CHAPTER II

THE INDUSTRIAL DISPUTES ACT, 1947:
THE SALIENT FEATURES
A legislative enactment should reflect a genuine and bonafide endeavour on the part of the legislature to accomplish the statutory objects. Greater diligence is required to avoid egregious errors while enacting a law which relates to industrial employers and workers whose interests are often dissimilar. It is, therefore, advisable to entrust the drafting of such a legislation to competent persons since shabby and unintelligible drafting may indefinitely or permanently postpone the realisation of the objects underlying such a legislation. It is, therefore, averred that legislative drafting being "a highly technical discipline" and also "the most rigorous form of writing outside of mathematics" is not a job to be assigned to "children, amateurs or dabblers". The legislative draftsman is, unquestionably, a conduit between the law giver and the enforcer. Therefore, it is imperative that he spells out the intention of the legislature as clearly as possible. Because, in the absence of a clear cut enunciation of the statutory policy, purposes or objectives, the enforcer, the interpreter and also the targeted beneficiaries of the law would have to engage in a wild goose chase. The legislative draftsman must realise that he is just "a legislative midwife" and should not hasten to draft a legislation

1. Dickerson, Legislative Drafting 29 (1954).
without having a clear perspective of the problem that has warranted the enactment of the law and the object such law seeks to accomplish.

In the light of the foregoing, an evaluation of an extremely important piece of legislation in the area of labour law, namely, *The Industrial Disputes Act, 1947* (hereafter "the Act") is necessary.

The statutory objectives, *inter alia*, underlying the Act are: "to make provisions for the investigation and settlement of industrial disputes...." In the light of this declared statutory object, it is arguable that the provisions relating to the constitution, powers and duties of the various machineries created for the prevention or resolution of industrial disputes would have to be regarded as some of the salient features of the Act. Incidentally, it is submitted that the thrust of this Thesis is to present a critical analyses of the dispute-settling machineries provided for under the Act. Therefore, in this Chapter, while spelling out the salient features, the focus would be upon the significant provisions that have a bearing upon the dispute-resolving mechanisms.

It should also be noted that the Act also attempts to provide for "certain other purposes", *viz*, prohibition of strikes and lockouts under certain situations.\(^2\)

\(^2\) Ss. 22, 23, 24, 25, 10(3) and 10A (4A).
payment of various types of compensation as prescribed, penalties for the infractions of the provisions embodied in the Act.

In an industry, the ambitions and aspirations of the partners in production may vary and do differ and these give rise to conflicts. Further, the dissimilar interests and the different social strata to which they belong add fuel to the fire. Where such conflict of interests rules the roost, disputes would be endemic. The havoc caused by such industrial disputes, paralyzing the production process and the resulting adverse effect on the employers, workers, community and, more importantly, on the nation's economy, have lead to the enactment of the Industrial Disputes Act, 1947 which has been described as a "benign measure which seeks to pre-empt industrial tensions, provides the mechanics of dispute resolutions and set up [sic] the necessary infrastructure so that the energies of partners in production may not be dissipated in counter productive battles and assurance of industrial justice may create a climate of goodwill". The personality of the statute, when considered as a whole, signifies that it is labour welfare oriented and as "a beneficial legislation, protects labour, promotes their contentment and regulates situations of crisis and tension where production may be imperilled by untenable

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strikes and blackmail lockouts". Further, the machineries under the Act seek to confer "regulated benefits to workman" and strive to resolve their "actual or potential" conflicts "according to a sympathetic rule of law ...." More importantly, "[i]ts goal is amelioration of the conditions of workers, tempered by a practical sense of peaceful co-existence to the benefit of both [and] to impose restraints on laissez faire and [exhibit] concern for the welfare of the weaker lot".

The *Directive Principles of State Policy* enshrined in Part IV of our Constitution, the supreme lex, are not "pious declarations" but "instruments of instructions" which command every government in power to promote the well-being and the interests of the underdog, namely, the working class. Many of these Directive Principles seek to establish a social order where "Justice-social, economic and political" shall be assured to all, especially, the working class. Consequently, the labour laws enacted to protect and promote the interests of the workers should be accorded a pivotal position in our Legal System. It may be noted that the parties in industrial or trade disputes have varied interests and, at times, "‘present an infinite permutations of attitudes’ on, economics, politics and

6. Ibid.
7. Ibid.
8. Ibid.
9. It is well admitted that “[t]he law governing industrial relations is one of the vitally important branches of the law—the legal system on which depends the social and economic security of a very large majority”. *Quoted* in I.O.P. Malhotra, *The Law of Industrial Disputes* xx (4th edn. 1985).
human relations".\textsuperscript{10} So, to contemplate a consistent, consensual approach for evolving dispute-resolving mechanics that would serve well on all occasions or in all situations would be foolhardy.\textsuperscript{11} The economically weaker section of the industrial society that forms a large chunk, that is, ‘Labour’, is time and again, compelled to struggle for the security of their rights and interests. Therefore, their “security” is considered as the “keystone in dealing with the industrial relations between the industrial employers and their workers”.\textsuperscript{12} A naked picture of the puzzled mind should necessarily stem from the trials and tribulations of the working class whose greatest fear is loss of jobs they hold. That is, ‘insecurity’ bothers them most. ‘Labour’, undoubtedly, constitutes the ‘focal point’ in any inquiry concerning Industrial Relations. Obviously, “[t]here is every-where a constant need for finding \textit{a judicium finium regundorum} between collective bargaining and legislation of all kinds as instruments for the regulation of conditions of employment—wages and hours, holidays and pensions, health, safety and welfare, and even, increasingly, social security”.\textsuperscript{13}

The concept of a Welfare State, a basic and an essential feature of our Constitution, demands that there shall be legislative provisions against exploitation of workers, particularly, those in the unorganised sectors. Workers are now

\begin{thebibliography}{3}
\bibitem{10} Ibid.
\bibitem{11} Ibid.
\bibitem{12} Ibid.
\bibitem{13} Ibid.
\end{thebibliography}
becoming right-conscious as the study of case law in the area of Industrial Disputes Act reveals. The Indian Supreme Court has been conscious of the plight of the poor working class and, also, at the same time, emphasized that continuous confrontations between workers and employers would only postpone indefinitely the attainment of the constitutionally ordained goal, that is, the establishment of a Welfare State. This conclusion is discernible when one takes note of the primary objects listed by the Apex Court while expounding the statutory purposes underlying the Act. According to the Hon'ble Court, the Act seeks to:

i) promote measures for securing and preserving amity and good relations between the employer and workmen;

ii) provide for the investigation and settlement of industrial disputes between employers and employers, employers and workmen or workmen and workmen with a right of representation by registered trade union or a federation of trade unions or an association of employers or a federation of associations of employers;

iii) prevent illegal strikes and lockouts;

iv) provide for relief to workmen in the matter of layoff and retrenchment;

and

14. See, e.g. Management of Indian Oil Corporation Ltd., v. its Workmen, 1975, 11 L.L.J. 319 S.C. [The employer is forbidden from inflicting change in the conditions of employment applicable to his workmen unilaterally without issuing notice as mandated under section 9A of the Act]; State Bank of India v. N.Sundaramonn, 1976 1 L.L.J. 476 S.C. [payment of retrenchment compensation].
v) promote collective bargaining.\textsuperscript{15}

Thus, "the policy of law emerging from [the] Act ... is to provide an alternative dispute resolution mechanism to the workmen, a mechanism which is speedy, inexpensive, informal and un-encumbered by the plethora of procedural laws and appeals upon appeals and revisions applicable to Civil Courts....\textsuperscript{16} Undoubtedly, the basic thrust of the Act is to protect and preserve industrial peace and register quantitative as well as qualitative increase in production and productivity which would ultimately lead to the overall prosperity of the industry, the employers, workers and the nation.

Every enactment has its own area of operation and would have a targeted group whose interests it wants to safeguard and promote. To ensure the accomplishment of the objects, the statute inevitably incorporates a chapter defining the \textit{key words} with a view to weed out ambiguities and pave the way for a pragmatically consistent interpretation. The \textit{Industrial Disputes Act} is no exception. To avoid interpretational difficulties and to add clarity and precision, the Act defines certain key words, like, for example, "Industry",\textsuperscript{17} "Industrial

\textsuperscript{15} \textit{Assam Chah Karmachari Sangh v. Dimakuchi Tea Estate}, 1958 1 L.L.J. 500, 506 (S.C.)


\textsuperscript{17} S.2 (j).
Industrial disputes cannot be wished away. Hence, whenever such disputes do occur, it is advisable to resolve them through mutual negotiations, through the collective bargaining process. The presence of "outsiders", on Negotiation Committees has proved to be a bane, not a boon. These outsiders, it is said, are more interested in self-aggrandizement and take undue advantage of the crisis and jeopardize the chances of re-establishing peace, quickly, in the industry. Probably, the vital role which the collective bargaining process can play in resolving disputes was not realized when the Act was passed. Hence, no provision in the Act of 1947 according legal sanctity for the bipartite agreements arrived at the collective bargaining table. However, later, in 1956, the definition of "settlement" was amended to encourage collective bargaining by providing that a bipartite agreement

18. S.2 (k).
19. S.2 (s).
20. S 2 (a).
21. S.2 (q).
22. S.2 (l).
23. S.2 (oo).
24. S. 2 (kkk).
25. 'Outsider' is a politician appointed as an office bearer of a trade union i.e., President, Vice-President etc. Section 22 of the Trade Unions Act, 1926, provides that not less than one-half of the total number of the office bearers of every registered Trade Union shall be persons actually engaged or employed in any industry with which the Trade Union is connected. Further, the Appropriate Government may, by special or general order exempt any Trade Union or class of Trade Unions from the application of this section.
settlement arrived at, by the parties, otherwise than in the course of conciliation would also fall within the definitional purview of 'settlement' under section 2(p) of the Act. It is submitted that the amendment, mentioned above, cannot be regarded as an adequate step for promoting collective bargaining since the Trade Unions Act, 1926, a central legislation, does not provide for 'Recognition' of trade unions for purposes of collective bargaining. Nor, are there any provisions in the Act providing a mechanism for determining the most representative union and imposing an obligation on the employer to recognise and bargain with such a representative union.

Labour and Management are complementary to each other. They are mutually inter-dependent and cannot be regarded as adversaries. The welfare and well-being of one depends upon the other. Unless, both strive, whole-heartedly, to achieve the object for which they have come together, the industry concerned cannot survive or flourish and the nation cannot prosper. But, the conflicting interests of the partners in production have to be necessarily, acknowledged. Such an acknowledgement implies that the disputes paralyzing the production process should be anticipated. Therefore, to "promote measures for securing and preserving amity and good relations between the employer and workmen....", the Act provides that the Appropriate Government may require an industrial employer,
to constitute “Works Committee”26 consisting of equal number of representatives of both employers and workmen. These Works Committees can comment upon matters of common interest and concern of both the parties and shall endeavour to compose any material differences. This is the first step the Act takes to minimize industrial conflicts. Constitution of Works Committees also provides for a back door entry for the concept of “workers’ participation in management”, which may encourage the labour and the management to “shed their class conflict syndrome and look upon each other as partners in industry”.

When the disputes are not resolved through mutual negotiations, the need for a third party intervention arises. Keeping in view the paramount importance of collective bargaining to sort out the differences between the labour and the management, the Act empowers the Appropriate Government to appoint “Conciliation Officers”27 and to constitute “Boards of Conciliation”.28 Both Conciliation Officers and the Boards are charged with the duty of mediating in and promoting the settlement of industrial disputes when the situation so demands. In this connection, it is noteworthy that the ‘Conciliation Officers’ as well as the ‘Boards’ would try to persuade the parties to reach a mutually agreeable settlement and the parties themselves are the final arbiters over their disputes. Hence,

27. S.4 (1).
conciliation can be regarded as an “extended form of collective bargaining”. The Act, *inter alia*, provides for the procedures, powers and duties of Conciliation Officers and Boards of Conciliation. Conciliation Officer can act *suo moto* but the Board can act only when the Appropriate Government refers the dispute to it. In case of public utility services, when the notice of strike or lockout is received, the Conciliation Officer is duty bound to start the proceedings forthwith. But, in case of non-public utility services and in the absence of a strike or lockout notice in public utility services, the Conciliation Officer has discretion to decide whether or not he should start the proceedings. However, the Report of *National Commission on Labour* observes that “over the years the optional provision appears to be acquiring compulsory status in non-public utilities also”. In case, the conciliation officer succeeds in promoting a fair and amicable settlement, he shall submit a report along with the Memorandum of Settlement signed by the parties to the dispute to the appropriate government. When his attempts to promote a settlement fail, he is obliged to submit a Failure Report to the

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29. S.11.
30. Ibid.
31. Ss. 12, 13.
31A. Ss. 12 (1), 10 (1) (a).
32. S.12 (1).
33. Ibid.
35. Ss. 12 (3), 13 (2).
appropriate Government stating the steps taken for ascertaining the facts and circumstances relating to the dispute and also the steps taken and efforts made by him for bringing about a settlement and the reasons as to why his efforts have proved futile. The Board of Conciliation is also charged with the same duties as imposed upon the conciliation officers. However, the Board can make recommendations for resolving the dispute.

Despite the fact that the Conciliation Machinery can play a vital role in promoting the settlement of industrial disputes and in restoring industrial peace, it has been noticed that persons with adequate, appropriate qualifications, requisite aptitude and training are not manning these bodies and these factors, therefore, have affected their functioning and frustrated the very purpose for which they have been established. Thus, as a veteran trade union leader has remarked; "'conciliation' has become a fifth wheel to the coach and arbitration is not available for one reason or the other and adjudication stands condemned as a time consuming futile exercise at litigation".

Sometimes, disputes that erupt frequently disrupt production awfully. This necessitates the creation of a mechanism for finding out the causes and the reasons

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36 Ss. 12 (4), 13 (3).
37 Ibid.
38 S.13 (3).
for such a situation so that appropriate measures may be evolved to, at least, minimise the incidence of disputes. A machinery to discover the facts and circumstances responsible for industrial disharmony and to apprise the appropriate government about the causes for internecine disputes would play a vital role since the appropriate government, when well-informed of the facts, may devise suitable methods or employ effective remedies which would prevent the wheels of production from grinding to a halt. Thus, section 6 of the Act envisages the establishment of a Court of Inquiry, a fact finding body, to inquire into any matter appearing to be connected with or relevant to an industrial dispute. Further, the Act also prescribes the procedure\textsuperscript{40} to be followed by the Court of Inquiry. The Court of Inquiry is required to enquire into the matter referred to it and report thereon to the appropriate government ordinarily within a period of six months from the date of reference under section 10 (1) of the Act.\textsuperscript{41} Some of the Reports of various Inquiry Committees constituted by the Government may be gathering dust in the archives and many may argue that the Court of Inquiry is a superfluous body not worth its place in the realm of the Act. It is submitted that such a criticism is unfounded and smacks of ignorance since the Courts of Inquiry can play a very useful role in reducing the incidence of industrial disputes\textsuperscript{42} by

\textsuperscript{40} S.11 (1).
\textsuperscript{41} S.14.
\textsuperscript{42} See infra, pp 74-97.
furnishing to the appropriate government adequate, relevant facts so that minor causes, incidents would not affect industrial production in a major way.

In an industrial environment, the policies and programmes that affect the workers should be evolved after mutual consultations and interactions. A consensual approach should normally lead to better results. Unilateral decisions of managements and imposition of the same over the workers would be resented and may not yield the desired results. The workers' voice should be heard but not stifled if increased production and productivity are to be ensured. Because, ultimately, it is the workers that are going to bear the brunt while executing such decisions. Good management practices also demand that in such situations the workers should, at least, be provided with an opportunity to know well in advance about the proposed or intended changes and, if necessary, to offer their views, or suggestions. Unilateral impositions may bear, often, the stamp of authoritarianism and would lead to resentment which would frustrate the very purpose underlying such policies or programmes. In this regard, section 9A of the Act plays a very vital role. It prevents employers from imposing unilateral decisions designed to change adversely the conditions of service of workmen as regards matters specified in the Fourth Schedule. Section 9A commands the employer to issue notice before changing the conditions of employment of his workers and injuncts him to wait for 21 days before he can effect the change. Further, issuing of notice under this section serves a dual purpose, that is, on the one hand, “it affords an
opportunity to the workmen to consider the effect of the proposed change and, if necessary, to present their point of view on the [said] proposal, and, on the other, [provides] an opportunity for mutual consultation between the employer and his workmen and thus, "... stimulates a feeling of common joint interest of the management and workmen in the industrial progress and increased productivity."

When the disputants fail to resolve their differences after mutual negotiations, the conciliation machinery can be pressed into service. If the efforts of the conciliation officer prove futile and the parties are not inclined to go before an arbitrator, then the appropriate government may have to make a reference of the industrial dispute to adjudication which involves "a mandatory settlement of industrial disputes by Labour Courts, Industrial Tribunals or National Tribunals [as the case may be] under the Act ...." It has been argued that the "central theme of the Act is adjudication [and from the statutory] scheme it is clear that the Act does little more than lip-service to collective bargaining, relegates the conciliation to the position of a mere stepping stone to adjudication and gives step-motherly treatment to voluntary arbitration". The final remedy, therefore, as regards unsettled disputes, is reference by the appropriate government to the adjudicatory...

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43. Tata Iron And Steel Co. Ltd v. The Workmen, 1972 11 L.L.J 259 (S.C.)
44. Ibid.
45. S.10 A.
46. Supra note 9 at 16.
47. Ibid.
machinery. The Act empowers the Appropriate Government to constitute the Adjudicatory Authorities, viz., Labour Courts, Industrial Tribunals or National Tribunals and to refer an industrial dispute, existing or apprehended, to one of these machineries. To ensure unimpeded production, the Act prohibits industrial action during the pendency of adjudicatory proceedings and also empowers the Appropriate Government to prohibit the continuance of a strike or lockout already in existence on the date of reference made under S.10 (1) of the Act.

Provisions pertaining to compulsory Adjudication were not found in the repealed Trade Disputes Act, 1929. They were first introduced as an emergency measure during the Second World War under the Defence of India Rules, and later, found their way into the Industrial Disputes Act, 1947. The dictates of a planned economy to reach the desired target fixed for industrial growth and expansion through the various Five Year Plans is an important reason for the retention of compulsory adjudication under the Act. Any short-comings which one may notice in the functioning of the adjudicatory machinery under the Act, should not lead to the conclusion that the adjudicatory mechanism has struck at the roots of the collective bargaining process and, therefore, should be disbanded. Because,
the past record of the adjudicatory body does not deserve condemnation\textsuperscript{52} and the adjudicatory mechanism had to be necessarily introduced into the Act because of the demands of a planned economy and the need to reduce the incidence of costly strikes and repressive or retaliatory lockouts. It should be noted that the Adjudicatory Authorities, under the Act can in appropriate cases, say, unfair labour practices indulged in by an unscrupulous employer, order ‘reinstatement’ of a wrongfully dismissed or discharged workman\textsuperscript{53} which cannot be thought of under the common law nor such a requirement can be incorporated under the terms of a contract of employment. Therefore, by conferring power to interfere with the unjust order of punishment, by way of discharge, dismissal, retrenchment \textit{etc.}, passed by employer with or without domestic enquiry, the legislature has endeavoured to frustrate the unfair labour practices on the part of the industrial employers.\textsuperscript{54}

Thus, this provision under S.11A strengthens the hands of the adjudicatory bodies to safeguard and promote the workers’ interests and, at the same time, compels the employers to be more cautious while passing an order which would deprive the workmen of their very livelihood.

\textsuperscript{52} \textit{Supra} note 34 at 325, para 23.29.
\textsuperscript{53} S.11 A.
\textsuperscript{54} \textit{Ibid.}
The Act also provides for Voluntary Arbitration\textsuperscript{55} of labour disputes. Incidentally, it may be pointed out that it was Mahatma Gandhi, The Father of the Nation, who advocated this method for the resolution of an industrial dispute that had arisen in Ahmedabad Textile Mills.\textsuperscript{56} The provisions relating to Voluntary Arbitration were inducted through the \textit{Industrial Dispute Miscellaneous Provisions (Amendment) Act}, 1956. Through this Amendment, the machinery for Voluntary Arbitration acquired statutory sanctity. However, the Award of the Arbitrator remained at a lower level than the settlement arrived at in the course of conciliation proceedings and also the Award of an adjudicator in so far as its binding effect was concerned. The repeated stress in the various \textit{Five Year Plans} upon strengthening the Voluntary Arbitration as a mode of settlement of industrial disputes led to an Amendment in 1964 which placed the Award of an Arbitrator on an equal footing with that of an adjudicator in certain situations. It is argued that the very presence of Voluntary Arbitration is a sign of failure of the collective bargaining process. But, it is possible to assert that when the parties consequent upon the failure of conciliation, instead of knocking at the doors of an Adjudicator, decide to opt for Voluntary Arbitration, what is demonstrated is that the principle of 'voluntarism' still guides them in their interactions and that mutual faith still

\textsuperscript{55} Supra note 45.

\textsuperscript{56} Supra note 34 at 323 para 23. 23.
exists which can be strengthened by creating a suitable environment in the days to come.

After a cursory survey of the provisions in the Act relating to the "investigation and settlement of industrial disputes", we may now consider those other provisions which enable us to understand the meaning of the phrase "certain other purposes". Workers 'Right to Strike', though not a fundamental right needs to be protected. This does not mean that absolute freedom should be granted to the working lot to exercise this right indiscriminately. Because, the very presence of the strike situation in any industry dispatches its ripples far and wide affecting, adversely, the employer, the community and, more importantly, the workers themselves. Hence, by providing for the regulation of workers' right to strike under the Act,\textsuperscript{57} the legislature has to some extent succeeded in striking a balance, keeping in mind the negative aspects of either total ban on strike action or granting unbridled and uncanalised right to resort to strike according to the whims and fancies of trade unions. In similar vein, the Act also imposes equally rigorous restrictions on the employers' right to declare a lockout.\textsuperscript{58} As for as strikes and lockouts in Public Utility Services are concerned, taking into account the purposes the Public Utility Services serve in the society, the Act is comparatively more

\textsuperscript{57} Ss.22, 23, 24, 25, 10 (3) and 10A (4A).

\textsuperscript{58} Ss. 22 (2), 23, 24, 25,10(3) and 10A (4A).
severe in imposing restrictions on the exercise of this right by the disputants.\textsuperscript{59}

Therefore, regulation of strikes and lockouts may ensure minimization of unwarranted work stoppages and pave the way for uninterrupted production which would enrich not only the employer and his workers but also the country.

The main theme of all “Bread and Butter Statutes” – labour legislations, is to provide an umbrella that protects a person from both, getting wet in a heavy down pour and, also, from the ‘burns’ caused by a scorching sun. The Act, by providing various types of compensation\textsuperscript{60} to workmen faced with involuntary unemployment offers such a protective umbrella. But, the workman must have put in at least one year of continuous service.\textsuperscript{61} These compensatory payments may enable workers facing involuntary unemployment to keep their bodies and souls together by retaining some of their purchasing power and demonstrate a humane public policy. The Act, by imposing the obligation of payment of compensation to workmen in case of layoff, retrenchment, transfer or closure has sought to frustrate the employers’ attempts to resort to these above mentioned methods capriciously or whimsically. The provisions, referred to above, are, indeed, a measure of social security.

\textsuperscript{59} S.22. For definition of “Public Utility Service”, see S.2 (n).
\textsuperscript{60} Chapters VA, VB.
\textsuperscript{61} S.25 B.
Pendency of proceedings before any of the dispute-settling authorities itself establishes the strained relationship between labour and management. To ensure that the strained relationship should not deteriorate further, section 33 forbids the employer from altering the conditions of service of workmen to their prejudice in certain specified situations.

Despite numerous Amendments, the main thrust of the Act, remains. Thus, maintenance of peace and harmony in an industry to promote industrial prosperity and through it the economic prosperity of the nation, concern for the underdog, the workers, and paving the way, ultimately, for industrial democracy are the prime priorities of the Act. Indiscriminate strikes and retaliatory or repressive lockouts are frowned upon. The Act exhibits its concern for workers facing involuntary unemployment on account of layoff etc., and seeks to provide a measure of social security. Because, workers do need shoulders to cry upon when they are in trouble and the compensatory provisions incorporated under the Act provide such shoulders.

62. Conditions of service, etc., to remain unchanged under certain circumstances during pendency of proceedings.