CHAPTER – I

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Industrial relations is a dynamic socio-economic process. It is a “designation of a whole field of relationship that exist because of the necessary collaboration of men and women in the employment processes of industry.”\(^1\) It has two faces, like a coin, co-operation and conflict.\(^2\) The relationship, to use Hegal’s expression, undergoes change from thesis to ante-thesis and then to synthesis. Thus, the relationship starting with co-operation soon changes into conflict and after its resolution again changes into co-operation.\(^3\)

Industrialisation plays a vital role in the economic development of any nation. However, industrialisation in India, as in other countries, brought with it some socio-economic problems. Those who control the industry have a natural tendency of multiplying their wealth and if this tendency is not checked the rich grows on richer and the poor becomes poorer day by day. This economic disparity leads to a struggle between ‘Haves’ and ‘Have-nots’, where the later is exploited. Although this situation continues for some time and it had continued to be so in our country too, but gradually the workmen realised that they could put up a better fight if they get united. This realisation was closely followed by a period of industrial unrest leading to strikes

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\(^3\) Ibid.
and lockouts. With rise in the cost of living there has been consistent demand from labour for increase in wages. Democratic ideas have also grown simultaneously with the growth of industrialisation in our country. These democratic ideas have pleaded for and have also helped in mass awakening and consciousness for greater power amongst the working class. Labour problems constituted a serious menace to the society and needed solution, if not to eradicate, then at least to mitigate them in the very beginning. The proper regulation of industrial relations is necessary for maintenance of industrial peace and harmony.

"Industrial Peace" and "Industrial Harmony" may have the same meaning; but the concept of industrial peace is somewhat negative and restrictive. It emphasises absence of strife and struggle. The concept of industrial harmony is positive and comprehensive and it postulates the existence of understanding, co-operation and a sense of partnership between the employers and the employees. A quest of industrial harmony is indispensable for economic progress of the country. Industrial harmony leads to more co-operations between employees and employers, which results in more productivity. It is founded on healthy industrial relations. Healthy industrial relations cannot, therefore, be regarded as a matter in which only the employers and employees are concerned; it is of vital significance to the community as a whole.4

Industrial Law in India is of recent vintage and has developed in respect to the vastly increased awakening of the workers of their rights, particularly after the advent of independence. Industrial relations embrace a complex of relationships between the

4 See First Five Year Plan, p.572.
workers, employers and Government, basically concerned with the determination of the terms of employment and conditions of Labour of the workers. Escalating expectations of the workers, the hopes extended by Welfare state, uncertainties caused by tremendous structural developments in industry, the decline of authority, the waning attraction of the work ethics and political activism in the industrial field, all seemed to have played some role. But our society has not yet found the means to guarantee minimum needs of life to the industrial workers.  

As a result of globalisation, competition among nations to attain higher industrial productivity and to attract more investments in industry is becoming more intense. Industrial growth and economic development have been receiving the highest priority in the agenda of policy perspectives of every nation, particularly in the developing countries.

India, being one of the developing countries, has kept its doors wide open for foreign investments in all sectors of industry. Having done away with the irksome and regressive policies of industrial controls and the licensing system, India has been beseeching both the foreign and domestic investors to invest in industries, by offering the attractive terms and concessions, besides the cheap labour and technical skills available in the country. There is a competition among the Indian states for attracting foreign investments. One of the important conditions for succeeding in these objectives is to provide a peaceful industrial relations climate.

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Industrial Disputes cannot be ruled out forever, nor can be wished away. In the words of Bernard Gournay, there is only one place in the world, which is free from conflicts and that is the graveyard.\footnote{Quoted in Livishitz and Nikitinshky, \textit{An Outline of Soviet Labour Law}, 1977, p.193.}

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

An industrial disputes or for that matter any disputes establishes a cause. And the cause in industries may sprout from the acts done by either of the partners in production or from their omissions. The cause for an industrial disputes may also emanate from lack of understanding between the disputants about each other’s position.

An industrial dispute is a dispute between employers and workmen or workmen and workmen or employers and employers and its subject matter relates to employment, non-employment, the terms of employment or the conditions of labour of any person. Here, “any person” does not mean anybody or everybody in this wide word but would include past, present and future workmen, or one in whose employment, non-employment..., a large number of or an appreciable number of his fellow workers are directly and substantially interested.\footnote{Assam Chah Karamchary Sangh v Dimakuchi Tea Estate, (1958), 1 L.L.J, 500,507 (S.C).}
Normally, the subject matter of industrial disputes related to discharge, dismissal, retrenchment of workmen, wages, compensation, and other allowances, hours of work and rest intervals, leave with wages and holidays, bonus, Profit sharing, provident fund, gratuity, classification by grades, rationalation, withdrawal of customary concession or privilege, application and interpretation of Standing Orders, etc.\(^8\)

Unresolved disputes would dislodge industrial peace and would hamper production and productivity in the industrial unit concerned. The Industrial Disputes Act was enacted with the predominant object of “Investigation and Settlement of settlement of disputes.” Accordingly, it provides for the constitution of Courts of Inquiry to discover causes responsible for internecine industrial disputes, so that Appropriate Government can contemplate suitable curative and remedial measures to thwart or pre-empt such disputes.

The Act provides for establishment of Works Committees for maintenance of industrial harmony and preservation of amity and good relations between employers and workmen.\(^9\) It also pre-empt disputes and illegal strikes and lockouts. Further, it seeks to resolve industrial disputes that may errupt in industries through the machineries of conciliation,\(^10\) Arbitration,\(^11\) Adjudication,\(^12\) if there be a dead lock in

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\(^8\) Schedules II and III of \textit{I.D.Act.}
\(^9\) Sec.3
\(^10\) Secs. 4,5,12,13.
\(^11\) Sec. 10-A
\(^12\) Secs. 7,7A, 7B, 10,11,17,18,19,20.
the negotiation process and collective bargaining proves futile. It also seeks to prevent situations which might exacerbate or aggravate the disputes already in existence\textsuperscript{13} and provides for social security when workmen are forced to face involuntary unemployment as a consequence of lay-off, retrenchment or transfer or closure of their establishment.\textsuperscript{14}

The Act has been described as a "benign measures to pre-empt industrial action, to establish machineries for dispute resolution to ensure that the productive partners energies do not go wasted in counter productive battles [and that industrial peace] would create a climate of good will"\textsuperscript{15} The Supreme Court, in Hindustan Hosiery Industries,\textsuperscript{16} has declared that the Act is intended to promote social justice through mechanisms provided therein.

Industrial conflicts, inherent to the contemporary industrial system, have to be contained and resolved by establishing effective procedures. The voluntary methods of settlement of industrial disputes like collective bargaining and voluntary arbitration have to be encouraged to ensure sustainable industrial peace. But, the Indian system of industrial relations lays greater emphasis on compulsory methods such as conciliation and compulsory adjudication through state intervention.

\begin{thebibliography}{9}
\bibitem{sec33} Sec.33 “Conditions of service, etc. to remain unchanged under certain circumstances during pendency of proceedings.”
\bibitem{chapv} Chapter V-A and V-B
\end{thebibliography}
The focus in this thesis is made upon the adjudication machinery with a view to discover whether the machinery has succeeded in accomplishing the predominant statutory object, namely expeditious resolution of industrial disputes whenever they crop up.

Compulsory adjudication of industrial disputes, introduced as a Wartime measure, continued to be the basis of the legal framework of the industrial relations policy. Compulsory adjudication of interests disputes and the consequent prohibitions on strikes is one of the most important controversial areas in the field of industrial relations. The principles of greater freedom of contract to the labour and management and lesser state intervention in industrial disputes such as voluntarism or bilateralism in industrial relations provide the alternative policy choice for future industrial relations in India.

However, for the resolution of the individual and rights disputes, the adjudication system is the only peaceful remedy available to the aggrieved workmen. The continuation of the system of adjudication as a method of resolution of industrial disputes have been preferred by the national trade union federations with some modifications. The First National Commission on Labour, reviewing the whole situation prevailing in the area of Labour Management Relations, has cautioned that the dismantling of the adjudicatory system under Act would be an unwise step\textsuperscript{17} and the same is also endorsed by the Second National Commission on Labour in India.\textsuperscript{18}

The National Commission on Labour while acknowledging, *inter alia*, that there are procedural deficiencies in the adjudicatory system and recommending that the same be remedied has observed:

"The adjudication machinery has exercised considerable influence of several aspects of conditions of work and labour management relations. Adjudication has been one of the instruments for improvement of wages and working conditions and for securing allowances for maintaining real wages for standardisation of wages, bonus and introducing in benefits and amenities. It has also helped to avert many work stoppages by providing an acceptable alternative to direct action and to protect and promote the interests of the weaker sections of the working class, who were not organised or were unable to bargain on an equal footing with the employer."

The ultimate object of industrial adjudication is to help the growth and progress of national economy and it is with that ultimate object in view that industrial disputes are settled by industrial adjudication on principles of fair play and justice. The basis lies in the guiding principles of Social welfare, common good and the directive principles of State policy enshrined in the Constitution. The essential function of industrial adjudication is to assist the State by helping a solution of industrial disputes.

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19 *Supra* note-17.


The present adjudication mechanisms such as Labour Courts and Industrial Tribunals, which were charged with the duty of expeditious adjudication of industrial disputes for ensuring social justice and Industrial peace, have been functioning as an appendage or sub-system of the main Judicial System. Consequently, all the defects and drawbacks of the judicial system in the country have infiltrated into the industrial adjudication. These drawbacks, abnormal delays, mounting arrears, excessive cost of litigations, procedural technicalities and court formalities, etc. have made the adjudication system ineffective and inefficient. As a result, the workmen and the trade unions have been loosing confidence in the system. But, in the interest of industrial peace and harmony it is essential that the adjudication machinery shall function effectively.

In this context, the entire subject of industrial adjudication deserves a comprehensive and critical review. The present study is an attempt in this direction in order to identify the limitations of the adjudication system and its operational drawbacks and to offer appropriate suggestions to infuse confidence in the disputants in the Adjudicatory Machinery and to make industrial adjudication more effective, efficient and responsive to the contemporary needs.

1.1 The Problem

The Industrial Disputes Act, 1947, envisages three kinds of machinery for compulsory adjudication of industrial disputes, they are: Labour Courts, Industrial Tribunals and National Tribunals. Labour Court has Jurisdiction over matters contained in the Second Schedule of the Act; the Industrial Tribunal has Jurisdiction
over matters contained in the Third Schedule of the Act and the National Tribunal to be Constituted by the Central Government to Adjudicate Industrial disputes of National Importance or Industrial Dispute of such a nature that industrial establishments situated in more than one State are likely to be interested or affected by such a dispute.

Among the disputes over which Labour Court and Industrial Tribunal has Jurisdiction, the termination disputes, disputes referred under section 10(1)(c) and applications under section 33 (c)(2) are some of the important and major ones. These disputes are considered as important ones because the majority of the disputes registered before Labour Courts and Industrial Tribunal are these disputes and the Industrial Disputes Act, 1947, provides for disposal of the same within a period of three months in case of termination disputes and within six months in other cases. The rules made under the Act also supplement this expectation of the Statutes.

Though the Statute and rules framed under the Act provides for disposal of the disputes within the prescribed period of time, in reality the disputes have been pending before the Labour Courts and Industrial Tribunals since several years. As a result, the adjudicatory machinery seems to become ineffective in administration of Justice to the poor and needy workmen and also posed a threat to Industrial peace and harmony. The solution to the problem lies in restraining and revitalizing these adjudicatory machinery in order to ensure just and speedy disposal of the Industrial Disputes.
1.2 Objectives of the Study

1. To study the government policy on Industrial Relations.
2. To critically analyses the provisions relating to Industrial Disputes and methods and machineries for their settlement.
3. To understand the role of government in the adjudication system.
4. To study the adjudication machinery under the Industrial Disputes Act.
5. To study the Awards and Judicial review of Awards.
6. To evaluate the Compulsory Adjudication method and operation of the system.
7. To study the working of Labour Courts and Industrial Tribunals and their performance.
8. To suggest the remedial measures to avoid or minimize the delay in adjudication of the disputes and to make adjudication system more effective and efficient.

1.3 Hypotheses

1. There is a enormous delay in adjudication of Industrial Disputes.
2. The misuse of Governments power of reference and lack of access to parties would result in delay in adjudication.
3. The huge pendency of cases is one of the causes for delay in disposal of cases. Appointment of non-specialist Presiding Officers is also responsible for delay in adjudication
4. Granting of unlimited adjournments is causing delay in disposal of cases.
5. The stringent procedural technicalities and court formalities are also contributing to delay.

6. Lack of adequate Labour Courts and Industrial Tribunals and excessive cost of litigation are also hampering adjudication process.

7. Government’s negligence in filling up vacancies of Presiding officers in time is also one of the reasons for delay in adjudication.

8. The requirement of publication of awards would cause further Impediment on completion of adjudication process.

1.4 Importance of the Study

The Importance of the study lies primarily, in the fact that it reveals the lacunae existing presently in the Industrial disputes adjudication system in India, which are actually obstructing the process of adjudication of disputes. An objective analysis of the laws relating to adjudication process, Judicial decisions and data collected from the presiding officers, Advocates, Employers, Trade Union Leaders and Employees, to identify the gray areas in the adjudication system and to suggest ways to improve the system. The study contributes to the ongoing efforts to bring necessary reforms and changes in the industrial adjudication system in the country.

1.5 The Scope of the Study

The present study is confined to Labour Courts and Industrial Tribunal at Hubli and their working. The study intends to review the relevant provisions of law relating to adjudication of Industrial Disputes under the Industrial Disputes Act. This study
further intends to know the causes and ill effects of delay in adjudication of Industrial Disputes on workmen, employers and society at large and also to suggest some remedial measures to overcome the present problems.

1.6 Methodology

The methodology adopted for the study is both doctrinal and non-doctrinal. The documents analyzed include treaties, statutes, judicial decisions, and report of various commissions. The empirical data collected from Labour Courts and Industrial Tribunal at Hubli and reports of various Committees have been used as evidence for certain propositions, arguments and conclusions. Discussions with Presiding Officer of Labour Court and Industrial Tribunal and Information collected through questionnaire administered to Presiding Officer, Advocates, Employers, Trade Union Leaders and Employees are also used in the study.

1.7 Scheme of the Study and its Presentation

This investigation into the problem of “Adjudication of Industrial Disputes With Special Reference to Working of Labour Courts And Industrial Tribunal At Hubli” is planned in nine chapters.

Chapter I: Introduction

This chapter is concerned with an elucidation of the problem, the objectives of the study, hypotheses, importance of the study, its scope and methodology adopted for the study.
Chapter II: Policy of Government on Industrial Relations and the Law

This chapter deals with the Indian system of industrial relations and importance and relevance of the adjudication method, its origin and development as part of the overall industrial relations system in detail. The Government's policy on industrial relations, the evolution of the system and the later developments, in the pre independence as well as the post independence periods are discussed with the necessary details. The legal framework of the system as contained mainly in the Industrial Disputes Act and the Trade Unions Act has been discussed. The attempts made by the Government of India in the post Independence era to bring about critical changes in the industrial relations policy through appropriate changes in the legal framework have been explained with the help of the various Bills that were introduced in parliament. The relevant recommendations of the National Commissions on Labour and various Committees have been discussed. Apart from this the impact of New Economic Policy on industrial relations in India is also discussed.

Chapter III: Industrial Disputes and Their Settlement: Methods and Machinery

This chapter deals with the concept of 'industrial dispute' and the definition of the concept as defined in the I.D.Act. The discussion provides an understanding as to the inherent nature of industrial disputes in employment relationship and the need to settle them in a manner agreeable to the parties to the dispute and the society in general. The various methods of settlement of industrial disputes, as are available and used in varying degrees are discussed with the necessary details. Further discussion in
this chapter concentrates on different types of dispute settlement machineries and their objects. The discussion also touches upon the effectiveness of the machinery in helping peaceful resolution of disputes in the light of their working in the country during the last almost five decades. Since the main theme of the discussion is compulsory adjudication, the functional nexus among various methods of settlement and the inter-relationship of compulsory adjudication with other methods is emphasised.

Chapter IV: Government's Role in the Adjudication System

This chapter deals with the role of appropriate Government in the adjudication process. Except the actual adjudication function, every other incidental operation necessary for adjudication is to be performed by the Government. From the initial function of constituting the adjudicatory authorities and referring disputes to them for adjudication, the appropriate government under the scheme of adjudication provided by the I.D.Act undertakes upto the ultimate function of ensuring the implementation of the award of these authorities. Hence, the Government's power to constitute adjudication machinery, power to refer disputes for adjudication and to prohibit continuation of strikes and lock-outs after reference, publication of awards, to reduce or extend the period of operation of awards and implementation of awards are discussed in detail. Apart from delays in the matter of reference, the partisan attitude of the Governments and political interference in the decision-making are emphasised
along with an analysis of recommendations made by various commissions and committees.

Chapter V: Adjudication Machinery under the Industrial Disputes Act

This chapter deals with the adjudicatory machinery i.e., the Labour Courts, Industrial Tribunals and National Tribunal, which is entrusted with the task of adjudication of industrial disputes. The main objective of this thesis being the assessment and evaluation of the efficacy of these adjudicatory authorities, this chapter is devoted to the detailed discussion of the composition and qualifications of these bodies, the procedures followed by them and their extraordinary jurisdiction in resolving the industrial disputes. The main objection for the adjudication system being the delays in the adjudication, the structures and qualifications of these authorities are discussed from the point of view of the persons selected as presiding officers of these bodies. The recommendations of the Law Commission of India in its 122nd Report and other commissions and committees on this aspect are emphasised. Further, the procedure and jurisdictional aspects of these bodies are discussed with reference to the actual practice and the relevant case law. The powers and duties of the adjudicatory authorities are also dealt with.

Chapter VI: Awards and Judicial Review

This chapter deals with the meaning and definition of award and the judicial review of awards. The publication of awards, their commencement, the binding nature of awards and operation of awards are also discussed. As the I.D.Act did not provide
for any appeal against the awards of the adjudicatory authorities, the remedy available
to the aggrieved party under Articles 226 and 227 before High Courts and writ
jurisdiction under Art. 32 and Special Leave Appeal under Art.136 to Supreme Court
is discussed. Apart from this the scope of judicial review over the awards has been
discussed with the relevant case law.

Chapter VII: An Evaluation of the Adjudication Method and Operation of the System

This chapter contains a critical analysis of the various drawbacks and
deficiencies from which the adjudication system at present suffers. The causes for
delay in adjudication of disputes and possible remedies to overcome the same are
emphasised. Further, limitations of adjudication are also dealt with.

Chapter VIII: Working of Adjudicatory Machinery at Hubli and it's Performance-An Empirical Analysis

This chapter deals with the working of Labour Courts and Industrial Tribunal
at Hubli. The data collected from all these adjudicatory bodies for the years 1999-
2004 regarding the institution, disposal and pendency of cases has been analysed and
findings are drawn from this data regarding the efficacy of functioning of these
bodies. The opinions collected through various experts in the field are critically
analysed and results of the opinion survey are also incorporated in this chapter.
Chapter IX: Conclusion and Suggestions

This chapter contains the fair summary of the whole study and findings of the study. Appropriate suggestions are proposed for making the adjudication more effective and efficient.

In view of various limitations and drawbacks in the operation of the labour adjudication system in India, it is generally admitted that the adjudication system is not effective and efficient in its operation and that it has failed in rendering speedy justice as contemplated by the I.D.Act and envisioned in the Constitution. Unless the structural defects and the operational deficiencies, discussed in the study, are eliminated and the system is thoroughly reformed, on the lines suggested in the thesis, it is likely to be rejected altogether by the workmen and trade unions in the country.

However, in the interest of industrial peace and social justice, the adjudication method of settlement of disputes has to continue, particularly in the absence of any other effective alternative, for all individual and rights disputes and some times even interest disputes also. Therefore, it is essential that the adjudication system be made effective and efficient in its operation.