CHAPTER – III Industrial Relations Laws in India –
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3.1. INDUSTRIAL RELATIONS LAWS IN INDIA: AN ANALYTICAL STUDY

An effective and rational settlement of industrial disputes is a precondition for smooth development and prospects of the Society.

Maintaining industrial peace is as important for a worker as it is for an employer. Disputes inflict damages on both sides and industrial unrest has its fatal consequences on the economy of a country. Litigations cause wastages of money and time at the cost of harmony. From a dynamic point of view disputes pose problems for rationalizing labour and capital.

The duration of disputes can and should be reduced through appropriate regulatory and legal mechanism.

Industrial relations in India are regulated by three major Acts:

i) The Trade Unions Act, 1926 - to ensure collective bargaining rights.

ii) The Industrial Employment (Standing order) Act, 1946. To ensure terms and conditions of the employment.

iii) The Industrial Disputes Act, 1947. To ensure the settlement of Industrial Disputes through State intervention.

3.1.1 THE TRADE UNIONS ACT, 1926: ANALYSIS

Object and Scope:
The main object of the Act is to register trade unions. The Act provides immunity from civil and criminal liability to trade unions Executive and members for
bonafide trade union activities. Trade Union is the Institution acting as the instruments to ensure collective bargaining against the mighty employers.

The Act is a statutory recognition to the right of association and the collective bargaining. The Trade Unions provides for registration of Trade Unions Act, 1926 provides for registration of Trade Unions although the Act does not make registration compulsory, Registration is necessary to be entitled to the benefits provided for the unions under the Act.

Main provisions – The main provisions of the Trade Unions Act, 1926 relates to (i) registration of unions (ii) rights and privileges, and (iii) obligations and liabilities of registered trade unions.

**Registration of Unions**

Under the provisions of the Trade Unions Act, 1926 and Trade Unions Regulations framed thereunder, any seven or more members of a trade union may apply in the prescribed manner to the Registrar of Trade Unions for registration of the union. The application must be accompanied by a copy of the `Rules` of the Union. The `Rules` shall provide for certain matters as set out in Section 6 of the Act such as the name of the union and its object, admission of members, creation of general fund, subscription rate, the Executives of the union, amendment of the Rules etc. At least half of the total number of the office bearers of a registered union must be persons actually engaged in the industry to which the union belongs. By an Amending Act passed in 1964 and enforced since April, 1965 persons convicted of offences involving moral turpitude are debarred from becoming office bearers or members of the executive of a registered trade union.
If the Registrar is satisfied that the union has complied with the requirements of the Act, he shall register the union in the prescribed manner and issue a certificate of registration in favour of the union.

The Registrar may proceed to withdraw or cancel the certificates of registration of a union if he is satisfied that the certificate was obtained by practising a fraud or issued out of a mistake or that union has ceased to exist or willfully violated the provisions of the certified Rules by invoking the provisions of the Act.

There is no bar to registration of an omnibus union under the Act. Employers' Associations are also registrable. Central Trade union organisations such as C.I.T.U., A.I.T.U.C., I.N.T.U.C., U.T.U.C., T.U.C.C., H.M.S., B.M.S., N.F.I.T.C, etc. are however, not registered under this Act, but each of them has a large number of affiliated registered trade unions.

**Administration and enforcement:**

The Act is administered by the State Governments which are required to appoint Registrars of Trade Unions to look after the proper compliance of the provisions of the Act.

3.1.2. **THE INDUSTRIAL EMPLOYMENT (STANDING ORDERS) ACT, 1946** : - ANALYSIS

**Object and Scope:**

The object of the Act is to regulate the conditions of recruitment, discharge, disciplinary action, holidays, etc. of the workers employed in industrial undertakings/establishment wherein 100 or more workers are employed, or were employed on any day of the preceding 12 months. Under the Act employers are required to define precisely the conditions of employment in industrial
establishments and to make such conditions known to the workmen employed therein. In order to widen the coverage of the Act, an Amendment Act was passed in 1961, which empowers the appropriate Govt. to extend its provisions to industrial establishments employing less than 100 persons after giving them not less than two months notice of its intention to do so as well as to exempt any establishment or classes of establishments from all or any of the provisions of the Act.

**Main provisions:**

The main provisions of the Act relate to (i) procedure for submission of draft Standing orders (ii) conditions for certification (iii) date of operation and display of these orders (iv) procedure for modifications and (iv) machinery for the implementation of the Act.

The certified standing orders should contain every matter set out in the schedule such as, (i) classification of workmen e.g. permanent, temporary, apprentice, probationary or budlies (ii) manner of intimating workmen periods and hours of work, holidays, pay days and wage rates (iii) shift working (iv) attendance and late coming (v) conditions of procedure in applying for, and the authority which may grant, leave and holiday (vi) requirement to enter premises by certain gates, and liability to search (vii) closing and re-opening of sections of the Industrial establishments and temporary stoppages of work and the rights and liabilities of the employees and workmen arising therefrom (viii) termination of employment and the notice thereof to be given by employer and workmen (ix) suspension or dismissal for misconduct, and acts or omissions which constitute misconduct (x) means of redress for workmen against unfair treatment or wrongful exactions by the employer or his agents and/or servants and (xi) any other matter which may be prescribed.
In West Bengal, the State Govt. empowered by an Amendment to the Act, has made the Act applicable to all industrial establishments in the State having 50 or more workmen.

**Implementation & Administration:**

The machinery for the implementation of the Act consists of the certifying officer and the Appellate authority. The Labour Commissioner, wherever appointed, otherwise an officer appointed for the purpose by the appropriate Government, has to discharge the functions of the certifying officer.

The ‘Appellate Authority’ is an industrial court wherever it exists, or in its absence, any authority appointed for the purpose by the appropriate Govt.

As regards the application or interpretation of Standing orders, Section 13A of the Act provides that an employer or employee may refer the question to any of the Labour courts constituted under the I.D. Act, 1947 to whom such powers have been delegated by the appropriate Govt. Such courts are required to give an opportunity to the parties concerned of being heard and give their decision which will be final and binding on them.

The administration of the Act is the responsibility of the Central Government only in respect of the undertakings in the Central sphere. In respect of undertakings falling in the State sphere, the administration of the Act is the responsibility of the State Government.
3.1.3 THE INDUSTRIAL DISPUTES ACT, 1947 : ANALYSIS

Object and Scope:

The Industrial Disputes Act, 1947 was passed in March, 1947 repeating the provisions legislation on the subject viz. The Trade Dispute Act, 1929.

This Act is a comprehensive measure adopted by the Central Government with a view to improve industrial relations. It provides a machinery for peaceful settlement of industrial disputes and for the establishment of works Committee to promote harmonious relations between the employers and workers. The Act introduced the principle of compulsory arbitration and prohibited strikes without notice in public utility services. It also provides for the first time two new institutions, viz., (i) works committees consisting of representatives of employers and employees in undertakings employing 100 or more workers, and (ii) Industrial Tribunal for the adjudication of Industrial disputes.

Though the Act is mainly for the workers in the organised sector there are certain provisions which are also applicable to workers in the un-organised sector.

In order to remove some short comings noticed in the working of the Act, the Central Government has amended the Act from time to time. The Industrial Disputes (Amendment and Miscellaneous provisions) Act, 1956 introduced far reaching changes in the original Act. It (i) streamlined the adjudication machinery by providing for a three-tier system for ensuring expeditious settlement of disputes at the appropriate levels, (ii) abolished the Labour Appellate Tribunals (iii) remove the difficulties experienced by employers in the operation of Section 33 of the Act. (iv) incorporated provision for voluntary reference of disputes to arbitration (v) made provision for enforcement of agreements reached between the parties (vi) enhanced the penalty provision so as to ensure implementation of awards, and (vii) added five more industries viz.
banking, cement, defence establishments, services in hospitals and dispensaries, and fire brigade service to the schedule of the original Act which may be declared to be public utility services; (viii) enlarged the definition of workman.


This Act provides mechanism to regulate industrial relations. The objectives are:-

(1) Securing and preserving good relation between employer and worker;
(2) Investigation and settlement of industrial disputes;
(3) Promotion of collective bargaining;
(4) Protection of workers against unfair labour practices;
(5) Improving conditions of workers;
(6) Avoiding disruption of industrial production.
(7) Relief of workers in the matter of lay off and retrenchment.
(8) Ensuring social justice to employers and workmen.

3.1.4. ADJUDICATION SYSTEM UNDER I. D. ACT : A CRITICAL ANALYSIS

Works Committee : Section 3 of the Industrial Disputes Act, 1947 provides for works committee; as follows:-

(1) In the case of any industrial establishment in which one hundred or more workmen are employed or have been employed on any day in the preceding twelve months, the Appropriate Govt. may by general or special order require the employer to constitute in the prescribed manner a works committee consisting of representatives of employers and workmen engaged in the establishment so however that the number of representatives of workmen on the committee shall not be less than the number of representatives of the
employer. The representatives of the workmen shall be chosen in the prescribed manner from among the workmen engaged in the establishment and in consultation with their trade union, if any, registered under the Indian Trade Unions Act, 1926.

(2) It shall be the duty of the worker 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 matter.

Works Committee is not intended to supplement or supersed the unions for the purpose of collective bargaining. They are not authorised to consider real or substantial changes in the conditions of service. Their task is only to smooth away fictions, that may arise between the workmen and the management in day-to-day work. They cannot decide any alteration in the conditions of service by rationalisation. If the workman's representatives on the works committee agree to a scheme of rationalisation, that is not binding either on workers or on the mills.

3.1.5 COURTS OF ENQUIRY

SECTION 6 PROVIDES FOR COURTS OF INQUIRY AS FOLLOWS:

(1) The appropriate Government may as occasion arises by notification in the official gazette, constitute a court of inquiry for inquiring into any matter appearing to be connected with or relevant to an industrial dispute.

(2) A court may consist of one independent person or of such number of independent person as the appropriate Government may think fit and where a
court consists of two or more members, one of them shall be appointed as the chairman.

(3) A court, having the prescribed quorum, may act not with standing the absence of the chairman or any of its members or any vacancy in "its" member.

(4) Provided that, if the appropriate Government notifies the court that the services of the chairman have ceased to be available, the court shall not act until a new chairman has been appointed.

Both the institutions i.e. works committee and the courts of enquiry remains only prescriptive in nature and the Industrial Relation System neither utilized them appropriately nor the judiciary insisted the industries to infuse blood in these institutions.

3.1.6. ADJUDICATION OF INDUSTRIAL DISPUTES: AN EVALUATION

Before analysing the adjudication system, we may discuss the concept of 'Industrial Dispute' under the Industrial Dispute Act, 1947.

Section 2(k) of the Industrial Disputes act, 1947 defines Industrial disputes in the following way:-

'Industrial Dispute' means any dispute or difference between employer and employee, or between employers and workmen or between workmen and workmen which is connected with the employment or non-employment or the terms of employment or with condition of labour, of any person;

The definition of an 'industrial dispute' has remained unchanged since the inception of the Industrial Disputes Act, 1947. Along with the definition of 'Industry', 'Aappropriate Government' and Workmen' in Section 2(j), 2(a) and Section 2(s), respectively, it forms the basic framework of the Act. The dispute
or difference, to come within the purview of Act must be industrial, that is, must relate to 'industry' as defined in Section 2(j) of the Act.

The Amendment Act of 1982 substituted the definition of 'Industry' considering the recommendation of the first National Commission on Labour and the interpretation given to the term by the Supreme Court in its judgement in Bangalore water supply and sewerage board Vs. A. Rajappa case which is the current law on the subject as the amendment has not yet been brought into force. In the amendment under the Act of 1982, certain modifications have been made to narrow down the wide amplitude of the industry. Since, the amendment is not yet become law, the terms and guidelines laid down by the Supreme Court in the Bangalore Water Supply case still hold the field.

Prior to enactment of Section 2A by the Industrial Disputes Amendment Act, 1965, sponsorship of a dispute involving an individual workman by a union or at least by a substantial number of workmen working in the establishment was considered essential to convert an individual dispute into an industrial dispute.

Section 2A has changed all this in respect of a dispute or difference arising out of a discharge, dismissal, retrenchment or termination of service of an individual workman.

A number of Supreme Court decisions envisaged that the whole scheme of the Industrial Disputes Act is related to collective disputes and not individual disputes. Section 2A is an exception to this scheme.

INTRODUCTION OF SECTION 11-A

The introduction of Section 11-A has brought about a sea-change in the practice of disciplinary matters affecting an employee vis-à-vis employer in an industrial establishment.
In any human organisation, where people work together, the need for a disciplinary action manifests itself sometime. In an Industrial establishment, disciplinary action is a normal feature of its working. Till the enactment of the Industrial Disputes Act, in the sphere of employer-employee relationship, an employer’s will was the last word and the final law.

The Industrial Disputes Act made possible a scrutiny of an employer’s action in disciplinary matters by an independent agency. There were, however, limitations on such scrutiny.

The Supreme Court had summarized the extent of interference by a Labour Court or an Industrial Tribunal under the Industrial Disputes Act in the Indian iron and Steel Co. Ltd. and Anr. V. Workmen\textsuperscript{5} in these words.

"In case of dismissal of a worker for his misconduct a court or a Tribunal will interfere (i) when there is a want of good faith (ii) when there is victimization or unfair Labour practice (iii) when management has been guilty of a basic error or violation of the principles of natural justice and (iv) when on the materials on record the finding is completely baseless or parverse."

But where none of these conditions is present, a Labour Court or an Industrial Tribunal has no jurisdiction to change the form of punishment awarded by the management.

With Section 11-A in the Statute, a disciplinary action against an industrial employee is neither a closed book nor is it sacrosanct. A Labour Court or an Industrial Tribunal, acting u/s 11-A, has powers to investigate both whether the disciplinary action itself is fair and proper, and whether the punishment imposed is justified, and if not whether any other punishment, under the circumstances, would meet the ends of justice.
Section 11-A provides:

Power of Labour Court, Tribunal and National Tribunal to give appropriate relief in case of discharge or dismissal of workmen – Where an Industrial dispute relating to the discharge or dismissal of a workman has been referred to a Labour Court, Tribunal or National Tribunal for adjudication and, in the course of the adjudication proceedings, the Labour Court, Tribunal or National Tribunal, as the case may be, is satisfied that the order of discharge or dismissal was not justified, it may by its award, set aside the order of discharge or dismissal and direct reinstatement of the workmen on such terms and conditions, if any, as it thinks fit, or give such other relief to the workmen including the award of any lesser punishment in lieu of discharge or dismissal as the circumstances of the case may require.

Provided that in any proceeding under this Section the Labour Court, Tribunal or National Tribunal, as the case may be shall rely only on the materials on record and shall not take any fresh evidence in relation to the matter.

3.1.7. IMPLICATIONS OF SEC 11-A ON THE ADJUDICATION PROCESS:

Section 11-A was inserted by the Industrial Disputes (Amendment) Act, 1971 (45 of 1971), Section 3 with effect from December 15, 1971. The ILO recommendation No. 119 (June 1963) recommended that in case of termination of service, a worker should have a right to appeal to a neutral body and that neutral body should have the power to order reinstatement or adequate compensation or some other relief. The Section was brought into force from 15/12/1971.

The Principal changes effected under Section 11-A or the general principles underlying the amendment are as follows:
Previously a Labour Court or an Industrial Tribunal had no power to interfere with the finding of misconduct recorded by an employer in a domestic enquiry. Now the tribunal is at liberty to consider not only whether the finding of misconduct recorded by an employer is correct, but also to differ from the finding if a proper case is made out. What was once largely in the realm of the satisfaction of an employer has ceased to be so and now it is the satisfaction of the Tribunal that finally decided the matter. The limitations imposed on the powers of a Tribunal in the Indian Iron & Steel Co. Ltd. decision can be longer be invoked by an employer.

It is open to the Tribunal or Labour Court to deal with the validity of the domestic enquiry if one has been held as a preliminary issue. If its findings on the subject is in favour of the management then there will be no occasion for additional evidence being filed by the management, but if the finding is against the management, the Tribunal or Labour Court will have to give the employer an opportunity to cite additional evidence justifying his action. This right in the management to sustain its order by adducing independent evidence before a Tribunal or a Labour Court, if no enquiry is held, or if the enquiry is held to be defective, has been given judicial recognition over a long period of years\(^6\). Of course an opportunity will have to be given to a worker also to lead evidence contra. Under such circumstances the issue about the impugned order of dismissal or discharge is at large before the concerned authority, and that it has to decide for itself whether the misconduct alleged is proved. In such a case the exercise of managerial function in respect of quantum of punishment does not arise at all.

The Tribunal or a court is now empowered to decide on the quantum of punishment depending upon the gravity of misconduct proved by evidence in support of it. The concerned authority may hold that the proved misconduct does not warrant punishment by way or discharge or dismissal and may instead award a lesser punishment. The power to interfere with
the punishment and alter the same has now been conferred on the Adjudicating authority by Section 11-A.

(ii) While exercising powers u/s 11-A, the nature of misconduct alleged is a relevant factor. The observations of the Supreme Court in an earlier case Delhi Cloth and General Mills vs. Workmen are relevant in this connection. The expression 'misconduct' covers a wide area of human conduct, a distinction should be made between technical misconduct which leaves no trace of indiscipline, and misconduct resulting in damage of employer's property and serious misconduct such as acts of violence against the management or the employees or riotous or disorderly behaviour in or near the place of employment which is conducive to grave indiscipline. Therefore, it is not possible to treat all cases of misconduct alike. The nature and the quantum of punishment have therefore to depend on the nature of the charges.

(iii) An employer is still bound to hold an enquiry and this will establish his bonafides and promote industrial peace.

When a case of dismissal or discharge of an employee is referred for adjudication, a Labour Court or a Tribunal should first decide as a preliminary issue whether the domestic enquiry has violated the principles of natural justice. When there is no domestic enquiry or defective enquiry is admitted by the employer there will be no difficulty. But when the matter is in controversy between the parties, that question must be decided as a preliminary issue. On that decision being pronounced it will before the management to decide whether it will adduce any evidence before the concerned authority. If it chooses not to do so, it will not be thereafter permissible in any proceeding to raise the issue.

(iv) A domestic enquiry may be followed by a criminal prosecution and the decision in the latter may be contrary to that in the former, or a domestic
enquiry may be held inspite of an acquittal in a criminal proceeding. If a Domestic Tribunal has concluded its enquiry and come to a conclusion even before the criminal court has passed the judgement, the domestic Tribunal's judgement is not vitiated by the fact that on the same facts the criminal court has subsequently acquitted the worker either on a technical ground or on merits. Similarly if after a conviction by the criminal court there is a finding of the Domestic Tribunal holding the employee guilty on evidence which is independently assessed by it, the fact that subsequently on appeal, the worker was acquitted does not mean that the Domestic Tribunal’s conclusion is in any way vitiated. But if the criminal court's judgement, either of a trial court or an appellate court, is earlier than the domestic Tribunal's enquiry, the Domestic Tribunal is bound to take the judgement of the original court into consideration. If after taking the judgement into consideration, the Domestic Tribunal takes a different view, the adjudicating authority cannot interfere if it is found that principles of natural justice have been complied with and there is evidence which could support the finding of the Domestic Tribunal. But if the domestic Tribunal does not apply its mind to the judgement of the criminal court, it may stop malafides and therefore its order may liable to be struck down.

(v) Materials on record – While exercising discretion the adjudicating authority cannot go on a fishing enquiry in search of evidence. It is required to confine its attention strictly to the materials on records, that is the order of discharge or dismissal and the evidence already recorded and such other evidence as the parties may be permitted to adduce in the proceedings before the concerned authority.

(vi) Interference by High Court – Section 11-A bestows considerable discretionary powers on a Labour Court or an Industrial Tribunal in dealing with orders of discharge or dismissal passed by management. An improper exercise of this discretion will invite a corrective action by the High Court. The High Court acts in exercise of its Writ Jurisdiction, but it
does not function as an Appellate Court. The High Court in proceedings under Article 226 Articles does not interfere save where the Industrial Tribunal or the Labour Court has exceeded its jurisdiction, or its decision is not reasonably founded on the evidence, or it has failed to take into account matters which it ought to have done, or has taken into account matters which it ought not to have done, or it has acted in violation of principles of natural justice, or it has misinterpreted or mis-applied the law, and the like. In the absence of any such vitiating circumstances, the decision of the Tribunal is not likely to be interfered with for the industrial tribunal is the final arbiter of facts which are exclusively within the sphere allotted to it.

Under section 11-A, the legislature has vested in the adjudicating authority all the powers which are normally exercised by appellate authorities by way of reappraising the evidence i.e. to set aside findings and also to impose reasonable punishments, subject, however to the proviso prohibiting the taking of any fresh evidence in relation to the matter. It has become necessary now to hold domestic enquiry properly and with an open mind and before inflicting the punishment of dismissal or discharge, the disciplinary authority has to consider at the properly relevant records including change sheet, enquiry Report and Representations of the delinquent employee.

The High Court is not a court of appeal over the decision of the authorities holding a departmental enquiry against a public servant. The court is concerned to determine whether the enquiry is held by an authority competent in that behalf and according to the procedure prescribed in that behalf, and whether the rules of natural justice are not violated. Secondly, where there is some evidence which the authority entrusted with the duty to hold the enquiry has accepted and which evidence may reasonably support the conclusion that the delinquent officer is guilty of the charge, it
is not the function of the High court to review the evidence and to arrive at an independent finding on the evidence. The High Court may interfere where the departmental authorities have held the proceedings against the delinquent in a manner inconsistent with the rules of natural justice or in violation of the statutory rules prescribing the mode of enquiry or where the authorities have disabled themselves from reaching a fair decision by some considerations extraneous to the evidence and the merits of the case or by allowing themselves to be influenced by irrelevant considerations or where the conclusions on the very face of it is so wholly arbitrary and capricious that no reasonable person could ever have arrived at that conclusion. The departmental authorities are, if the enquiry is otherwise properly held, the sole judges of facts and if there is some legal evidence on which their findings can be based, the adequacy or reliability that evidence is not a matter which can be permitted to be canvassed before the High Court in a proceeding for a writ U/A 226 of the Constitution.

The Jurisdiction to issue a writ of certiorari u/A 226 is a supervisory Jurisdiction. The findings of fact reached by an inferior court or tribunal a result of the appreciation of evidence cannot be questioned in writ proceedings. An error of law which is apparent on the face of the record can be corrected by a writ, but not an error of fact, however grave it may appear to be with regard to a finding of fact recorded by a tribunal, a writ can be issued if it is shown that in recording the said finding, the tribunal had erroneously refused to admit admissible and material evidence, or had erroneously admitted inadmissible evidence, which has influenced the impugned finding. Again, if a finding of fact is based on 'no evidence', that would be regarded as an error of law which can be corrected by a writ of certiorari. A finding of fact recorded by the Tribunal cannot be challenged on the ground that the relevant and material evidence addressed before the Tribunal is insufficient or inadequate to sustain a finding. The
adequacy or sufficiency of evidence led on a point and the inference of fact to be drawn from the said finding are within the exclusive Jurisdiction of the Tribunal.

In a writ petition, the scope for interference with a finding of the departmental authorities is much more restricted and the court can interfere only if the finding is based upon no evidence or is based upon extraneous or irrelevant evidence or is otherwise perverse.9

3.1.8 JURISDICTION OF CIVIL COURT:

The civil courts deals with the civil rights of persons and it can grant relief only if a legally recognized right of a person is infringed. But the Civil Court have generally no power to award reinstatement and they can only grant damages.10

To conclude, we may say that the common law right of employers to 'hire and fire' employees at their will has come to be subjected to certain specific restrictions so as to avoid hardship and unfairness to workmen and give them some measure of security of service. The fundamental principles on which there restrictions are based are:

(a) that an industrial worker must be placed in such a position that security of his service may not depend upon the caprice or arbitrary will of the employer,
(b) that industrial peace should be maintained and
(c) that industry should be efficiently managed.
3.2 RECOMMENDATION OF 1ST NATIONAL COMMISSION ON LABOUR ON INDUSTRIAL RELATIONS

The first National commission on Labour, 1969 in it Report observed: “The degree of State intervention in employer – employee relationship is to be determined by the stage of economic development. In a developed economy, the stopage of work to settle claims may not have as serious consequence as in a developing economy, like wise, a free market economy may leave the partner free to settle their relation through strikes and lockouts. But in other systems, varying degree of state participation will be required for the building up of Industrial relations”.

The adjudicating process under the Industrial Disputes Act, 1947 are not without lapses.

The Act is silent as to when the appropriate government shall refer the matter.

The labour and Industrial Courts are vested with the powers that of a Civil Court such as in the matter of enforcing attendance of a person and examining him on oath, compelling him for production of documents and material objects and issuing commissions.

According to Sec. 11 (1) of the Act and Rule 10B (6) framed there under, the evidence can be recorded in a summary way and on affidavit. But in practice, the evidence is by and large recorded as if the matter is being tried under Civil Procedure Code, which causes delay.

After the award is pronounced, the aggrieved party generally files a writ petition in the High Court challenging the award and get, the award stayed.
Unlike Civil Court, the awards of adjudicatory authorities do not come into force as soon as they are pronounced. The Jurisdiction of adjudicating Authority is advisory and recommendary in nature and on receipt of award the appropriate government has to publish it in Gazette and then only it comes into force\textsuperscript{13}.

After an in depth study into the Employer. Employee relationship as prevalent in India in comparison with the other developed countries, the 1st National Commission on labour has summarized its approach as follows:

"While we discuss the arrangement disputes of industrial disputes when they arise, we must emphasise that real industrial harmony is possible only when conditions are created for avoidance / prevention of disputes. While no procedure, however carefully worked out, can entirely eliminate industrial disputes and conflict, frequent discussions between the employer and the representatives of workers will be of considerable assistance in reducing the areas of conflict. The system of industrial relations as it has developed since Independence has kept avoidance of conflict / disputes as one of its two basic objectives, the other being expeditious settlement of disputes, when they do arise. The role of Government in pursuit of the former objective cannot be gainsaid. Emphasis has been laid on the creation of the necessary atmosphere for the development of labour management cooperation through the adoption of a suitable institutional frame-work for joint consultation, redress of grievances and the like. It is perhaps true that these procedures which will be discussed in the next chapter in detail were not as effective as expected and this objective could only be partly realised. This is due as much to the absence of certain important factors, such as the existence of a united trade union movement and the provision for recognition of unions as to the emphasis laid on compulsory adjudication for the settlement of disputes. What be the nature or causes of disputes, more them can be amicably settled, given the good and desire to come to a settlement on the of the employers and the employees. It this context that we
emphasise the adoption procedures which will promote effective to the consultations and collective bargains between the parties.14

The commission proposed a new scheme of legislation elaborately:

(1) The Industrial Relations Commission (IRC):

   (i) There should be a National Industrial Relations Commission appointed by the Central Government. The National IRC would deal with such disputes which involve questions of national importance or which are likely to affect or interest establishments situated in more than one State, i.e., disputes which are at present dealt with by National Tribunals.

   (ii) There should be an Industrial Relations Commission in each State for settlement of disputes for which the State government is the appropriate authority;

   (iii) The National / State IRC will have three main functions: (a) adjudication in industrial disputes, (b) conciliation and (c) certification of unions as representative unions.

   (iv) The strength of the National / State Commission should be decided taking into account the possible load on it and the need for expeditious disposal of cases; its membership should not exceed seven.

   (v) The Commission should be constituted with a person having prescribed judicial qualifications and experience as its President and equal number of judicial and non-judicial posts, but should be otherwise eminent in the field of industry, labour or management;
(vi) Judicial Members of the National Industrial Relations Commission, including its President, should be appointed from among persons who are eligible for appointment as Judges of a High Court;

(vii) The terms and conditions of service and the age of superannuation of the judicial members of the National / State IRC should be similar to those of the judges of the High Courts.

(viii) The President of the National Industrial Relations Commission will be appointed by the Union Government in consultation with a committee consisting of the Chief Justice of India, the Chairman of the Union Public Service Commission (UPSC) and the senior-most Chief Justice in the High Courts;

(ix) The other members of the National Industrial Relations Commission will be appointed by the Union Government in consultation with the Chief Justice of India, the Chairman of the UPSC and the President of the National Industrial Relations Commission;

(x) In regard to the State Industrial Relations Commission, the President of a State IRC will be appointed in consultation with the Chief Justice of the State and the chairman of the State Public Service Commission;

(xi) The other members of a State Industrial Relations Commission will be appointed by the State Government in consultation with the Chief Justice of the State High Court, the Chairman of the State Public Service Commission and the President of the State Industrial Relations Commission;

(xii) The Conciliation Wing of the Commission will consist of conciliation officers with the prescribed qualifications and status. In the cadre of
conciliators, there will be persons with or without judicial qualifications. Those who have judicial qualifications would be eligible for appointment as judicial members of the Commission after they acquire the necessary experience and expertise. Others could aspire for membership in the non-judicial wing.

(xiii) The Commission may provide arbitrators from amongst its members / officers, in case parties agree to avail of such services;

(xiv) The Commission may permit its members to serve as Chairmen of the Central / State Wage Boards / committees if chosen by the Government for such appointment;

(xv) The functions relating to certification of unions as representative unions will vest with a separate wing of the National / State IRC.

3.2.1 PROCEDURE FOR THE SETTLEMENT OF DISPUTES

The National Commission suggested the following procedure for the settlement of Disputes:

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

(ii) After negotiation have failed and notice of strike/lock – out has been served, either party may approach the Commission for naming a conciliator within the Commission to help them in arriving at a settlement during the period covered by the said notice.
(iii) In essential industries/service, when collective bargaining fails and when the parties to the dispute do not agree to arbitration, either party shall notify the IRC, with a copy to the appropriate Government, of the failure of such negotiations, whereupon the IRC shall adjudicate upon the dispute and its award shall be final and binding upon the parties.

(iv) In the case of “Others” (non-essential industries/services), following the failure of negotiation and refusal by the parties to avail of voluntary arbitration, the IRC, after the receipt of notice of direct action (but during the notice period), may offer to the parties its good offices for settlement. After the expiry of the 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.

(v) When a strike or lock-out commences, the appropriate Government may move the Commission to call for the termination of the strike/lock-out on the ground that its continuance may affect the security of the State national economy or public order, and if after hearing the Government and the parties concerned the Commission is so satisfied, it for reasons to be recorded call on parties to terminate the strike/lock and file their statements. Thereupon the Commission shall adjudge on the dispute.

(vi) (a) If a State IRC is seized of any dispute and it appears to the Central Government that the decision on the said dispute is likely to have an impact on similar industrial undertakings in the States, it will be open to the Central Government to move the National Commission to take the said dispute on its file. While such an application is made, the National IRC shall hear the parties concerned and if it comes to the conclusion that it is necessary to take the case on its file, it shall call for the papers in
relation the said dispute from the State IRC and shall proceed to deal with and decide the dispute.

(b) Similarly if a State IRC is seized to any dispute and it appears to the National IRC that the decision on the dispute is likely to have an impact on similar industrial undertakings in other States, and if after hearing the parties the National IRC comes to the conclusion that it is necessary to call for the papers in relation to the said dispute from the State I.R.C., the national I.R.C. shall call for the papers and shall decide the dispute on merits.

(vii) When a state IRC is possessed of dispute, and during the hearing it comes to the conclusion that the decision the said dispute will have an impact on similar industrial undertakings in and out States and that it is desirable that dispute should be try by the Natio IRC, it may, after hearing the parties concerned, transmit the case to the national IRC which will there upon try said dispute.

(viii) Where a dispute is brought before National IRC, and the Commission after hearing the parties comes to the concession that it may be desirable or expected that the said dispute should be done with by the appropriate State IRC, it may remit the case to the said State IRC for disposal and on receiving the record of the said dispute, the State IRC should proceed to deal with it.

(ix) If the Commission substantially grants the demands in support of which the strike was called and comes to the conclusion that the said strike was justified because of the refusal of the employer to grant the said demands, the Commission while making its award may direct the employer to pay the employees their wages during the strike period.
(x) In case a strike becomes necessary as a result of the changes sought to be introduced by the employer in the terms and conditions of employment of his employees and the Commission comes to the conclusion that the change(s) was / were not justified and the strike was justified, the employees will be entitled to wages for the period of strike.

(xi) If the demands in support of which the strike was called are not granted by the Commission the wages for the period of the strike would not be granted.

(xii) If the commission holds that demands which led to the lock-out were justified and the lock-out was not justified and the Commission in granting the demands may order that the employees should be paid their wages during the period of the lock-out.

(xiii) If the Commission holds that the demands were not justified and the lock-out was justified the employees will not be entitled to claim wages for the period of the lock-out.

(xiv) If during the pendency of the strike or thereafter, the employer dismisses or discharges an employee because he has taken part in such strike, it would amount to unfair labour practice and on proof of such practice, the employee will be entitled to reinstatement with back wages.

(xv) An award made by the IRC in respect of a dispute raised by the recognised union should be binding on all workers in the establishment(s) and the employer.

3.2.2 ESTABLISHMENT OF STANDING LABOUR COURT: The National Commission suggested establishment of standing labour court to interpret and enforce labour laws.
In addition to the Industrial Relations Commission, the national Commission also suggested the setting up of standing Labour Courts which would be entrusted with judicial functions of interpretation and enforcement of all labour laws, awards and agreements. These courts will deal broadly with disputes relating to matters mentioned in the Second Schedule to the I.D. Act, in respect of the industrial relations issues brought to them.

(I) There will be a labour court in each State constituted of judicial members only. The strength and location of such courts will be decided by the appropriate Government;

(II) Members of the labour court will be appointed by Government on the recommendations of the High Court. Generally the government should be able to choose from a panel given by the High Court in the order in which the names are recommended;

(iii) Labour courts will deal with disputes relating to rights and obligations, interpretation and implementation of awards of either the National or State IRC and claims arising out of rights and obligations under the relevant provisions of laws or agreements, as well as disputes in regard to unfair labour practices and the like.

(iv) Labour courts will thus be the courts where all disputes specified in clause (iii) will be tried and their decisions implemented. Proceedings instituted by parties asking for the enforcement of rights falling under the aforesaid categories will be entertained by labour courts which will act in their execution jurisdiction in that behalf. Appropriate powers enabling them to execute such claim should be conferred on them.
Appeals over the decisions of the labour court in certain clearly defined matters, may lie with the High Courts within whose area/jurisdiction the court is located;

The recommendations of commission were considered by the National Labour Conference in September, 1982.

The conference made certain unanimous recommendations on these issues and set up a committee to examine the proposal for further amendments to The Trade unions Act, 1926 and The Industrial Disputes Act, 1947.

In this Context, we may mention the Industrial Relations Bill, 1950 and Industrial Relation Bill, 1978, and Sanat Mehta Committee Report, 1983 suggesting reform in the system.

The Committee constituted by Labour conference made a number of useful recommendations which were placed for considerations before the standing labour committee, a national tripartite forum, representing the employers, workers and the Government in September, 1986. There was wide ranging exchange of views among the members of the standing labour committee.

All these efforts culminated in the introduction of Trade unions and the Industrial Disputes (Amendment) bill, 1988 in the Parliament.

3.2.3 STATEMENT OBJECT AND REASONS OF THE INDUSTRIAL RELATIONS BILL, 1988.

1. It was recognised that the existing dispute-settlement mechanism and structures need substantial change. The need for having statutorily recognized bargaining agents at unit and industry levels was also
recognised. The Standing Labour Committee felt that efforts should be made to ensure that the existing multiplicity of unions was reduced and that the trade unions became effective and strong in organisation. The need for taking measures to promote and encourage growth of internal leadership was also generally shared by all members of the SLC.

2. In the light of experience gained and the views expressed by all the interests concerned, it was considered necessary to undertake comprehensive amendments to the aforesaid two Acts with the intention of promoting healthy industrial relations, effective bargaining councils at unit, industry or national levels and, finally, expeditious settlement of industrial disputes through a system of Industrial Relations Commission (with labour Court working under them) from whose decisions appeals would lie only to the Supreme Court.

3. The Industrial Disputes Act, 1947, as it stands, provides mainly for the investigation and settlement of Industrial Disputes. There has been a feeling that the Act essentially provides for a “conflict-management arrangement”, and comes into play only when there arises a dispute between an employer and his workers. To dispel this impression, it is proposed to change the title of the Act to “The industrial relations Act”. The objective of the new law is to set up, in a statutory framework, institutions that will promote peace and harmony in industrial establishment and protect the legitimate interests of workers and employers, for increased production and productivity, increased flow of goods and services and consequent improvement in the standard of living of the people and a greater measure of social justice. It is designed to promote responsible internally-led trade unions which can engage in collective bargaining with employers with a full sense of the confidence reposed in them by substantial sections of the workers and which gives both workers and employers a stake in jointly searching for settlements and evolving mutually beneficial collective bargaining forums without recourse to
competing militancy among non-representative or fragmented trade unions or unnecessary or prolonged litigation.

4. The National Labour Commission had recommended the setting up of Industrial Relations Commissions (IRCs) for exercising the function of conciliation, adjudication and certification of the collective bargaining agent. A similar recommendation was made by the Committee set up by the National Labour Conference in September, 1982. It is proposed to set up IRCs both at the Centre and in the States. These will comprise both judicial and non-judicial members, the latter being drawn from among persons having eminence in the fields of industry, labour or management. The IRCs will be high-powered Tribunals under Article 323 B of the Constitution and appeals against their orders or awards will lie only to the Supreme Court of India. These Commissions will have jurisdiction in respect of adjudication and hear appeals against the orders of the Labour Courts including those relating to registration of bargaining councils. It is not, however, proposed to entrust them with conciliation functions which have been traditionally performed by the appropriate Governments. The State Governments have responsibility for maintenance of law and order and the first lines of defence in any matter threatening industrial peace are necessarily conciliation and the activation of the collective bargaining mechanism before recourse is considered by either party to the judicial process or to even more extreme steps like strike or lockout.

5. The trade union movement is weakened by multiplicity of small, fragmented unions which do not have the requisite strength to deal with the employers. Their bargaining power is, inevitably, weakened by such splintering and fragmentation, and is not in the interest of the working class themselves whether in the short term or in the long-run. The Bill seeks to provide that in relation to a trade union of workmen engaged or employed in an establishment or in a class of industry in a local area and where the number
of such workmen is more than one hundred, the minimum membership for the registration of such trade union shall be ten per cent of such workmen. Such unions shall be eligible for registration only if they meet this minimum test of strength.

However, due to tough opposition from the trade unions, this bill also lapsed in controversies.
3.3 OBSERVATION:

The Central Acts, namely, Industrial Dispute Act, 1947, Trade unions Act, 1926 and the Industrial Employment (Standing Orders) Act, 1946, though drafted before independence, are still regulating the employer-employee relations in India. Various efforts have been made to reform the system but due to disagreement between various interest group, the basic framework remains unaltered. The adjudicating machinery has gradually been infected with all the chronic diseases of main stream Judicial System. To ensure the harmony between capital and labour and sharpen the competitive edge of industry, frictions should be minimized. Since the adjudicating machinery is still struggling to perfectuate its functions, the industry needs an institution which can lubricate the roughness of the relations.

The Industrial Disputes Act is applicable to workmen employed in an Industry. Section 2 (J) of the Act defines an industry as "Industry means any business, trade, undertaking, manufacture or selling and includes any selling, service, employment, handicraft of Industrial occupation or avocation of workmen. This definition of industry has been the subject of many Judicial decisions. The definition of Industry as explained by the Supreme Court in Bangalore water Supply vs. Rajappa¹⁸ is the law now: Taking into consideration the Judgment of Bangalore Water supply case and Report of First National Commission on Labour, 1969, Parliament redefined the concept of Industry by way of an amendment in 1982, but this has not been brought into effect. So the law as laid down in the Banagalore Water Supply case remains. In this case the term Industry was explained as follows:-

'Where there is a systematic activity organized by co-operation between employer and employee for the production and/or distribution of goods and services calculated to satisfy human wants and wishes, prima facie, there is an
industry in that enterprise. Absence of the profit motive or gainful objective is irrelevant, be the venture in the public Joint, private or other Sector. The true focus is functional and the decisive test is the nature of the activity wish special emphasis on the employer-employee relation."

Inspite of Bangalore Water Supply case decision, the subsequent Judgements of the Supreme Court have left some uncertainty on the question of activities and organizations that can be labeled as industries under the I.D Act. In the case of physical Research Laboratory vs. K.G.Sharma, the Supreme Court ultimately came to the conclusion that a physical research laboratory was not an industry. And finally, in Coir Board, Ernakulam, Cochine & another vs. Indira Devi and others the Supreme Court has very rightly observed that "looking to the uncertainty prevailing in this Area and in the right of the experience of the last decades in applying the test laid down in the case of Banglore water Supply and sewerage board, it is necessary that the decision in Bangalore Water Supply and Sewerage Board Case is reexamined."

We have already briefly outlined the importance of domestic Enquiry System in the adjudicating phenomenon. Now we may proceed to analyze the present practice and procedure of Domestic Enquiry System in order to arrive at the conclusion of either retaining the present form or restructuring the same. It has also to be seen whether the Domestic Enquiry can play a greater role in the Industrial Relation System.

There are enough laws for maintaining the Industrial Harmony but the practice followed for wiping out the disharmony is inadequate. Unless an attempt is made to critically analyse the present system, the lapses can not be detected.
3.4 References:


2. Section 2(j) of the Industrial Disputes Act, 1947 provides, 'Industry' means any business, trade, undertaking, manufacture or calling of employers and includes any calling, service, employment, handicraft or industrial occupation or a vocation of workmen.

The definition of 'industry' was amended by the Industrial Disputes Amendment Act, 1982, but the same has not been brought into force by the Notification dt. 21.8.1984.

The Amendment Act, 1982, provided: 'Industry' means any systematic activity carried on by co-operation between an employer and his workmen (whether such workmen are employed by such employer directly or by or through any agency, including a contractor) for the production, supply or distribution of goods or services with a view to satisfy human wants or wishes (not being wants or wishes that are merely spiritual or religious in nature), whether or not, -

(a) any capital has been invested for the purpose of carrying on such activity; or

(b) such activity is carried on with a motive to make any gain or profit, and includes;

© any activity of the Dock Labour Board established under Section 5-(A of the Dock Workers (Regulation of Employment) Act, 1948;
(d) any activity relating to the promotion of sales or business or both carried on by an establishment, but does not include;

(e) any agricultural operation except where such agricultural operation is carried on in an integrated manner with any other activity (being any such activity as is referred to in the foregoing provisions of this clause) and such other activity is the predominant one.

Explanation: for the purpose of this sub-clause, "agricultural operation" does not include any activity carried on in a plantation as defined in clause (i) of Section 2 of the Plantations Labour Act, 1951; or

(2) hospitals or dispensaries or
(3) educational, scientific, research or training institutions; or
(4) institutions owned or managed by organisations wholly or substantially engaged in any charitable, social or philanthropic service; or
(5) Khadi or village industries; or
(6) Any activity of the Government relatable to the sovereign functions of the Government including all the activities carried on by the departments of the Central Government dealing with defence research, atomic energy and space; or
(7) any domestic services; or
(8) any activity, being a profession practiced by an individual or body of individuals, if the number of persons employed by the individual or body of individuals in relation to such profession is less than ten; or
(9) any activity, being an activity carried on by a co-operative society or a club or any other like body of individuals, if the number of persons employed by the co-operative society club or other like body of individuals in relation to such activity is less than ten;
(a) "appropriate Government" means, -

(i) in relation to any Industrial Disputes concerning any industry carried on by or under the authority of the Central Government or by a railway company [or concerning any such controlled industry as may be specified in this behalf by the Central Government or in relation to an Industrial Dispute concerning [a Dock Labour Board established under Section 5-A of the Dock Workers (Regulation of Employment) Act, 1948 (9 of 1948), or [the Industrial Finance Corporation of India limited formed and registered under the Companies Act, 1956] or the Employees' State Insurance Corporation established under Section 3 of the Employees' State Insurance Act, 1948 (34 of 1948), or the Board of Trustees constituted under Section 3-A of the Coal Mines Provident Fund and Miscellaneous Provisions Act, 1948 (46 of 1948), or the Central Board of Trustees and the State Boards of Trustees constituted under Section 5-A and Section 5-B, respectively, of the Employees' Provident Fund and Miscellaneous Provisions Act, 1952 (19 of 1952), or the Life Insurance Corporation of India established under Section 3 of the Life Insurance Corporation Act, 1956 (31 of 1956), or [the Oil and Natural Gas Corporation Limited registered under the Companies Act, 1956 (1 of 1956)] or the Deposit Insurance and Credit Guarantee Corporation established under Section 3 of the Deposit Insurance and Credit Guarantee Corporation Act, 1961 (47 of 1961), or the Central Warehousing Corporation established under Section 3 of the Warehousing Corporations Act, 1962 (58 of 1962), or the Unit Trust of India Act, 1963 (52 of 1963), or the Food Corporation of India established under Section 3, or a Board
of Management established for two or more contiguous State under Section 16 of the Food Corporations Act, 1964 (37 of 1964), or [the Airports Authority of India constituted under Section 3 of the Airports Authority of India Act, 1994 (55 of 1994)], or a Regional Rural Bank established under Section 3 of the Regional Rural Banks Act, 1976 (21 of 1976), or the Export Credit and Guarantee Corporation Limited or the Industrial Reconstruction Corporation of India Limited], or [the Banking Service Commission established, under Section 3 of the Banking Service Commission Act, 1975, or] [an air transport service, or] [a banking or an insurance company, a mine, an oilfield] [a Cantonment Board,] or a major port, the Central Government, and

(ii) in relation to any other Industrial Dispute, the State Government;

3. **Section 2(s) defines workman’ as follows:**

Workman’ means any person (including an apprentice) employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, where the terms of employment be express or implied and for the purposes of any proceeding under this act in relation to an industrial dispute, include any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of, that dispute or whose dismissal, discharge or retrenchment has led to that dispute, but does not include any such person –

(a) who is subject to the Air Force Act, 1950 or the Army Act, 1950 or the Navy Act, 1957 or
(vii) who is employed in the police service or as an officer or other employee of a prison; or
(viii) who is employed mainly in a managerial or administrative capacity; or who being employed in a supervisory capacity draws wages exceeding one thousand six hundred rupees per mensem or exercise, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature.


Workmen of Rohtak General Transport Co. V. Rohtak General Transport Co., 1962 ILLJ 634

5. 1958 LLJ 260 S.C.


Workmen of Firestone Tyre & Bubber Co. of India (P) Ltd vs. The Management, 1973, 1 LLj 278, 299-300 (SC)


Syed Yaqoone vs K.S. Radhakrishnan, AIR 1964 SC 477

10. Khushiram V Assessing Authority, AIR 1976 SC 2372
    M. Singh V. Hindustan Motors Ltd., AIR 1976, SC, 2062

Bishuti Bhusan Ghosh V. Damodar Valley AIR, 1953 CAL, 581
    Anand Swarup Singh V. State of Punjab, AIR 1972 SC 2638


12. In Telco Convoy Drivers Mazdoor Sangh V. State of Bihar, 1989 sc 1565, the workmen concerted had to toil and suffer for almost 17 years to get the industrial disputes refered for adjudication.


18. AIR 1978 SC 548


“The definition of industry, as it has been interpreted, is very comprehensive in scope. Questions arose from time to time whether hospitals, clubs, municipalities, educational institution, etc., fell within the scope of the term. In deciding these issues, it has been generally held by courts/tribunals that profit motives or money consideration for the services rendered is not an essential characteristic; that while the regal and sovereign functions of the State or outside the scope of the definition, other function of the Government which are not of a regal character, fall within the definition.”

19. AIR SCW 1594
20. AIR 1998 SC 2801

