, "the right to strike or right to declare lock out" may be controlled or restricted by appropriate industrial legislation and the validity of such legislation would have to be tested not with reference to the criteria laid down in clause (4) of article 19 but by totally different considerations." Thus, there is a guaranteed fundamental right to form association or Labour unions but there is no fundamental right to go on strike. Under the Industrial Dispute Act, 1947 the ground and condition are laid down for the legal strike and if those provisions and conditions are not fulfilled then the strike will be illegal.

In Mineral Miner Union vs. Kudremukh Iron Ore Co. Ltd., it was held that the provisions of section 22 are mandatory and the date on which the workmen proposed to go on strike should be specified in the notice. In Gujarat Steel Tubes v. Its Mazdoor Sabha, (AIR 1980 SC 1896) Justice Bhagwati opined that right to strike is integral of collective bargaining. He further stated that this right is a process recognized by industrial jurisprudence and supported by social justice. Gujarat Steel Tubes is a three-judge bench decision and cannot be overruled by the division bench decision of T.K. Rangarajan v. Government of Tamilnadu and Others. (MANU/SC/0541/2003).

In the Rangarajan case the court had no authority to wash out completely the legal right evolved by judicial legislation. The scheme of the Industrial Disputes Act, 1947 implies a right to strike in industries. A wide interpretation of the term 'industry' by the courts includes hospitals, educational institutions, clubs and government departments. Section 2 (q) of the Act defines 'strike'. Sections 22, 23, and 24 all recognize

the right to strike. Section 24 differentiates between a 'legal strike' and an 'illegal strike'. It defines 'illegal strikes' as those which are in contravention to the procedure of going to strike, as laid down under Sections 22 and 23.

The general tests evolved for determination of the question as to "what is 'industry'?" have been ephemeral and elastic. After the decision of the Supreme Court Bangalore Water Supply and Sewerage Board vs. A.Rajappa [(1978) I.L.L.J.349] one may justifiably say that even the Supreme Court is "the Court of ultimate conjecture". In this case all the judges, in desperation, have unanimously cried for legislative reform of the definition of 'industry' clearly demarcating its contours.

The provision thereby implies that all strikes are not illegal and strikes in conformity with the procedure laid down, are legally recognized. Further, Justice Krishna Iyer had opined that "a strike could be legal or illegal and even an illegal Bangalore Water Supply and Sewage Board V. A.Rajappa AIR 1978 SC 548 strike could be a justified one". It is thus beyond doubt that the Industrial Disputes Act, 1947 contemplates a right to strike. It is for the judiciary to examine whether it is legal or illegal. Is the total ban on strikes post-Rangarajan not barring judicial review which itself is a basic structure of the Constitution?

The workers' right to strike is complemented by the employers' right to lock-out, thus maintaining a balance of powers between the two. However, the Rangarajan judgment, by prohibiting strikes in all forms but leaving the right to lock-out untouched shifts the balance of power in favour of the employer class.

### **Analysis of the definition**

**Industry** - Section 2(j) of the Industrial Disputes Act, 1947, as any business, trade, undertaking, manufacture, calling of employers, and includes any calling, service, employment, handicraft, industrial occupation or avocation of workmen. The first part says that 'industry' means any business, trade, undertaking, manufacture or calling of employers and the second part of the definition of 'industry' says that it includes any calling, service, employment, handicraft, or industrial occupation or avocation of workmen. The Courts have given different meaning to this concept at different times, and actually, the interpretation has always depended on predictions of individual Judges.

For the first time such a situation arose in the case of Budge Municipality Vs P.R. Mukerjee<sup>3</sup> when Mr. Justice Chandra Shekara Iyer of the Supreme Court was asked to decide whether the Municipality is an industry within the meaning of the Industrial Disputes Act, 1947. The fact of this case was that two employees of the Municipality who were the members of Municipality Workers Union were suspended by the Chairman on the charges of the negligence, insubordination and indiscipline. The workers were dismissed from the service saying that their explanations were unsatisfactory. The union questioned the dismissal and the Tribunal directed the workers reinstatement by making an award saying that suspension of two employees was of victimization. The Municipality under Article 226 of the Indian Constitution took the matter to the High Court. The petition was dismissed and leave was granted under Article 132(1) of the Indian Constitution to make an appeal to the Supreme Court.

The Supreme Court analyzed this situation in the light of the Australian Judgment given in Federated Municipal and Shire Council Employees Union of Australia Vs Melbourne Corporation and observed that through every activity in which the relationship of employer and employee existed commonly understood at an industry, but still a wider and more comprehensive interpretation has to be given to such words to meet the rapid industrial progress and to bring about industrial peace, and economy and a fair.

In the case of Madras Gymkhana Club, Employees Union Vs Management of Madras Gymkhana Club<sup>5</sup>, it was observed that "if the activity can be described as an industry with reference to the occupation of the employers, the ambit of the industry, under the force of the second part takes in the different kinds of activity of employees mentioned in the second part. But the second standing alone cannot define industry. By the inclusive part of the definition the labour force employed in any industry is made an integral part of the industry for the purpose of industrial disputes although industry is ordinarily something which employers create or undertake".

In Bangalore Water Supply Vs A. Rajappa, a seven Judges Bench of the Supreme Court exhaustively examined and considered the scope of 'industry' and prescribed the Triple test which has practically reiterated the test projected in Hospital Mazdoor Sabha case. The Triple test laid down in the Bangalore Water Supply case are that where there is

- a) systematic activity,
- b) organized by co-operation between employer and employee (the direct and substantial element is chimerical),
- c) for the production and/or distribution of goods and services calculated to satisfy

human wants and wishes, prima facie, there is an “industry”.

- i. Absence of profit motive or gainful objective is irrelevant, be the venture in public, joint, private or other sectors.
  - ii. The true focus is functional and the decision test is the nature of the activity with special emphasis on the employer and employee relations.
- d) If the organization is a trade or business, it does not cease to be one because of philanthropy animating the undertaking.

In view of the above points and the consequences of the decision given in the Bangalore Water Supply case activities that such as professions, clubs, educational institutions, cooperatives, Research institutes, charitable projects and other kindered adventures if they fulfill the above Triple test, cannot be exempted from the scope of section 2(j) of the Industrial Disputes Act, 1947.

**Workmen** - in section 2(s) falls in three parts; the first part gives a statutory meaning of ‘workman’. This part determines a ‘workman’ by reference to a person (including an apprentice) employed in an ‘industry’ to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work, for the hire or reward. It determines what a ‘workman’ means. The second part is designed to include something more in what the term primarily denotes. This part gives an extended connotation to the expression ‘workman’. The third part specifically excludes the categories of persons specified in clauses (i) to (iv) of this sub-section. Even if a person satisfies the requirements of any of the first two parts, he shall be excluded from the definition of ‘workman’ if he fails in any of the four categories in the third part. In the first part, the legal basis of the definition of ‘workman’ contained in section 2(s) the

Industrial Disputes Act, 1947 as in other statutes, remains the contract of employment between the employer and the employee. Unless there is a contract of employment between the two of employer and or in other words, there is a relationship of employer and employee between them, the definition of; workman; will not come into play.

### **Individual Dispute When Becomes Industrial Dispute**

The Supreme Court of India examined this concept in different cases and observed in the case of News Papers Limited Vs State Industrial U.P. and others. Whether a single man who is aggrieved by an action can raise industrial dispute. The Section 2(k) of the Industrial Disputes Act, 1947 provides that a dispute between employer and workmen i.e. plural form has been used, the Supreme Court of India specifically observed that “before insertion of section 2(A) of the Act an individual dispute could not per say be an industrial dispute, but it could become one if taken up by the trade union or a number of workmen. The provision of the Act leads to the conclusion that its applicability to an individual as opposes to dispute involving a group of workmen is excluded unless it acquires the general characteristic of an industrial dispute viz., the workmen as a body or a considerable section of them make common cause within the individual workmen”.

Like industry this term also has been interpreted and analyzed differently in different case situations by the Courts. Some of the Principles to judge the nature of this terms were evolved by Courts such as Kundan Textiles Vs Industrial Tribunal<sup>23</sup>. Here the Court relied on Convey Vs Wade; Jumburnna Coal Mines Vs Victorian Coal Mines Asson; GeorgeHudson Ltd., Vs Australian Timber Workers Union; D.W.

Banerji Vs P.R.Mukerji; CPT Service Ltd. Vs R.G.Patwardhan<sup>28</sup>; Dimakuchi Tea Estate Vs the Management; Bombay Union of Journalists Vs The Hindu; Workmen Vs Dharampal Premchand.

The following are some of the principles laid to examine the nature of the dispute by the above said Courts.

1. The dispute must affect large group of workmen or employers who have community of interest and the rights of these workmen must be affected as a class in the interest of common good. In other words, considerable section of employees should necessarily make common cause with the general lot.
2. The dispute should invariably be taken up by the industry union or by an appreciable number of workmen.
3. There must be a concentrated demand by the workers for redress and the grievance becomes such that it turns from individual complaint into the general complaint.
4. The parties to the dispute must have direct and substantial interest in the dispute, i.e., there must be some nexus between the union which espouses the cause of the workmen and the dispute. Moreover, the union must fairly claim a representative character.
5. If the dispute was in its inception an individual dispute and continued to be such till the date of its reference by the Government for adjudication, it could not be converted into an industrial dispute by support to the reference even of workmen interested in the dispute.

The whole controversy ended in the year 1965 and the situation was changed in cases of dismissals and retrenchments when the Parliament amended the Industrial Dispute Act, 1947 and added section 2 A, according to which, even the individual disputes relating to termination of service would now be called industrial disputes under the Act, notwithstanding whether they have been

taken up by any union or by a number of workmen. The section provides: Where any employer discharges, retrenches or otherwise terminates the services of an individual workman, any dispute or difference between that workman and employer connected with, or arising out of, such discharge, dismissal, retrenchment or termination shall be deemed to be an industrial dispute notwithstanding that no other workman nor any union or workmen is a party to the dispute.

Whether an outside union is competent to espouse the cause of workmen working in a particular establishment. If it is, then what should be the qualifications of that union and under what circumstances could it espouse the cause, it is enough that it possesses a representative character, notwithstanding other considerations, within the industry, for the maintenance of industrial peace and harmony. It is reasonably justified that the workmen of an industry who have a dispute with their employer become members of an outside union after the cause of action arose, simply to make that union qualified to espouse their cause.

In such issues Justice and fair play require that a dispute should be branded as an industrial dispute within the meaning of the Industrial Dispute Act, 1947 if only it affects the operations of the industry in any manner, irrespective of the persons involved. If it is likely to create a grave situation and if it shows impact adversely on production and industrial discipline, it has to be taken up as an industrial dispute, no matter whether the union takes it up or not. Espousal by outside unions should as far as possible be discouraged because that gives leverage to outside people to put unnecessary interference in an industry where they have no 'locus standi' otherwise. It would be better if the Parliament defines the term

‘industrial dispute’, in a detailed manner so as to leave little scope for diverse interpretations.

### **Procedure for Settlement of Industrial Disputes**

The Industrial Disputes Act, 1947 provides procedure for settlement of industrial disputes, which must be followed in all “public utility service”, has been defined in section 2 (n) of the Act so as to include “any railway, postal, telegraph or telephone service that supplies power, water and light to the public, any system of public conservancy or sanitation, any section of an industrial establishment on the working of which the safety of the establishment or the workmen employed therein depend and any industry which keeping in view the public emergency has been declared as such by the appropriate Government”.

As laid down in the Act a dispute should first go through the process of conciliation before it could be referred to the appropriate authorities for adjudication. Where any industrial dispute exists or is apprehended, the Conciliation Officer may or where the dispute relates to a public utility service and a notice under Section 22 has been given shall hold conciliation proceedings in prescribed manner.

Conciliation proceedings are deemed to have been started from the date on which a notice issued to the parties to appear before the conciliation officer who may meet them jointly or separately. The Conciliation Officer must submit his report to the Government within 14 days of the starting of conciliation proceedings.

During this period he tries to bring about a fair and amicable settlement between the parties to dispute. If a settlement arrived at, the Conciliation Officers will send a report

to the Government along with a memorandum of settlement duly signed by both parties. If no settlement is reached by the parties, the conciliation officer will submit his report to the appropriate Government stating the reasons for which he thinks no settlement could be arrived at as well as the facts of the case.

### **Action by the Government**

On receipt of the report from the Conciliation Officer, the Government will come to a decision on whether the circumstances and the facts of the case as such to justify a further reference. The Government has to arrive at ‘prima facie’ conclusion that the nature of the dispute justifies a further reference. If in the opinion of the Government, there is a scope of arriving at a settlement by further conciliation efforts, it may refer the case to the Board of Conciliation.

### **Collective Bargaining as a method of Settlement of Industrial Disputes**

Collective bargaining as such is one of the most developed in Indian history since independence, and deserves the attention of all who are concerned with the preservation of industrial peace and implement of industrial productivity. In the ‘laissez faire’ the employers enjoyed unfettered rights to hire and fire. In United States of America the workers have the right to organize and bargain collectively. In Japan the right to collective bargaining is guaranteed under their Constitution.

Collective bargaining in India is of late development and therefore in view of the above circumstances, the legislature in order to establish and maintain harmony and peace between labour and capital came out with a legislation named “The Industrial Disputes

Act, 1947” which provides for the machinery for the settlement of industrial disputes. This act has two main objects, first is the investigation and the second is the settlement. There are some routine criticism of the adjudicatory system i.e., delay, expensive Governmental interference in referrals and uncertain outcome. Therefore the parties to the industrial dispute are coming closure to the idea that ‘direct negotiations provide better approach to resolving key deference over wages and other conditions of employment.

### **Settlement Machinery of Industrial Disputes**

State intervention in industrial relations is essentially a modern development. The concern of state in matters relating to labour is a product of its obligations to protect the interest of industrial community, while at the same time fostering economic growth in almost all countries. The state has assumed powers to regulate labour relations in some degree or the other. In 1947, the Government of India passed the Industrial Disputes Act under which machinery for the preventions and settlement of the disputes was outlined. The Act as amended in 1956 has set up machinery for settlement of disputes. The present system of establishing industrial peace and to settle industrial disputes is as under:

#### **The Works Committee**

In the case of any industrial establishment in which 100 or more workmen are employed or have been employed on any day in the preceding 12 months, the appropriate Government may by general or special order require the employer to constitute in the prescribed manner a Works Committee consisting of representatives of employer and workmen engaged in the establishment. It shall be the duty of the Works Committee

to promote measures for securing and preserving amity and good relations between the employer and workmen and, to that end to comment upon matters of their common interest or concern and endeavour to compose any material difference of opinion in respect of such matters. The Committees attempt to remove causes of friction between employers and workers in the day-to-day working of the factory. They provide a forum for negotiations between employers and workers at the factory level.

In *Kemp & Company Ltd., Vs. their Workmen* that “The Works Committees are normally concerned with problems arising in the day to day working of the concern and the functions of the Works Committees are to ascertain the grievances of the employees and when occasion arises to arrive at some agreement also.

#### **Short comings**

The scope of the Works Committee as in Sec. 3 (ii) of the Industrial Disputes Act, 1947 is vague. Besides health, safety, welfare and human relations, the committees advise on a number of technical matters and are kept posted with the undertaking position of trade, sale and account sheets.

#### **Grievance Redressal Machinery**

The Industrial Disputes (Amendment Act), 2010 had substituted a new chapter for chapter II-B.

1. Every industrial establishment employing 20 or more workmen shall have one or more GRC for the resolution of disputes arising out of individual grievances.
2. The GRC shall consist of equal number of members from the employer and the workmen.

3. The chairperson of the GRC shall be selected from the employer and from among the workmen alternatively on rotation basis every year.

4. The total number of members of the GRC shall not exceed more than six. Provided that there shall be, as far as practicable, one woman member if the GRC has two members and in case the numbers of members are more than two, the number of women members may be increased proportionately.

5. Notwithstanding anything contained in this section, the setting up of GRC shall not affect the right of the workman to arise industrial dispute on the same matter under the provisions of this Act.

6. The GRC may complete its proceedings within 30 days on receipt of a written application by or on behalf of the aggrieved party.

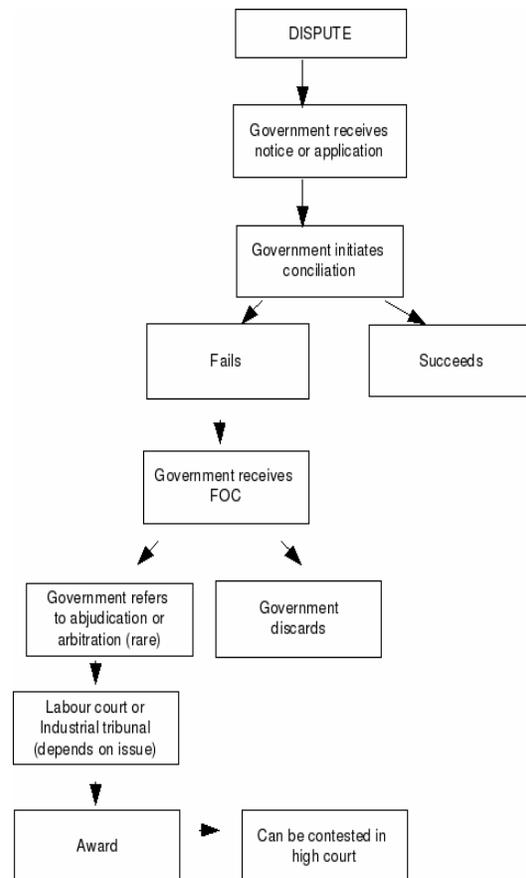
7. The workman who is aggrieved of the decision of the GRC may prefer an appeal to the employer against the decision; and the employer shall, within one month from the date of receipt of such appeal, dispose of the same and send a copy of his decision to the workman concerned.

8. Nothing contained in this section shall apply to the workmen for whom there is an established GRC in the establishment concerned.

### **Duties of Conciliation Officers**

The Conciliation Officer is required to submit his report within 14 days of the commencement of the conciliation proceedings, but the time for the submission of the report may be extended further on the written request of the parties to the dispute. Where a settlement is not reached, the appropriate Government, after considering the report of the conciliation officer, may

refer the dispute to a Board of Conciliation or Labour Court or Industrial Tribunal or National Tribunal as the case may be.



A Conciliation Officer may take appropriate steps for inducing the parties to a fair and amicable settlement of the dispute. If a settlement is arrived at during conciliation proceedings, he must send a copy of the report and the memorandum of the settlement to the Government.

In case no settlement is arrived at, he is required to send to Government, full report of the steps taken by him to resolve the dispute, and the reasons on account of which a settlement could not be arrived at.

### **Board of Conciliation**

Section 5 of the Industrial Disputes Act, 1947 provides for creation of Board of Conciliation which is simply an extension of conciliation officers' work. Unlike a Conciliation Officer, the board may not be a permanent body and can be set up as the occasion arises. It comprises of two or four members representing parties to the dispute in equal numbers and a chairman who has to be an "independent person". The Board has the status of a Civil Court and can issue summons and administer oaths.

### **References of Disputes to Board of Conciliation**

Where the appropriate Government is of the opinion that any industrial dispute exist or is apprehended, it may at any time, by order in writing, refer the dispute to a Board of Conciliation for promoting settlement. In case the parties to an industrial dispute make an application in the prescribed manner whether jointly or separately, for a reference of the dispute to a Board of Conciliation, the appropriate Government is required. Where the dispute is referred to the Board, the appropriate Government may prohibit the continuance of any strike or lock-out in connection with such dispute which may be in existence on the date of reference.

### **Duties and Powers of the Board**

When a dispute has been referred to the Board of Conciliation, it may take suitable steps to induce the parties to come to a fair and amicable settlement. If settlement is arrived at, the board is required to send a report and a memorandum of the settlement signed by the parties to the disputes to the appropriate Government. If no such settlement is arrived at, the Board is required to the appropriate Government a full report

setting forth the proceedings and steps taken by the board for ascertaining the facts and circumstances relating to the disputes and bringing about a settlement and the reasons on account of which a settlement could not be arrived at, and also its recommendations for the determination of the dispute. The board is required to submit report within two months of the date of the reference of the dispute or within shorter period as determined by the appropriate Government.

### **Court of Inquiry**

The appropriate Government is empowered to constitute a "Court of inquiry" as occasion arises, for the purpose of 'inquiry in to any matter appearing to connect with or relevant to an industrial dispute". Generally Court of Inquiry is constituted when no settlement is arrived at as a result of efforts made by the Conciliation Board. The idea of Court Inquiry is new in this Act and has been borrowed from the British Industrial Court Act, 1919. The Government can refer any single or more matter connected or relevant to the dispute or can refer whole to the Court which can be set up irrespective of consent of parties to dispute.

### **Labour Court**

Labour Court is one of the adjudication authorities set up under the Industrial Disputes Act, 1947 it was introduced by amending Act in 1956. Setting up of a Labour Court is at the discretion of the Government. It is the one man Court presided over by a person who has held either a judicial position in India. The function of labour Court is to adjudicate on matters referred to it is listed in the schedule II appended to the Act, which includes; The propriety or legality of an order passed by an employer under the standing orders; Discharge or dismissal of workmen

including re- instatement of or grant of relief to workmen wrongfully dismissed; Withdrawal of customary concession or privilege; Illegality or otherwise of a strike or a lock – out. All matters other than those provided in the Third Schedule appended to the Act.

### **Tribunals or Industrial Tribunals**

An Industrial Tribunal may be set up by the appropriate Government on a temporary or permanent basis for a specified dispute for industry. As a whole the Tribunal comprises of one person only. Generally, industrial disputes of major importance or industrial disputes which are important to the industry as a whole are referred to the industrial tribunals.

Thus appropriate Government may constitute one or more Industrial Tribunals for the adjudication of industrial disputes relating to any matter as specified either in second schedule mentioned above or in the third schedule appended to the Industrial Disputes Act, 1947 which includes ;

- a. Wages, including the period and mode of payment.
- b. Contribution paid or payable by the employer to a any provident or pension fund or for the benefit of the workmen under any law for the time being in force;
- c. Compensatory and other allowances.
- d. Hours of work and intervals.
- e. Leave with wages and holidays.
- f. Starting alteration or discontinuance.
- g. Classification by grades;
- h. Withdrawal of any customary concession or change usage;
- i. Introduction of new rules of discipline or alteration of existing rules, except in so far as they are provided in standing orders;
- j. Rationalization, standardization or improvement of plant or techniques which is likely to lead retrenchment of workmen.

k. Any increase or reduction in the number of persons employed or to be employed in any occupation or department or shift not occasioned by circumstances over which the employer has no control;

### **National Tribunals**

National Tribunals can be set up by the Central Government, involve questions of national importance industrial establishments situated in more than one State. If the matter under adjudication of National Tribunal is pending before a Court or Tribunal the proceedings relating to that matter which is pending before them will be deemed to have been quashed. State Governments are debarred from referring the matter under adjudication of National Tribunal to any Labour Court or Industrial Tribunal. The National Tribunal consists of one person only to be appointed by the Central Government.

### **Reference of disputes to adjudication authorities**

The appropriate Government may refer the dispute to a Labour Court Tribunal or National Tribunal for adjudication. The Labour Court is empowered to adjudicate upon matter specified in Second Schedule and an Industrial Tribunal on those specified in Second or Third Schedule.

Thus, any matter which is important for the industry as a whole and is listed in schedule ii or schedule iii maybe referred for adjudication to a Tribunal or Industrial. However, where a dispute relates to a matter specified in the third schedule, and is not likely to affect more than one hundred workmen, the appropriate Government may refer it to a Labour Court.

### **The procedure for the settlement of dispute**

(i) After negotiations have failed and before notice of strike or lock-out served, the parties may agree to voluntary arbitration and the commission will help the parties in choosing an arbitrator mutually concept able to them.

(ii) In case of essential industrial services when collective bargaining fails and when the parties to the dispute do not agree to arbitration, either party shall notify the Industrial Relations Commission (IRC) with a copy to the appropriate Government of the failure of negotiation where upon the IRC should adjudicate upon the disputes and its award shall be final and finding upon the parties.

(iii) In the case of non-essential industries services, following the failure of negotiations and refusal by the parties to avail of voluntary arbitration, the IRC after the receipt of notice of direct action may offer the parties its good offices for settlement.

After the expiry of notice period, if no settlement is reached, the parties will be free to resort to direct action. If direct action continues for 30 days it will be incumbent on the IRC to intervene and arrange for settlement of the dispute.

(iv) When a strike or lock-out commences, the appropriate Government may move the commission to call for the termination of the strike or lock-out on the ground that its continuance may affect the security of the state, national economy or public order and it after hearing the Government and the parties concerned the commission is so satisfied. It may for reasons to be recorded call on the parties terminate the strike lock-out and the file their statements before it. There upon, the commission shall adjudicate on the dispute.

(v) It would be possible to arrange transfer of cases from the National IRC to the State IRC and vice versa under certain conditions.

(vi) The commission will have powers to pay or withhold payments for strike or lockout under certain circumstances.

(vii) All collective agreements should be registered with IRC.

(viii) An award made by the IRC in respect of dispute raised by the recognized union should be binding on all workers in the establishments and the employers.

Labour Courts may be appointed in each state to deal with interpretation and implementations of award, claims arising out of rights and obligations under the labour laws and such other matters as may be assigned to these Courts.

### **Suggestion**

a) To suggest rationalization of existing laws relating to labour in organized sector;

b) To suggest an “umbrella” legislation for ensuring a minimum level of protection to the workers in the unorganized sector;

c) That it is necessary to provide a minimum level of protection to managerial and other employers too, against unfair dismissals or removals. This has to be brought adjudication by Labour Court or Labour Relation Commission or Arbitration;

That all these laws are judicially constituted into a single law called the Labour Management Relations;

d) That the changes in the labour laws be accompanied by a well-defined social security package that will benefit all workers, be they in the organized or unorganized sector and should also cover those in administrative managerial and other categories which have been excluded from the purview of the term ‘worker’.

e) Between arbitration and adjudication, the better of the two and would like, the system of arbitration to become the accepted mode

of determining dispute which is not settled by parties themselves.

f) A system of Labour Courts, Lok - Adalaths and Labour Relation Commission is the integral adjudicatory system in labour matters.

g) System of Lok Adalaths by the commission to be pursued to settle disputes speedily.

## **Conclusion**

This article is an informative guide to the practical aspects of industrial dispute settlement in India. By providing the information regarding the legal framework of industrial relations laws, this article should prove helpful to those firms which are contemplating the establishment of businesses or factories in India. Salient features of the dispute settlement processes in India.

It can be said that formal grievance procedures arise from structural and environmental determinants of increased dependency of organizational participants. While voice and fairness perceptions help in minimizing and resolving grievances it would appear from a social exchange perspective that fair and supportive employers would benefit when circumstances become less favourable. Employee involvement enables employees to respond to solve problems, act at work within their own authority while providing them with a high degree of self esteem, empowerment, learning environment, opportunities for personal growth and development, and a sense of achievement.

The article also demonstrates the salient weaknesses of Indian labor legislation. First, the legislation allows for a multiplicity of unions thereby resulting in an intense inter-union rivalry that generates a large number

of industrial disputes. Second, the dispute resolution machinery has increasingly failed to bring about timely agreements and reduce the number of workdays lost due to work stoppages. Finally, there seems to be a need to encourage parties to use collective bargaining, rather than rely on third party dispute resolution.

Whether the Indian government will introduce these changes is yet unknown. It is only a matter of time before the current industrial relations laws receive increased attention, since the labor relations climate also plays an important role in the decision of foreign investors to establish industries in India.

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