CHAPTER I

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A. STATEMENT OF THE PROBLEM AND ITS SIGNIFICANCE

Trade Unions, the workers' associations or organizations in industries, have ceaselessly endeavoured to secure social, economic and political justice for their members, the underdogs, of course, through relentless battles over the decades. They have been fighting against social, economic and political inequalities, against their employers' unfair labour practices and for the universally recognized rights of their members to enjoy the dignity and status as human beings. As late Shri.V.V.Giri, the former President of our Republic and a trade union leader of great eminence, has observed, "Trade Unionism", after all, seeks to ameliorate "the economic and social status of the workers through industrial action and parliamentary legislation". The instrumentality that can promote trade unionism is the trade union. Today, Trade Unions have come to symbolise workers' right to organise, to put up their demands collectively and to resort to strike when their fair and legitimate aspirations and demands are not fulfilled by their employers.

Trade Unions can accomplish their goals only when they enjoy the support of the majority of the workmen in the industries where they are functioning. Only a strong, virile, representative union, recognised by its employer, can engage in a meaningful, effective collective bargaining process. Unfortunately, the "archaic

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"Trade Unions Act, 1926 does not provide for the recognition of the most representative union in the industry for the purposes of Collective Bargaining. Incidentally, it should be noted that around 88 to 90% of the Indian Labour is almost unorganised, even today, that is, after fifty and odd years of Independence. So, we can speak of meaningful collective bargaining only in organised sectors like, banking, insurance, railways, road transport, textiles, jute, and a few others.

Now, the questions are: Should the Trade Unions, even in organised sectors, resort to indiscriminate strikes to attain their legitimate goals? Would not a strike be detrimental to the interests of the workers, the employers, the community and the nation? Can any industry, wherever it may be, survive and flourish if it is plagued by frequent strikes or lockouts? Can any country prosper if production and productivity are hampered because of internecine disputes between workmen and their employers? Should not the workers and employers realise that they are partners in production and are engaged in a co-operative endeavour to produce goods or make their services available to the community of which they are a part? Should they not be conscious that mutual trust, confidence, understanding in each other and co-operative efforts on their part would serve their own goals, while subserving the predominant interests of the community or society? Should not they understand that co-operation and not confrontation, amity and not animosity would alone promote the well-being of all concerned? Should they not appreciate
that the Constitutional goal of social justice would be unachievable if because of frequent strikes and lockouts, their industries, in the face of keen competition as a consequence of liberalisation, privatisation and globalisation, would have to shut down their shutters? Should not the industrial employers and workers take cognizance of the fact that an industry, a co-operative enterprise, cannot survive by employers alone or workers alone? Should they not heed the remarks of Victor Feather that only increased production and productivity would alone benefit the workmen, the employers and would enable whatever government in power to provide basic amenities like roads, street-lighting, bridges, hospitals, primary health centres and the like to its citizenry with the aid of the revenue flowing into its coffers from increased production on the industrial front?

Despite the foregoing pertinent queries, strikes and lockout cannot be ruled out for ever, nor can be wished away. In the words of Bernard Gournay, there is only one place in the whole world which is free from conflicts and that is the graveyard.2

A well-knit family where love exudes from all towards each other is also not free from quarrels or disputes. Therefore, in an industry, where the workmen and the employers are guided or motivated by different, dissimilar interests, ambitions or aspirations, disputes are endemic.

An industrial dispute or for that matter any dispute establishes a cause. And the cause in industries may sprout from the acts done by either of the partners in production or from their omissions. Generally an employer invests in an industry to earn profits. To meet this end, his emphasis would naturally be on keeping the product competitive by minimising the overhead costs. To achieve this, he may even compel his work-force to make compromises regarding their working and living conditions, facilities and amenities to which they are legally entitled. On the other hand, workers especially in organised sectors may, at times, demand more than what they deserve. Such an attitude, Ramanujam says, would not augur well for the industry, the workers and the community. Therefore, the causes for an industrial dispute may also emanate from lack of understanding between the disputants about each other’s position.

An industrial dispute is a dispute between employers and workmen, or workmen and workmen or employers and employers and its subject matter relates to employment, non-employment, the terms of employment or the conditions of labour, of any person. Here, “any person” does not mean any body or every body in this wide world but would include past, present and future workmen or one in whose employment, non employment ..., a large number or an appreciable number of his fellow workers are directly and substantially interested.³

Normally, the subject-matter of industrial disputes relates to discharge, dismissal, retrenchment of workmen, wages, compensation and other allowances, hours of work and rest intervals, leave with wages and holidays, bonus, profit sharing, provident fund, gratuity, classification by grades, rationalisation, withdrawal of customary concession or privilege, application and interpretation of Standing Orders, etc.  

Unresolved disputes would dislodge industrial peace. Strikes and lockouts, thereafter, would hamper production and productivity in the industrial unit concerned. When consumers who have got accustomed to a particular product realise that the product is scarce or unavailable, they may look for alternative products manufactured by some other industrial employer. So, an industrial unit which is plagued often by strikes or lockouts may lose some or all of its consumers once for all. This may lead to decline in the sale of its products and cause concern about its survival. Further, in this era of Liberalisation, Privatisation and Globalisation where competition is keen, an employer who cannot offer quality products at competitive prices may have to eventually close his unit.

As Ray Sanderson has pointed out: “Manufacturing industry is becoming more and more competitive and is likely to remain so. Industrial action is a self-defeating method of resolving conflict and employees have got to identify with the

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4. Schs. II, III.
interests of the employers, because that interest is survival". Markets, today, are flooded with a variety of goods and it has become difficult for the consumers to make a choice. Frequent recurrence of industrial disputes resulting in strikes and lockouts on the one hand, and, the global competition, on the other, has made the employer's position unenviable.

In the circumstances, the employer may either be obliged to prune his work force by resorting to rationalisation or standardization schemes or decide to close down the undertaking itself rendering the entire work-force jobless, depending upon the magnitude of the problem he is facing. Further, no one could ignore the consequences of competition leading to lay-off, retrenchment and closure of industries and its debilitating and, at times, ruinous impact upon the work-force. A workman over whose head the "Damocles Sword of Retrenchment" hangs may not be in a proper mental state to give out his best. As a corollary, if the workers "are forced to face moral, mental and health problems", the casualties would be "their skills, capability and human development". Also, introduction of new technologies in a country like ours where labour is abundant ("a labour surplus


economy”) may render “a host of traditional skills redundant”\(^7\) and the employers, instead of retraining, redeployment, prefer to discharge workers with old skills, and recruit new ones”.\(^8\) Moreover, computerisation, automation, robotisation, along with restructuring of undertakings, undoubtedly, have aggravated the unemployment problem. In any of the situations referred to above, it is the workers who have to bear the brunt. Once they are out of job, financial problems engulf the entire family leaving their children without proper care, education and other basic amenities.

Further, the Directive Principles of State Policy enshrined in Part IV of the Constitution which have a bearing on its Preambular Precepts of social and economic justice ordain that the State shall initiate measures to promote the welfare of the people by establishing “a social order where justice- social, economic and political shall inform all the institutions of national life”,\(^9\) and to minimise the inequalities in income and eliminate inequalities in status,\(^10\) to pursue policies and programmes which would ensure to its citizens adequate means of livelihood, equitable distribution of material resources to subserve common good, to prevent concentration of wealth and means of production to the common


\(^8\) Ibid.

\(^9\) Art. 38 (1).

\(^10\) Art. 38 (1) (2).
detriment, to ensure equal pay for equal work for both men and women, to ensure that citizens shall not engage in avocations not suited to their age or strength,\textsuperscript{11} to secure the right to work, to education and to public assistance in cases of unemployment, old age, sickness and disablement and in other cases of undeserved want,\textsuperscript{12} to ensure just and humane conditions of work and for maternity relief,\textsuperscript{13} to secure for ... industrial workers a living wage, conditions of work which shall ensure a decent standard of life ...,\textsuperscript{14} and to promote workers’ participation in the management of industrial undertakings,\textsuperscript{15} would remain “teasing illusions”.

The questions, therefore, are: How should the industrial disputes that arise be resolved? What machineries are to be set up to pre-empt them, to reduce their incidence and for their expeditious resolution to ensure that the wheels of production would not grind to a halt or when ground could be put into motion as quickly as possible so that the productive processes in industries shall go on without much disruption? To seek answers for these questions, we should advert to the premiere legislation in the area of Labour-Management Relations, namely, the \textit{Industrial Disputes Act}, 1947 (herein after “the Act”).

\textsuperscript{11} Art. 39.
\textsuperscript{12} Art. 41.
\textsuperscript{13} Art. 42.
\textsuperscript{14} Art. 43.
\textsuperscript{15} Art. 43A.
The predominant object underlying the Act is "investigation and settlement of disputes". Accordingly, it provides for the constitution of Courts of Inquiry to discover causes responsible for internecine industrial disputes so that the Appropriate Government, armed with relevant facts, can contemplate suitable curative and remedial measures to thwart or pre-empt such disputes.

Maintenance of industrial peace and harmony and preservation of amity and good relations between the employers and workmen, being an important concern, the Act provides for the establishment of Works Committees "to comment upon matters of … common interest or concern and endeavour to compose any material difference of opinion in respect of such matters".

The Act seeks to pre-empt disputes and also illegal strikes and lockouts.

The Act has been described as a "benign measure to preempt industrial action, to establish machineries for dispute resolution to ensure that the productive partners' energies do not go wasted in counter-productive battles [and that industrial peace] would create a climate of good-will". Incidentally, it may be noted that the Supreme Court, in *Hindustan Hosiery Industries*, has declared that

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17. S.3 (2). [Emphasis Supplied].
18. *Supra* note 3 at 506. See S.9. "Notice of Change" (No unilateral change of the scheduled conditions of service by employer without notice and without waiting for 21 days).

the Act is intended to promote Social Justice through the mechanisms provided therein. Accordingly, it seeks to resolve industrial disputes that may erupt in industries through the machineries of Conciliation,\textsuperscript{21} Arbitration,\textsuperscript{22} Adjudication\textsuperscript{23} if there be a deadlock in the negotiation process and Collective Bargaining proves futile. It also seeks to prevent situations which might exacerbate or aggravate the disputes already in existence.\textsuperscript{24}

The Act can also be described as a beneficial piece of legislation since it provides for a measure of social security when workmen are forced to face involuntary unemployment as a consequence of Lay-off, Retrenchment or Transfer or Closure of their establishments.\textsuperscript{25}

The focus in this Dissertation, however, is upon those machineries contemplated under the Act which are professedly designed to keep the wheels of production in industries moving and, more importantly, upon the machineries of Conciliation, Arbitration and Adjudication with a view to discover whether these machineries have succeeded in accomplishing the predominant statutory object, namely, expeditious resolution of industrial disputes whenever they crop up.

\textsuperscript{21} Ss. 4, 5, 12, 13.
\textsuperscript{22} S.10A.
\textsuperscript{23} Ss. 7, 7A, 7B, 10, 11, 17, 18, 19, 20.
\textsuperscript{24} S.33 "conditions of service, etc. to remain unchanged under certain circumstances during pendency of proceedings".
\textsuperscript{25} Chapters VA and VB.
It may be, incidentally, noted that the Act of 1947 has been periodically amended “in the light of experiences gained from the operation of the Act, judicial decisions and also the Industrial Relations policy of the government”.26 It should be mentioned that the 1982 Amendment, in its Statement of Objects and Reasons, expressly declared, inter alia, that one of the main factors prompting the Amendment was “to ensure speedier resolution of industrial disputes by removing procedural delays”.27 Thus, there has been an express acknowledgement that the machineries, referred to above, have not resolved disputes as expeditiously as contemplated, earlier.28

The 1984 Amendment was enacted to clarify certain doubts expressed by the Courts on the validity of certain provisions of the Act.29

27. The Industrial Disputes (Amendment) Act, 1982.
28. The 1984 Act amended the definition of 'retrenchment' under section 2(00) consequent upon the Supreme Court’s decision, in Hariprasad Shivashankar Shukla v. Divelkar, A.I.R. 1957 S.C. 121, according a very broad interpretation of the erstwhile definition. Further, the provisions relating to closure of industries, enacted in 1976, had been struck down by the Supreme Court in Excel Wear v. Union of India, A.I.R. 1979 S.C. 25, as being violative of the Fundamental Right of the employer. The 1984 amendment sought to amend the closure provisions in the light of Supreme Court’s decision.
29. The 1988 Amendment sought to revamp the Industrial Relations Law in a major way. It, inter alia, sought to provide for the Constitution of bargaining councils, restructuring the adjudicatory machinery by “establishing Industrial Relations Commissions [or Special Industrial Relations Commissions] for the adjudication and trial of industrial and labour disputes… to promote and maintain industrial harmony....” Currently, the Second National Commission on Labour is engaged in proposing Reforms in the area of Labour-Management Relations.
B. JUSTIFICATION FOR STUDY

A critical study of the provisions relating to the machineries of Works Committees, Conciliation, Arbitration and Adjudication in the light of the judicial decisions disclose that they are not geared up to inspire confidence in the parties and to promote the statutorily dictated objects.

It is not enough if a legislature guided by lofty ideals enacts a statute and provides therein mechanisms to resolve the disputes. If the machineries are not manned by personnel that inspire confidence in the disputants, they are doomed.

According to Ramanujam, the Works Committees "seem to be non-starters in many cases".30 Despite statutory compulsions, many establishments care little to constitute Works Committees. To comply with the statutory obligation, some employers may constitute Works Committees but they rarely meet and the irony is "where they meet, they are unable to reach unanimity on any subject, and where a rare unanimity is reached, it is not implemented !".31 The reasons furnished for non-implementation are that "they involve huge financial outlay, non-availability of raw-material, lack of co-operation, friction and local politics, procedural difficulties, and matters beyond the financial or administrative powers of the head

of the establishment etc ...."32 The foregoing compel the conclusion that “an insignificant role is attributed to these committees in the realisation and maintenance of proper labour-management relations and through it the achievement of organizational goals”.

As regards the Conciliation Machinery, when the Executive appoints enforcers of Labour Laws as Conciliation Officers, obviously, one of the disputants may not trust such a body or may not be inclined to repose confidence in it and may not be prepared to assist the body in promoting a settlement. For example, if the labour officer being appointed as a conciliation officer has not enforced the provisions of the law beneficial to the labour strictly and is found to be hobnobbing with the employer or his deputies, then, the trade union would be disinclined to enter the conciliation process with a determination to reach a settlement though such a Conciliation Officer offers his aid and assistance to promote settlement. Consequently, his perambulations from employer’s camp to the Trade Union’s camp may prove to be frustrating which would undermine the most important underlying object of the Act, that is, the expeditious resolution of the dispute that has arisen.

On the other hand, if the Labour Officer, appointed as Conciliation Officer has endeavoured to implement the provisions of the Law beneficial to the labour,

32. Management and control in Public Enterprises, 192, 196, quoted in Dhyani, S.N., Trade Unions And The Right To Strike 300, 301.
33. Id., at 213, 214.
then, the employer who has not been able to reap huge profits may not be inclined to co-operate and assist the Conciliation Officer to promote a settlement expeditiously.

The feelings of the disputants that the conciliation machinery is a hurdle that has to be necessarily crossed in order to have the dispute referred to adjudication may also dampen the spirit of the conciliation agency. Further, the possible awareness on the part of the disputants that the conciliator is ill-equipped because of lack of technical qualifications in terms of education, training and experience, ignorance of relevant customs and practices in the particular industry, cultural peculiarities of their region may not prepare them to participate in the conciliation process with a determination to reach a settlement. It may be surprising to note that the disputants themselves have almost, unanimously, expressed that the conciliation machinery under the Act has been a failure.33A

Added to the foregoing, some of the statutory provisions themselves are vague and puzzling. For example, when the disputants in the course of conciliation process arrive at an agreement to refer the dispute to voluntary arbitration, would such an agreement fall under the definition of "settlement" or would it amount to an arbitration agreement under section 10A? Further, does the

Act contemplate that an implied agreement by conduct or acquiescence such as accepting and enjoying the benefits by members who were not parties in the conciliation process is one which the definition of ‘settlement’ under section 2(p) encapsulates? Can a court consider a settlement in bits and pieces and hold some parts good and acceptable and others bad? Would a ‘settlement’ be valid when the disputants do not conform to the statutorily prescribed format and when it is not signed by the persons duly authorised as required under Rule 58? Can the validity of a ‘settlement’ be attacked in certiorari proceedings under Article 226 of the Constitution?

While promoting a fair and an amicable settlement of an industrial dispute, when the issues in the dispute, say, for example, relate to demands for increase in wages, dearness allowance, bonus, etc., does the Act contemplate the submission of numerous failure reports in respect of unsettled issues? In that event, in case there is no settlement over the demand for increase in wages, does the Act oblige the conciliation machinery to submit a Failure Report in respect of the same and command it to continue the proceedings in respect of other issues? In such a situation, would it never become functus officio? As a consequence, can the right to strike, though much regulated under the Act, be indefinitely postponed and thereby rendered a paper right?

Political unionism has been the bane of Indian Trade Union Movement. As Karnik has observed: “Indian Trade Unions were born in politics and live and grow in politics”.35 Multiple unions are a common feature in Indian industries. The Act declares that a settlement arrived at in the course of conciliation proceedings binds all the workmen in the establishment.36 If in an establishment, the majority union breaks off during the pendency of conciliation proceedings and demands that a Failure Report be transmitted by the Conciliation Officer, should the conciliation officer oblige? Later, when a settlement is arrived at in the course of conciliation proceedings, between the minority union and the employer, would the workmen of the majority union be bound by it since the settlement has been arrived at in the course of conciliation proceedings?

As stated earlier, under the Act, a settlement arrived at in the course of conciliation proceedings binds all the workmen employed in the establishment and also those who would get subsequently employed during the period of the operation of the settlement. But, surprisingly, the notice to terminate such a settlement, although entered into between a minority union and the employer in the course of conciliation proceedings, would have to served in writing not by the minority union but by the majority of persons bound by it.37 The Act does not contain provisions relating to recognition of trade unions nor does it lay out the

36. S.18 (3).
37. S.19 (2), (6), (7).
procedure for determining the representative character of a trade union. So, how can proper compliance with the statutory dictate that it is the majority union that must serve the notice for the termination of the extant settlement be ensured?

After a settlement is terminated, what would be the basis for regulating the relations between workmen and employer when no new settlement or award is in sight? Would the terminated settlement govern the relations between the workers and the employer until it is replaced by a new settlement or award?

Further, the judicial responses to the challenges against the conciliation machinery’s actions, inactions, against settlements on the ground that they are unjust and unfair, against claims that the settlements promoted do not bind all the workmen, etc., would, after a critical study, enable us to determine whether the judiciary while deciding the issues presented to it has been guided by the principle of *ad hocism* or whether its responses are geared to make the conciliation machinery more effective.

If the disputants are not able to thrash out their differences at the bargaining table, the machinery of conciliation can be invoked by them. If the efforts of the conciliation machinery also prove futile, the Act enables the disputants to have recourse to Voluntary Arbitration. The Act, while declaring that an arbitrator under section 10A may be chosen or selected by the parties, does not spell out the qualifications to be possessed by such a person when he has not been the Presiding Officer of an adjudicatory body. The question then would be; whether a lay
person not conversant with the intricacies of Labour Management Relations be appointed as an arbitrator? It should also be noted that the 10A arbitrator can arbitrate not only over “Grievance disputes” but also over “Interest Disputes”, that is, “Economic Disputes”. Therefore, the 10A arbitrator enjoys a wide jurisdiction.

The questions for analysis in the area of Arbitration are: When can the disputants resort to Arbitration under the Act? What is the procedure to be followed by them? Would non-compliance with the statutorily laid down procedure render their arbitration agreement void? What have the Courts ruled in this regard? Are the Courts’ decisions consistent? Should 10A arbitrator be clothed with section 11A powers? Whether the publication of the arbitrator’s award is mandatory? Can it also be modified or rejected as in the case of an award rendered by an adjudicatory body under the Act? Should the Arbitrator give reasons for his award? Whether such an award is subject to the Writ lancet? In view of the nomenclature assigned to section 10A, that is, “Voluntary Arbitration” and the relative provisions under the Act, what is the status enjoyed by the 10A arbitrator? That is, whether he is a Voluntary Arbitrator or Statutory Arbitrator? Whether the Government, which has periodically stressed upon the significance of the system of Arbitration as a better mechanism for voluntary resolution of disputes, has devised ways and means to establish an effective and inspiring Arbitration Machinery to promote the statutory goals?
Further, the remarks of G.Ramanujam, a veteran trade union leader, though made in 1973, have not lost their vitality and provide ample support to justify the study being undertaken. According to Ramanujam, "the conciliation machinery has become a fifth-wheel to the coach, arbitration is not available for one reason or the other and ... adjudication stands condemned as a time-consuming futile exercise at litigation".\footnote{G.Ramanujam, supra note 33A.}

If parties to the dispute are unable to resolve their disputes through Collective Bargaining or Conciliation or even through Arbitration, then, the Appropriate Government may refer the dispute to an adjudicatory body. The adjudicatory bodies envisaged under the Act are the Labour Courts, Industrial Tribunals and the National Tribunals.\footnote{Ss. 7A, 7B, 7C.}

V.V.Giri has argued that Compulsory Adjudication has "cut at the roots of the trade union organization" and, consequently, at the collective bargaining process.\footnote{Giri V.V., Industrial Relations 11 (1955).} He has further contended that such adjudication engenders "an attitude of suppressed hostility in one party and unconcealed satisfaction in the other\footnote{Ibid.} and this would lead to "a transient truce but not lasting peace".\footnote{Ibid.}

The above views of a veteran trade unionist deserve critical analysis, no doubt. But, within the parameters of the Dissertation, the questions that need be

\footnotesize\textsuperscript{38} G.Ramanujam, supra note 33A.\footnotesize\textsuperscript{39} Ss. 7A, 7B, 7C.\footnotesize\textsuperscript{40} Giri V.V., Industrial Relations 11 (1955).\footnotesize\textsuperscript{41} Ibid.\footnotesize\textsuperscript{42} Ibid.
addressed and answered are: What are the qualifications prescribed under the Act for the appointment of Presiding Officers of these adjudicatory bodies to ensure that these bodies act efficiently and effectively to achieve the objects underlying the Act, that is, speedy resolution of the dispute referred ensuring dispensation of social justice? Whether the procedure laid out under the Act and the Rules promulgated thereunder are conducive to expeditious resolution of the disputes referred? Whether the discretionary power conferred upon the Appropriate Government is static or undergoes situational modifications and may become non-est in certain situations? Whether the Appropriate Government can decide to make a reference of the dispute after having refused to do so earlier? Although the Act empowers the Appropriate Government to make a reference “at any time”, can the Government after initial refusal/s make an volte face and make a reference at the instance of a trade union after a long lapse of time without extending a “Hearing” to the employer? Would not extraordinarily delayed referrals frustrate the statutory object of expeditious resolution of the disputes and place the employer on the horns of a dilemma because the initial refusals may prompt him to conclude that the dispute raised by the trade union is without merit in the opinion of the Government?43 What have been the judicial responses in such situations?

Do the post-1980 judicial decisions of the Supreme Court relating to the provisions conferring discretionary power upon the Appropriate Government under the Act seek to devastate the discretion which the legislature had, in its wisdom, reposed in the appropriate Government? In the guise of an interpreter, can the Court rewrite the provision which is not only "intelligible" but has been drafted "intelligently"? Since the Government has, in its various Five Year Plan Reports, recommended that Collective Bargaining be promoted and strengthened, should the adjudicatory machinery under the Act be dismantled or revamped to ensure the accomplishment of the statutory goals?

Some of the incongruities in the Act have been pointed out. It is true that "our laws are not perfect and final, and cannot be so in a dynamic society; they are not always even intelligible, and if intelligible, not always intelligently made". This study endeavours to highlight the confusing and incongruous provisions in the Act and to draw the attention of the legislature to introduce curative, clarificatory and even substantive amendments so that the predominant object of the statute can be expeditiously and substantially achieved.


It has been stated earlier that the trade unions seek to achieve, *inter alia*, Social Justice. An important underlying object of the Act is also to promote social justice. At this juncture, a brief reference may be made to one of the predominant goals of our Constitution.

The Supreme Law of India is enshrined in the Indian Constitution, a written document. The Preamble to the Constitution, now its integral and inseparable part, and the Directive Principles of State Policy embodied in Part IV of the Constitution,\(^\text{46}\) amply demonstrate the concern of the founding fathers for the promotion of social justice. The Preamble declares, *inter alia*, that the Government should endeavour to secure for all its citizens – justice, social, economic and political.

The Preamble and the Directive Principles impose an uncompromising obligation on the State to endeavour ceaselessly to secure and promote social justice. As Justice Khanna has observed, denial of social justice might jeopardise political freedom.\(^\text{47}\) In the words of Justice Gajendragadkar, social justice should be regarded as a “living concept of revolutionary import” since it sustains and promotes rule of law and sanctifies the ideal of a welfare state.\(^\text{48}\) While Justice Koka Subba Rao asserts that social justice is “certainly the objective of the Indian

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\(^{46}\) Arts. 38, 39, 41, 43, 43A.


Constitution", 49 Justice Krishna Iyer describes, social justice as “the ideological signature of the Indian Constitution”.

In the light of the foregoing, it is necessary that a critical review of the machineries functioning under the Act and the relative legislative provisions be undertaken to find out whether these bodies have succeeded in promoting the statutory objects and the Constitutional goal of social justice.

C. SCOPE OF STUDY

The focus in this Dissertation is upon the three predominant machineries under the Act, namely, Conciliation, Arbitration and Adjudication. Consequently, the statutory provisions relating to the above machineries are critically reviewed. Further, a critical review and analyses of the decisions of the Supreme Court and the High Courts, upto December 2001, in respect of challenges in the areas of Conciliation, Arbitration and Adjudication over their duties, “settlements” and “Awards”, are dealt with.

It may be noted that the elementary cannon of statutory interpretation dictates that a statute should be read as a whole. When the Act is so read, the discerning critic would probably appreciate that the fundamental object of the Act, that is, preservation of industrial peace and harmony, preemption of disputes, avoidance of strikes, expeditious settlement of disputes that arise would be better

served if the smouldering disputes are not given a chance to burst into flames. Therefore, in this study, the machinery of Court of Inquiry whose Report, a treasure house of facts, which would equip the Appropriate Government to initiate appropriate curative, remedial measures to pre-empt or reduce the incidence of disputes is also included. Further, the Works Committees which signify and acknowledge one of the Directive Principles of State Policy, namely, Workers' Participation in the Management of undertakings, contemplated under the Act with a view to reduce tension on the industrial front, it is submitted, cannot be ignored. Because, a critical analysis of the provisions relating to the duties of the Works Committees, the jurisdiction within which they can operate and the issues or matters over which their decisions or resolutions cannot be regarded as final would, probably, pave the way for a responsive and responsible relationship between the Works Committees and the trade unions which alone can don the role of Collective Bargaining Agents in the industrial arena.

D. METHODOLOGY EMPLOYED

Law cannot operate in a vaccum. A legislative enactment signifies, often, a response to a manifest or an imminent or an intelligently perceived problem. As Wortley has observed, rightly, any law cannot be "perfect and final, and cannot be so in a dynamic society...."51 In the elegant words of Justice Cardozo: "The rules and principles of case law have never been treated as final truths, but as working

hypotheses, continually retested in those great laboratories of the law, the courts of justice...." Thus, a periodic evaluation and assessment of the substantive provisions bearing upon the main subject-matter of this Dissertation are warranted to determine whether the law enacted has succeeded in achieving its main objectives and what measures are necessary to make it effective in case the law has not been able to deliver the desired results.

The present research work is concerned with the "Dispute-Settling Machineries" under the Industrial Disputes Act, 1947 and a critical review thereof with a view to recommend reforms or changes in the extant law. This cannot be undertaken without reference to the substantive statutory provisions, the Rules promulgated thereunder, the judicial decisions bearing upon the same. Basically, this research is doctrinal in nature. Doctrinal method would be of primary concern for a legal researcher because of the exclusive normative character of the discipline of law which seeks to promote stability and certainty of law and prompts to pursue social values. It is worthwhile, at this point, to recall what S.N.Jain has said to highlight the importance of doctrinal research in the area of legal research:

... What distinguishes law from other Social Sciences (and law is a Social Science on account of the simple fact that it regulates human conduct and relationship) is its normative character. This fact along with the fact that stability and certainty of law are desirable goals and social values to be pursued, make doctrinal research to be of

primary concern to a legal researcher. Doctrinal research, of course, involves analysis of case law, arranging, ordering and systematising legal propositions, and study of legal institutions, but it does more—it creates law and its major tool (but not the only tool) to do so is through legal reasoning or rational deduction ....

The present research, in a way, is also analytical and critical. It relies on Primary Sources like the Statutory Enactments, Rules promulgated thereunder, Decisions of the Supreme Court and the High Courts and Secondary Sources like recognised Text Books, News Papers, Periodicals etc.

E. SCHEME OF THE DISSERTATION

The scheme of the Dissertation is as follows:

The Second Chapter spells out the salient features of the Industrial Disputes Act, 1947 – The Mother of all Labour Legislations.

It is essential to know what constitutes an ‘industry’, and what kinds of disputes fall under the definition of ‘industrial dispute’ and what categories of persons employed in an industry would come within the definitional purview of ‘workmen’ under the Act. Because, unless the establishment is an “industry” and the dispute is an “industrial dispute” and the employees raising the dispute are

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54. S. 2 (j).
55. S. 2 (k).
56. S. 2 (s).
"workmen", the machineries like, Conciliation, Arbitration and Adjudication cannot be set in motion. Hence, a broad overview of the key definitions, like, 'Industry', 'Industrial Dispute', and 'Workmen' has been incorporated in the Third Chapter.

An industrial dispute establishes a cause. The cause may relate to what has been done or not done either by the workmen or employer. A Court of Inquiry may explicitly indicate the cause in its Report and thereby render the job of any other dispute-settling machinery, like the adjudicatory body, easier. An incontestable Report of the Court of Inquiry would enable the adjudicator to administer an equitable award. Also, the Report of the Court of Inquiry would help the Appropriate Government to decide the question of reference of an industrial dispute to one of the adjudicatory authorities and also to withdraw the permission granted for closing down of an undertaking if employer's malafides, while seeking such an order, are established. Therefore, the Fourth Chapter deals with the constitution, powers and duties of the Court of Inquiry and also issues, such as, where the Appropriate Government makes a reference of an industrial dispute simultaneously to an adjudicatory body and a Court of Inquiry, would the proceedings before a Court of Inquiry come to an end when the adjudicatory body renders an award; Whether the government's move to dispense with the machinery of Court of Inquiry through an Amendment proposed in 1988 is justified.
Considering workers as a mere commodity or a factor of production in industries is a thing of the past. Workers now resent employers’ unilateral impositions. They wish to join hands with their employers in the managerial prerogative process of decision-making. The Act, therefore, provides for the constitution of ‘Works Committees’ in certain categories of industries “to promote measures for securing and preserving amity and good relations between the employers and workmen, and to that end, to comment upon matters of their common interest or concern, and to endeavour to compose any material difference of opinion in respect of such matters”. This provides a back door entry for the concept of workers’ participation in management— a Constitutional mandate through which the ultimate goal of paving the way for industrial democracy would be achieved. Hence, the Fifth Chapter contains an overview of the concept of ‘Participative Management’, the Government’s resolve to involve the trade unions in the decision-making process in industries and a critical analysis of the statutory provisions relating to the constitution, duties and powers of Works Committees. Further, a discussion on issues like, whether trade unions and works committees complement each other, whether the very constitution of works committee should be scoffed at, whether the constitution of Works Committees would pave the way for extinction of trade unions and whether a duly constituted works committee can supplant or supercede a trade union functioning in the industry, is also included in this Chapter.
The Sixth Chapter covers "conciliation", its meaning, difference between conciliation and mediation, types of conciliation, comparison of Indian conciliation process with countries, like, the U.S.A., Canada, the U.K., etc. Further, a critical evaluation of the provisions bearing upon conciliation under the Act, in the light of judicial decisions, would follow. In addition, the issues, pointed out earlier\textsuperscript{57} in respect of this machinery have also been discussed in this Chapter.

In the Seventh Chapter, provisions relating to Voluntary Arbitration provided under the Act are explained in detail. Further, the question whether the system of voluntary arbitration contemplated under the Act affects collective bargaining process is considered. Moreover, in the light of judicial interpretations, the controversial issues,\textsuperscript{58} pointed out earlier regarding Voluntary Arbitration are also critically evaluated in the present Chapter.

The Eight Chapter relates to Adjudication. In this Chapter, an attempt has been made to plug the loopholes pointed out, in the earlier part of the Dissertation,\textsuperscript{59} regarding the constitution of Adjudicatory Authorities, the adequacy of statutory qualifications prescribed for the persons manning these authorities. Also, questions relating to the appropriate Government's discretionary

\textsuperscript{57} Supra, pp 14-17.

\textsuperscript{58} Supra, pp 17-18 for the issues pointed out in respect of Voluntary Arbitration Machinery.

\textsuperscript{59} Supra, pp 20-21 for the questions raised regarding the Adjudicatory Machinery.
power to refer an 'industrial dispute' to one of these bodies and, more importantly, the way this power has been regulated in the light of Judicial Precedents have been dealt with.

The Final Chapter incorporates the Conclusions drawn from the study and also Recommendations for effectuating amendments to make the machineries for dispute-resolution more effective so that they can better promote social justice which has been described as the ideological signature of the Indian Constitution.