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INTRODUCTION
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INTRODUCTION

The thesis presented herein under the title: "Dispute Settlement and Workplace Relationship in India and Australia: A Critical and Comparative study" deals with that part of industrial law of India and Australia which provides for the machinery for the settlement of industrial disputes. The title "Dispute Settlement" refers to the Industrial Disputes Act, 1947 and "Workplace Relationship" refers to Workplace Relations Act, 1996 (Commonwealth of Australia).

This thesis traces the causes which led Australia to adopt compulsory arbitration and show how the system worked successfully for 84 years before it was replaced by the Industrial Relations Act, 1988 and later on by the Workplace Relations Act, 1996. The study compares the Conciliation and Arbitration Act, 1904 with the Industrial Disputes Act, 1947. The study of Australian system is of significance for India because, since the Second World War, the Indian industrial relations system has gradually turned towards the use of
conciliation and arbitration as a method to resolve industrial disputes, on the Australian pattern.

Labour, reflects human resources of all grades and skills. It has occupied a crucial position in the progress of industrialisation. The success or failure of any industrial relation system largely depends upon the approach to solve the problems of labour. The progress of an industry depends upon the extent of cooperation provided by the labour. In the last five decades, the industrial relation policy has moved towards a policy of protecting workers from exploitation, discrimination and unfair treatment. The Directive Principles of State Policy of the Constitution of India mandates a policy of protectionism of the labour class. Also, Article 39 of the Constitution specifically lays down as follows:

a) That all citizens' men and women equally have the right to adequate means of livelihood.

b) that the ownership and control of the material resources of the community are so distributed as to sub serve the common good.
d) That the operation of the economic system does not result in concentration of wealth and means of production to the common detriment.

e) That there is equal work for both men and women.

f) The health and strength of workers men and women and tender age of children are not abused and that the citizens are not forced by economic necessity to enter avocation unsuited to their age and strength.

Article 41 states as follows,

"The State shall within the limits of its economic capacity and development, make effective provisions for securing 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".

Article 42 states as follows, 

"The State shall make provisions for securing just and humane
conditions of work and for maternity relief”.

Article 43 enjoins that,

"The State shall endeavour to secure, by suitable legislation or economic organisation or in any other way, to all workers, agricultural, industrial or otherwise, work, a living wage, conditions of work ensuring a decent standard of life and full enjoyment of leisure and social and cultural opportunities and, in particular, the State shall endeavour to promote cottage industry on an individual or co-operative basis in rural areas”.

Article 43A obligates that,

"The State shall take steps, by suitable legislation or in any other way, to secure the participation of worker in the management of undertakings, establishments or other organisations engaged in any industry".
This blueprint of the Constitution has prompted the Government to enact various welfare legislations and helped the workers to get certain benefits.

The acceptance of labour as a subject of justice has initiated the enactment of labour laws like Trade Unions Act, 1926, Industrial Disputes Act, 1947, Industrial Employment (Standing orders) Act, 1946, Payment of wages Act, 1936, Workmen’s Compensation Act, 1923 and many other welfare legislations. Though these legislations are pre-independence legislations, they have been continued even after the adoption of the Constitution of India and find their roots in Part IV of the Constitution of India.


One of the areas of importance in industrial relations is the labour dispute resolution mechanism. Conflicts
are bound to arise between workers and the employers, as their interests are different and varied. While the labour is interested in increased wages and better working conditions, the employer's interest is in maximising profits by minimising cost. The government however on its part is interested in keeping both the parties happy and satisfied in order to maintain the growth of the economy and to achieve social justice. The Industrial Disputes Act, 1947 is the legislation, which provides for a forum to the disputant parties to redress their grievances in a democratic manner. Speaking about the Industrial Disputes Act, 1947, the Supreme Court of India commented in the case of Workmen of Hindustan Lever Ltd v. Hindustan Lever Ltd,¹ that,

"A developing country like India can ill afford dislocation in industrial production. Peace and harmony in industry and uninterrupted production being the demand of the time, it is considered wise to arm the government with power to compel the parties to resort to arbitration and as a necessary corollary to avoid contradiction and trial of strength which are considered

¹ [1984] Lab. IC 276 (286-87) (S.C.)
wasteful from national and public point of view”.

Over the years, there has been a review of the working of the dispute resolution machinery provided in the Industrial Disputes Act, 1947. The existing machinery for the settlement of disputes is not only dilatory but is, also impaired by undue government influence. Globalisation, liberalisation and privatisation initiated by the government since 1991 has added new dimension to the problem of labour dispute resolution. A globalized economy needs quick and effective system of labour disputes resolution system. The disputes resolution machinery as contained in the Industrial Disputes Act, 1947 is essentially based, on the system, as it existed in the Conciliation and Arbitration Act, 1904, of the Australian Commonwealth.² The Australian law since has been replaced twice by new set of

² The Supreme Court of India in the case of D.N. Banerji v. P.R. Mukherjee, A.I.R. 1953 S.C 58 while referring to the Australian decision in the case of Federated Municipal and Shire Council Employees' Union of Australia v. Melbourne Corporation, 26 Com-W.L.R 508, compared the Industrial Disputes Act, 1947 with the Commonwealth Conciliation and Arbitration Act, 1904 and said that some of the judgements given by the Australian Courts on the above law are instructive for Indian purposes.

The Labour Appellate Tribunal in Vishuddhananda Saraswathi Marwari Hospital v. Their Workmen (1952) 2 L.L.J 327 (L.A.T), had gone to the extent of pointing out that “Australian Federal statute (the Commonwealth Conciliation and Arbitration Act, 1904) has pari materia and so the cases decided by the High Court of Australia are helpful. That Act has the same object as our Act, namely, settlement by conciliation or arbitration of industrial disputes.” Also refer to the decisions in Osmania Univesity v. I.T., Andhra Pradesh 18 F.I.R. 440 (A.P.), Spencer & Company, Ltd v. Labour Appellate Tribunal (1954) 2 L.L.J 310 (Mad.)
legislation in the form of Industrial Relations Act, 1988 and later by the Workplace Relations Act, 1996. The changes in the Australian law has been done in order to keep pace with changing times of globalisation. The Australian system assures individual freedom in agreement making and thereby provides an effective system of dispute resolution. In the background of these circumstances a need is felt to study and review the existing system of disputes settlement law in India, specifically the Industrial Disputes Act, 1947 and to compare it with on the ground of similarities in the Conciliation and Arbitration Act, 1904. Further a study of the judicial approach to some of the problems presented in the Industrial Disputes Act, 1947 and Conciliation and Arbitration Act, 1904, in Australia is, also needed, to suggest a change in the present system. It is necessary to study the, Australian Workplace Relations Act, 1996, in its entirety in order to present model legislation on labour dispute resolution for India. Some of the good features provided in the Workplace Relations Act, 1996, could be, presented as model for Indian needs.
1. Significance of the topic of Research

The cry for labour reform in the context of globalisation, privatisation and liberalisation presents an ideal platform for the present research. While the role of the State as guardian of rights of the workers needs to be protected and strengthened at the same time individual freedom in industrial relations needs to be promoted.

Various Committees, Commissions and Conferences on labour reform have presented their agenda for change in the industrial relations law. There has been opposition to some of these reports and there seems to be a lack of consensus on labour law reforms. The report of Second National Labour Commission has further intensified the debate on labour reform. There is a proposal on behalf of the government to introduce a new labour reform bill shortly. In this background, this topic of research assumes significance, which could show the direction for new legislation since it is based on a comparative study of the Australian Labour Law.
2. Objectives of the Research

Keeping the above background in view, the research is carried on with the following among other objectives:

1. To expound the historical background of labour legislations in India.
2. To study the impact of globalisation on labour laws in India.
3. To specially study the efficacy of dispute settlement machinery provided for under the Industrial Disputes Act, 1947.
4. To note the Industrial Resolution system obtaining in Australia.
5. To analyse the provisions of the Conciliation and Arbitration Act, 1904.
6. To study the various provisions of Workplace Relations Act, 1996.
7. To note the approach adopted by the judiciary in India and Australia with regard to the interpretation of the various provisions in the Industrial Disputes Act, 1947 and Conciliation and Arbitration Act, 1904.
8. To analyse the contribution of the Supreme Court in evolving a new labour jurisprudence in India.
9. To suggest a model labour disputes resolution law for India.

3. Hypothesis

The research is undertaken with the following hypothesis:

1. The adjudicatory and non-adjudicatory machinery under the Industrial Disputes Act, 1947 has failed to deliver justice to the workmen.

2. Globalisation, privatisation and liberalisation of the economy will not achieve the desired result of industrial growth unless it is accompanied with reform in the labour laws.

3. Promoting the individual workmen's interest in the process of agreement making will ensure justice to the workmen.

4. The Industrial Disputes Act, 1947 on comparison with the Commonwealth Conciliation and Arbitration Act, 1904 of Australia is similar.

5. The Workplace Relations Act, 1996, presents the best model for reforming the Indian law on labour disputes resolution.
The above hypothesis will be tested in various chapters of this research.

4. Methodology

Keeping the previously mentioned objectives and the hypothesis in view, research has been carried out on the subject by following the analytical, historical and doctrinal methods of research. Data for this purpose has been gathered from authentic sources of information like the various legislative enactments, commentaries on legislations, reports of various Committees and Commissions on labour reform. Legislations of India and Australia have been surfed to give the thesis a concrete dimension. Decisions of the Supreme Court of India and those of Australian courts have been incorporated wherever the subject necessitates its inclusion. Extensive information has been gathered from various web sites in the internet.

5. Plan of the study

The thesis consists of eight chapters a brief description of which is given as under:
Chapter two, entitled "Labour legislation in India - A Historical Analysis of its Utility in the Context of Present day needs" briefly traces the historical development of labour laws in India. The growth of labour legislation from 1830-1876 A.D. to 1942-1947 is historically analysed in this chapter. The need for change in labour laws in the context of globalisation and economic liberalisation is also discussed.

Chapter three, entitled "A critical and comparative study of Australian and Indian industrial disputes settlement laws", traces the development of the law of labour dispute resolution in Australia and compares it with the Industrial Disputes Act, 1947. Some of the similarities in the provisions of the Conciliation and Arbitration Act, 1904 and the Industrial Disputes Act, 1947 are also discussed. The similarity in approach of the judiciary in India and Australia in decision making is highlighted.

Chapter four is devoted to the contributions of the Supreme Court of India towards evolving a new and dynamic labour system in India. The decisions of the Supreme Court of India on the various labour
legislations have been traced from the year 1950 onwards.

Chapter five is devoted towards discussing the provisions of the Workplace Relations Act, 1996. The various machineries and advantages presented by the Act are discussed in this chapter. Some case studies on the Act are also incorporated in the chapter.

Chapter six entitled "A review of legislative efforts and recommendations for labour reform in India", is a review of the legislative efforts and various reports of the Committees and Commissions set up for recommending changes in the labour disputes resolution law in India is undertaken before suggesting a new model for labour disputes resolution for India.

Chapter seven, entitled, "Model Labour Legislation-Suggestions for A New Labour Dispute Resolution Machinery" is the contribution of this thesis. In this chapter the needs for a new machinery to resolve labour disputes in India is discussed. A description of the new model based on some of the good features of the Workplace Relations Act, 1996, is presented.
Chapter eight gives a summary of the thesis and offers conclusions based on the research. It also offers a few suggestions for the direction needed for labour reform in India.