CHAPTER – II

POLICY OF GOVERNMENT ON
INDUSTRIAL RELATIONS AND THE LAW
2.1 Introduction

As part of the theme of this investigation into the adjudication as a dispute settlement technique, this Chapter concentrates on the Indian system of industrial relations at the macro level. In the present system of industrial relations, adjudication occupies the central place. In order to appreciate the importance and relevance of the adjudication method, it is necessary to examine its origins and development as part of the overall industrial relations system. To understand the advantages and drawbacks of the adjudication method, it must necessarily be counter posed with the method of collective bargaining. The history of Indian system of industrial relations is nothing but the clash between the claims and counter-claims of these two methods for primacy. Therefore, this Chapter contains a general description of the Indian system of industrial relations and a critical analysis of the government’s policy in this area. The origins and the later developments that have gone into the overall framework are critically examined with a view to finding out the place and relevance of the adjudication method in the present day industrial relations system. It is often said that to understand the character of industrial relations, one has to begin with the government policy. There were many attempts since 1950 to introduce changes in the policy to ensure harmonious industrial relations. But no attempt has so far been successful and the compulsory adjudication method continues to occupy the prime
place. This Chapter also traces these developments and examines the reasons for the failure of these attempts.

2.2 Industrial Relations System and Government Policy

Industrial relations in India are essentially triadic in character. The state enters the everyday relationship in industry in the capacity of a mediator and adjudicator. In the Indian system, labour and management are theoretically free to regulate their own relations, but in practice because of the ready availability of state machinery – conciliation and compulsory adjudication, a meaningful bargained relationship, in general, could not develop even after fifty years of Independence. The inevitability of government intervention and the reasons for it are rightly narrated by Myers by observing, “The pattern of labour management relations in India has increasingly been structured by government. The difficulties in developing a committed industrial labour force, the rivalries and weaknesses of the Indian trade union movement, the failure of many Indian and foreign employers to deal fairly with the workers or constructively with trade unions, and the resultant labour discontent and strife have encouraged government intervention in order to contain, channel and redirect incipient and actual labour protest. Increasingly, planning objectives for rapid economic development have been given priority and the pattern of labour management relations has been expected to conform to these objectives.”

This situation is quite different from the one that exists in the advanced capitalist democracies, where collective bargaining has been the mainstay of industrial relations and the state intervention in minimal. As Ramaswamy put it, "while industrial relations are undoubtedly subject to state intervention and regulation everywhere, there can be vast differences in the extent of such regulation. Where labour and management are expected to order their relations bilaterally, the role of the state is that of a watchdog which steps in where limits are transgressed.\(^2\)

In most of the industrially developed countries, although the state might intervene as and when it becomes necessary in the national interest, state regulation does not replace a bargained relationship. Speaking of the British labour relations system Otto-Kahn-Freund observed, "all statutory methods of the fixing wages and other conditions of employment are by the law itself considered as a second best. All British labour legislation is in a sense, a clause or foot-note to collective bargaining.\(^3\) In the advanced capitalist countries the distribution of power and money in the work place is essentially a matter of bilateral regulation. The state is rarely involved in win-lose situations of the kind encountered in the employment relationship where the gain of one is directly the loss of the other.\(^4\)

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\(^4\) Ramaswamy E.A., supra note-2, p.3.
In U.S.A., the state intervention is very much limited in the matter of settlement of industrial disputes. The state has confined itself to enacting legislation for ensuring the workers right to organise and bargain collectively. Independent authorities are constituted to administer and interpret legal provisions and decide on complaints against unfair labour practices. Even in very important economic disputes, the state does not interfere directly, beyond issuing statements of its economic policy from time to time.

In Japan right to collective bargaining and collective action, subject to certain limitations have been constitutionally guaranteed. State intervention is confined to a few disputes and it is justified on the grounds of national economy. In Australia the responsibility of interfering with and settling industrial disputes is vested in an independent commission, which consists of experts in the field and the executive authority of the government does not directly intervene in industrial disputes. In other industrially developed countries also direct state intervention is an exception and the disputes are mainly settled through collective bargaining, failing which parties are encouraged to resort to conciliation and/or voluntary arbitration.

But in India, mainly due to historical and ideological reasons, state intervention in the day-to-day labour-management relationship has continued till date, despite the demands of the Indian trade unions and recommendation of various commissions to the contrary. The law on the settlement of industrial disputes is now contained in the Industrial Disputes Act, 1947 (hereafter referred to as the I.D.Act). The main thrust of this Act is the government intervention in industrial disputes through conciliation and
compulsory adjudication by prohibiting strikes and lockouts during the pendency of these proceedings.\(^5\) Once the adjudication machinery provided under the Act is set in motion, collective bargaining comes to a heart and binding settlement is imposed on the parties by the state machinery. The *I.D. Act*, which incorporates the government's industrial relations policy, does not even mention the term "collective bargaining" and almost all the provisions of the Act deal with conciliation and compulsory adjudication and the appropriate Government's functions in relation to this machinery. It was only by an amendment in the year 1956, a bilateral settlement between an employer and workmen arrived at otherwise than through conciliation proceedings was recognized and made binding on the parties to the settlement.\(^6\) Even now but for this single provision there is nothing in the *I.D. Act* that speaks of collective bargaining. The Trade unions Act-1926 (hereafter referred to as the "*T.U.Act*") provides only for registration of trade unions and the privileges and immunities of registered trade unions. The most important amendment to the *T.U. Act* in 1947 providing for compulsory recognition of trade to bargain with the recognized trade registered trade unions. The most important amendment to the *T.U.Act* in 1947 providing for compulsory recognition of trade unions by employers, and thus imposing an obligation on the employer to bargain with the recognized trade union in good faith was, unfortunately, a piece of conditional legislation and the Government of India has not so far thought it necessary to bring these salient provisions relating to

\(^5\) See Sections 10 (3), 22 and 23 of the *I.D. Act*.

\(^6\) See Section 2 (P) and Section 18 (1) of the *I.D.Act.*, 1947.
recognition of trade unions into force. With the result, the present state of affairs is that there is no central legislation on the recognition of trade unions as bargaining agents, and, therefore, there is no legal obligation on an employer to bargain with the trade unions in his establishment.

The Law commission of India in its 122nd Report on “Forum for National Uniformity in Labour adjudication” pithily observed: “In fact, it is a trite saying that labour law such as the one that can be found in the Industrial Disputes Act-1947, was not enacted as a measure of socio-economic justice but it was in fact a law and order measure” 7 (emphasis added). It is this law and order measure that still regulates the labour management relations in the country today. It is only in a few states, like Maharastra, Uttar Pradesh, West Bengal laws are made for the recognition of trade unions, although even in these States the active state intervention continues to be the policy. Although attempts have been made from time to time to introduce basic changes in the government policy through amendments to the I.D. Act and the T.U. Act for giving importance to collective bargaining and for reducing the state intervention, these attempts have not yet met with success. This is because the successive Governments at the Centre after Independence lacked the political will to bring about the changes in the direction of strengthening the trade union movement in the country. The Government never liked to give up its control on industrial relations in the name of maintaining industrial peace. Added to this, most of the aspects touching upon employment relationship such as minimum working conditions in

factories, mines, plantations and shops and commercial establishments minimum wages in unorganised sector, protection of proper payment of wages, bonus, gratuity and other social security measures are now covered by specific legislations, leaving very little room for collective bargaining. For resolving more important disputes on wages the government resorts to wage boards in all big industries in the organized sector and pay commissions for government employees. Barring these, the wage disputes are also referred to industrial Tribunals for compulsory adjudication.

The government policy on industrial relations is well reflected by the Law Commission in its 122\textsuperscript{nd} Report in the following words:

"As the Constitution envisaged a society governed by rule of law, the state had to enact numerous legislations to translate into reality the promise in the preamble that the state shall secure to its citizens, justice, social, economic and political and equality of opportunity. Law was to ensure socio-economic justice to labour, transforming their position from being a factor of production to partner in industry. Through the instrumentality of law, the unequal bargaining power of the labour was to be strengthened so as to avoid direct action, confrontation, or conflict and to ensure peace and harmony in the industry, which was a prerequisite for higher production thereby improving and ameliorating the economic position of the labour force. Exploitation by the powerful industrial employees of the workmen had to be eschewed by enacting numerous legislations. With this end in view, the Central Government enacted roughly about 51 legislations since 1947."\textsuperscript{8}

\textsuperscript{8} Ibid. pp. 10-11.
So, the policy has been initiated to bring about a transformation through the law, without providing room for confrontation, as it would affect production and the economic development. There is widespread criticism that this policy of the government has been responsible for a weak trade union movement in the country. Labour has been made dependent upon the government and the labour tribunals established by law. Van Dusen Kennedy, an ardent critic and a keen student of Indian Industrial relations commenting on this approach of "change only through law" observed:

The total effect of all these laws, it can be argued, is to make sufficient and orderly provision for the key employment conditions so that workers need not be dependent upon the unions for these protections and the government need not feel compelled to promote the method of collective bargaining."\textsuperscript{9}

Commenting on the imperative of unity of labour as a countervailing force to counteract the inequality of bargaining power, which is inherent in the employment relationship, Kahn-Freund observed:

"Where labour is weak and its strength or weakness depends largely on factors outside of law – Acts of parliament, however well intentioned and well designed, can do something, but cannot do much to modify the power relation between the labour and management. The law does, of course, provide its own sanctions, administrative, penal and civil and their impact should not be underestimated, but in labour relations

legal norms cannot often be effective unless they are backed by social sanctions as well, that is by the countervailing power of trade unions and of the organized workers asserted through consultation and negotiation with the employer and ultimately, if this fails, through withholding their labour. How far the law can succeed in restraining the command power of management depends upon the extent to which the workers are organized. Therefore, there is a need for laws, which will engender party parity in collective bargaining power.”

The above observation of Kahn-Freund accounts for the fact that the employer more in breach and the workers observe the numerous labour legislations in the unorganised sector is unable to get the fruits of these welfare legislations.

The government policy in this regard may also be viewed from the perspective of expediency of a capitalist government in a market economy. The government is so much dependent upon the industrialists and traders for the economic development of the country that it cannot go all out to strengthen the trade union movement. The bias of the government towards industrialists and traders is well depicted by Ramaswamy by observing that, “those who wield political power and those who control the economy, have common social origins. The owners of the capital pressurize the state to act in their favour.” The stability of the government in a democracy depends on the prosperity of the economy and in the market economies the government is in turn dependent on businessmen to ensure this prosperity. In contrast, the trade unions do

11 Ramaswamy E. A., supra note 2, p.9.
not have as privileged position as that of business. Far from performing an essential public service, they are seen to pursue sectional interests, and that too by employing disruptive methods.\textsuperscript{12}

But, it cannot also be forgotten that in a political democracy labour is a major pressure group and an important constituent of the electorate and so its demands have to be conceded. Thus, the government policy in industrial relations is the result of a compromise of these two conflicting expediencies.\textsuperscript{13} More and more laws are made for the welfare of labour, but the politico legal structures are so maintained that the labour cannot grow and attain parity of power, that is essential for an orderly and healthy relationship. The obsession throughout has been to prevent strikes by workmen so as to maintain optimum levels of production. The answer is found in state's intervention in industrial dispute through conciliation in the first step and failing that, the adjudication machinery is set in motion to bring about a binding settlement of the dispute. Despite many advantages gained by labour through the system of compulsory adjudication, the labour is so weak today that balance of power is a far cry. The trade union movement in the country has remained highly dependent on the government and the adjudication machinery.

2.3 Evolution of the system

At this stage it is useful to discuss the origins and evolution of the government policy on industrial relations during the British regime and later on the discussion  

\textsuperscript{12} Ibid., pp. 17-18.
\textsuperscript{13} Ibid.
concentrates on the various unsuccessful attempts made in bringing about essential changes in the system in favour of more evenly balanced bilateral relationship.

**British Period**

The British colonial government's main concern was to assist the employers interested in work contract and in the maintenance of order and security. Before the First World War the government played a limited role in dealing with the labour management relations. The earliest legislation imposing curbs on workmen were the Workmen's Breach of Contract Act of 1859 and the Employers and Workers Disputes Act of 1860. These Acts were meant to protect the interests of the employers. The first factories Act came to be enacted in 1891 for regulating the working hours of only child and female labourers. In addition to the demands of labour movement in the country (although quite unorganised), the influence of the Lancashire and other British interests, which faced competition of textile manufacturing centres in India, was responsible for this legislation. The Factories Act did the first comprehensive regulation of adult male labour, 1911, limiting the working day of the textile factories to twelve hours. Thereafter, due to various economic and political pressures, which included pressure from the trade union movement that came into being by then, the labour legislation received fresh impetus in the 1920's. India's membership in the International Labour Organization (ILO) also influenced this spate of labour legislation. Important laws passed during the 'twenties were: The Indian Factories

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Act, 1922; The Indian Mines Act, 1923; The Indian Workmen's Compensation Act, 1923; The Indian Trade Unions Act, 1926 and The Trade dispute Act, 1929.

2.3.1 The Trade Unions Act 1926

The T.U. Act, 1926, which formed one of the basic legislations of industrial relations, for the first time recognized the workers' combinations as legal associations and provided for the registration of trade unions. The registered trade unions shall enjoy certain privileges and immunities. The immunity from prosecution for the offence of criminal conspiracy and from civil proceedings in respect of certain acts done in contemplation or furtherance of a trade dispute conferred necessary protection on trade unions for their legitimate trade union activities. With very minor amendments made, from time to time, this Act continues to be in force today.

2.3.2 The Trade Dispute Act, 1929

State intervention in the settlement of industrial disputes started with the Trade Disputes Act, 1929. This Act was “skillfully contrived as a weapon of counter attack on the working class. Afraid of the bitter and protracted struggles of the workers on railway and other important sections of industries, the government hurried through this Bill in the Central Legislative Assembly.”¹⁵ This Act consisted of three parts. The first part vested powers in the government for it to be used whenever it to be used whenever it considers fit to intervene in industrial disputes through adhoc Conciliation Boards and Courts of Inquiry. The second part prohibited strikes and

lockouts in public utility services without fourteen days’ notice. The third part banned the general strikes even of political nature, and sympathetic strikes of workers. The Act provided stringent punishment of imprisonment up to three months and/or fine of Rs. 200/- for joining or abetting an illegal strike. Provisions had also been made in the Act rendering protection to those who refuse to take part in a strike and also legally enabling them to claim compensation from the union. The All India Trade Union Congress (AITUC), the lone central trade union organization at that time, strongly criticized this Act and considered it as an attack on the trade union movement as a whole.16

Later, partly due to the recommendations of the Royal commission on labour (1931) (known as Whitely Commission), and partly as an outcome of the experience gained in the working of the Bombay Trade Disputes (conciliation) Act, 1934, the Trade Disputes Act was amended in 1938 by authorizing the Central and Provincial Governments to appoint conciliation officers for mediating in and promoting settlement of disputes.17

**Provincial legislation**

While this was the position in the country as a whole, a more extensive intervention in industrial disputes was attempted in one of the industrially advanced provinces—the Bombay Trade Disputes (Conciliation) Act, 1934 introduced, for the first time, a standing machinery to enable the state to promote industrial peace. A

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16 Ibid.
permanent cadre of conciliators was envisaged for settling disputes, which could not be settled through voluntary negotiations. Then came the Bombay Industrial Disputes Act, 1938, which provided for more comprehensive state intervention in industrial disputes. This Act had both positive as well as negative features. The positive features were: (1) compulsory recognition of unions by employer (2) Certification of standing orders which would define with sufficient precision the conditions of employment and make them known to the workmen. This Act also provided for the setting up of an industrial Court with original and appellate jurisdiction to which the parties can go for arbitration in case their attempt to settle matters between themselves or through conciliation did not bear fruit. The negative features of this Act were, in addition to the governments’ power of intervention in industrial disputes which the workers feared would go in favour of employers, the banning of strikes and lock-outs under certain conditions. The congress party in power in the province of Bombay at that time was responsible for the above enactment. The radical sections among the trade unions bitterly criticized these provisions as contrary to the promises made by the congress party to protect the right of workmen to organize and to strike. The compulsory arbitration machinery provided by the Act was an extension of Gandhian philosophy of industrial relations, which he practiced as the leader of Ahmedabad Mazoor Mahajan. The Bill was hotly debated upon both inside and outside the Assembly. The communist led trade unions and other radical sections among workmen put up stiff resistance against the Bill through

18 Ibid.
extensive strikes. Reporting on the protest agitations of workmen against this Bill, Sukomal Sen recorded, “AITUC considered this Bill as reactionary, retrograde, prejudicial and harmful to the interests of the working class and voiced strong protest against it. The one-day protest strike of 90,000 workers, which the Bombay Provincial Trade Union Congress organized against this Black Bill in November 1939, marked a glorious chapter in the working class movement of India. Indian Labour Party led by Dr. B.R. Ambedkar also supported this strike. The Congress ministry instead of retracing their harmful path, deployed police against workers who were then mercilessly fired upon and lathi charged. Police firing resulted in the death of two workers and against these brutalities the workers burst into mighty protest demonstrations of Calcutta, Ahmedabad, Kanpur, Madras and many other places of the country.”\(^{19}\) The Government did not heed to the agitation of the workmen. This Act was replaced in 1946 by a more comprehensive Bombay Industrial Relations Act, which maintained the basic structures of the earlier Bombay Industrial Disputes Act, 1938. This 1946 Act is now in force and is applicable to certain industries in the Bombay area. This makes it clear that the congress party favoured state intervention in industrial disputes through compulsory adjudication and it was also in favour of imposing curbs on strikes and lockouts. Even after Independence, the Congress party, which came to power at the Center and in almost all the States, continued the same policy.

2.3.3 Defence of India Rules–Rule-81-A

The British Indian Government promulgated during the Second World War the Defence of India Rules to meet the exigencies of the war. Rule 81-A of 1942 gave power to the appropriate Governments to intervene in industrial disputes through compulsory reference of disputes to Industrial Tribunals whose awards were enforceable on both the parties. Strikes and lockouts were prohibited during pendency of adjudicatory proceedings and for a period of two months thereafter. A blanket ban was imposed on strikes, which did not arise out of genuine trade disputes. At the national level this wartime measure was the starting point of introduction of compulsory adjudication into the arena of industrial relations. The Indian trade union movement, which was then heavily under the influence of Communists, who had severely opposed the earlier versions of government intervention, did not put up any resistance to this trend setting Rule because the Communists at that time cooperated with the British Government’s war efforts on the ground that any struggle against the British would weaken the war efforts of the Soviet side and hamper its victory in the anti-fascist war.20

With the termination of the war, Rule 81-A was about to lapse. But it was kept in operation pending the enactment of the Industrial Disputes Act, 1947, which replaced the Trade Disputes Act, 1929, from April, 1, 1947 with subsequent amendments this Act continues to be the main legal frame work for governments intervention in labour disputes.21

20 Ibid., p. 376.
21 Supra note 17, p. 319.
Meanwhile in 1946, the Industrial Employment (Standing Orders) Act was passed which requires the employers of large industrial establishments in which not less than one hundred workmen were employed to define with sufficient precision the conditions of employment under them and to get them certified by a government labour officer and then make the said conditions known to workmen employed by them.

2.3.4 The Industrial Disputes Act-1947

Harold Crouch described the economic background and the workers struggles on the eve of the passing of the I.D. Act in the following words:

"Economic conditions following the war imposed several hardships on the working class. There were shortages in several essential commodities and the prices were high. Although money wages had risen during the war period, prices had risen faster so that real wages were considerably below the level of 1939. Unemployment had been aggravated by post war demobilization. With such a basis for dissatisfaction it was not surprising that militant trade unions were able to gain a following. In 1946 and 1947 strikes became very common and large numbers of mandays were lost. In 1945 - 4054000 mandays were lost in industrial disputes. In 1946 the number jumped to 12718000 and in 1947 to 16563000. The union membership rose by 50 per cent in 1946-47 and 100 per cent in 1947-48.\textsuperscript{22}

It was during this period, three new national trade union centers, each with its own political affiliation, came into being to compete with the existing Communist

\textsuperscript{22} Harold Crouch., "Trade Unions and Politics in India," (Bombay : Manaktalas, 1966), p.79.
controlled AITUC and this introduced a very disturbing competition for members and employer recognition into the labour relations picture.23

The *I.D. Act* consolidated the provisions of the earlier Trade Disputes Act and the Defence of India Rule 81-A and enacted them as regular peacetime measure. Thus, the government's policy of active intervention in the industrial disputes was clearly manifested in this Act. The Act provides for the setting up of industrial relations machinery for ensuring peaceful settlement of disputes. Mainly, it provides for the settlement of disputes through conciliation by conciliation officers and Boards of Conciliation and compulsory adjudication by Industrial Tribunals. The Labour Courts came later in 1956. The Act also provided for the setting up of Works committees, consisting of representatives of employer and workmen in equal numbers charged with the duty “to promote measures for securing and preserving amity and good relations between the employer and workmen.24 This body is mainly means for preventing the disputes to the extent possible and it is no substitute for a trade union and so it has no power to enter into settlements. The Act also retained the machinery of Court of Inquiry as a fact-finding body. The Act vests the appropriate Government the Central Government in case of certain specified industries and all industries carried on by or under the authority of the Central Government, and the State Government in relation to all other industrial disputes with the power to refer disputes

23 Kennedy Van Dusen., *supra* note 9, p. 37.
to Boards of Conciliation, Court of Inquiry or the adjudicatory authorities at its discretion.

The act makes a distinction between public utility services and non public utility services and provides for compulsory conciliation and compulsory adjudication in respect of the former. In public utility services (PUS) strikes and lockouts are prohibited without notice of a minimum of 14 days and not beyond six weeks. Similarly strikes and lockouts are prohibited during the pendency of conciliation proceedings before the conciliation officer and seven days thereafter. Strikes and lockouts are prohibited in general in all industries during the pendency of proceedings before a Board of Conciliation and the adjudication authorities and for two months after the conclusion of adjudication proceedings. The government has also power to prohibit the continuance of any strike or lock out that may be in existence at the time of reference of a dispute for conciliation or adjudication. Strikes and lockouts in contravention of above provisions are declared illegal and penalties are provided for participation, aiding, instigating or financing illegal strikes or lockouts. The trade union movement in the country had launched a nationwide campaign against the Act, but could not influence the government. “In the Constituent Assembly, (which passed the Act) the four nominated representatives of labour including N.M.Joshi of AITUC and Maniben Kara of IFL spoke against the legislation and succeeded in inserting a number of amendments. But the essence of the legislation remained. Outside the legislature, a nationwide campaign was launched but without success. In Bombay S.A. Dange of the Communist party and Asoka Mehta of the Congress Socialist party
both opposed the legislation, but the Minister for Labour, Gulzarilal Nanda, refused to accept their criticism.\textsuperscript{25}

With certain modification, made from time to time, and in particular, with the introduction of the Voluntary Arbitration method for the settlement of disputes in 1956, the Act remain in force today. The object of the Act as stated in the preamble was to provide for the investigation and settlement of industrial disputes.

The Congress party and the trade unions under its influence supported the government intervention and adjudication as necessary for the maintenance of industrial production by avoiding strikes and lock-outs and also for rendering justice to the workers who are organizationally weak and therefore could not match the employers in collective bargaining. But, the left political parties and the trade unions under their control opposed the government intervention as a matter of principle, since it is likely to stifle the initiative of the trade unions. They argued that the curbs on strikes would further weaken the trade union movement. This is the crux of the discord between the two opposing camps on the question: what ought to be the role of government in the labour-management relations? The debate thereafter has been continuing as to whether primacy should be given to compulsory adjudication, which has the object of peaceful settlement of disputes without strikes and lock-outs but with the negative impact of weakening the trade union movement; or to collective bargaining, which enables the building up of a strong trade union movement in the

\textsuperscript{25} Harold Crouch, \textit{supra} note 22, p.80.
country in the long run, but with the negative consequences of work stoppages which a developing economy may not afford.

2.3.5 The Indian Labour Conference (ILC) and the Standing Labour Committee (SLC): Constitution & Functions

The Whitely Commission recommended the need for tripartite consultation on labour matters on the pattern set by the ILO. In 1942 the ILC with 44 members and SLC with about half the size of ILC were constituted with equality of representation to Government and non-Government representative and with parity between the representative of employers and workmen. Central trade union organizations having a minimum membership of one lakh, spreads all over the country and over a large number of industries are entitled to representation in proportion to their strength. These are purely advisory bodies and no voting is involved in reaching conclusions. It is the consensus emerging in the discussions that is generally taken into account by the Government in formulating its policies. The objectives set before these two tripartite bodies at the time of their inception in 1942 were: i) promotion of uniformity in labour legislation; ii) laying down of a procedure for the settlement of industrial disputes; and iii) discussion of all matters of all-India importance as between employers and employees.

The State Labour Advisory Boards are constituted at the State level for similar functions. The ILC was expected to meet once a year and SLC met as and when necessary.
All important matters relating to labour policy, proposals for reform of the existing law and for making new legislations are invariably discussed in the ILC and normally the Government takes the consensus into account before any action is initiated on these matters. Although there is criticism on the nature of consensus arrived at in the absence of unanimity, these bodies have been serving a very useful democratic purpose.26

2.4 Evolution of the system after independence

The substantial and real legislation on industrial relations came to be introduced only after India achieving independence. Therefore the best way of gaining insight into official thinking and practice on labour relations is to trace the evolution of policy since 1947.

2.4.1 The Trade Union (amendment) Act – 1947

In 1947 the Parliament enacted a law, in the form of amendment to the T.U. Act, providing for compulsory recognition of representative unions by employers and for adjudication of disputes over such recognition by labour courts. It also gave unions basic protection against unfair labour practices from employers. This really represented a clear break with the whole posture of the existing framework. “These amendments were plainly inspired by the American Wagner Act of 1935, which has often been called the Magna Carta of American Unionism.”27 Unfortunately, this was a piece of conditional legislation and this amendment has not been brought into force

26 Supra note 17, pp. 310-313.
27 Kennedy Van Dusen., supra note 9, p. 41.
till date. Had this amendment been implemented, the whole course of trade union movement in the country would have changed. Commenting on the reasons for not bringing this amendment into force, Kennedy observed:

“The Congress government and the Indian National Trade Union Congress, which had been sponsored by Congress leaders, probably had the most reason for concern on this score. At the time, communist and Socialist leadership still dominated the movement and the Congress high command could well be apprehensive that enforcement of this amendment provisions would play into the hands of anti-congress unions”.28

2.4.2 The constitution of India

The constitution of India, which came into force from 26th January, 1950 did not contain anything specific on the government policy on industrial relations. All the same, there are salient provisions in the constitution, particularly in the chapter on Directive principles of state policy, which provide the basic policy framework with the help of which the government should mould its industrial relations policy. The right to form associations and unions is guaranteed to all citizens as a fundamental right [(Article 19(1)(C)]. The preamble promises to secure justice. “Social, economic and political” for the citizens. The securing of a just social order for the promotion of the welfare of the people has been specifically stated as an object of the state under Art. 38. A combined reading of relevant fundamental rights and directive principles of

28 Ibid.
state policy makes it clear that the framers of the constitution made it obligatory for the state to promote industrial development, peace, harmony and also labour welfarism. Articles 23 and 24 guarantee fundamental rights against exploitation. Article 23 prohibits, *inter alia*, begar and other similar forms of forced labour and Article 24 prohibits employment of children below fourteen years in any factory or mine or in any other hazardous employment. The important directive principles of state policy enunciated in the constitution with regard to labour and labour welfare are:

Socio-economic justice; elimination of inequalities of income and of status and opportunities; equal pay for equal work for both men and women; the health and strength of workers shall not be abused; special protection to children; right to work, to education and to public assistance in case of unemployment, old age, sickness and disablement and in other cases of undeserved want; just and humane conditions of work and maternity relief; a living wage to all workers; decent standard of life, full enjoyment of leisure; social and cultural opportunities; and workers' participation in management. 29

The recent judicial pronouncements declared that the labour welfare legislations intended to implement the above directives ensure to the working class the right to live with human dignity, which is an integral part of Article 21 of the Constitution. 30

29 The Constitution of India, Chapter IV – See Articles 38, 39, 41, 42, 43, and 43-A.
30 *PUDR v. Union of India, Bandhuva Muktimorcha & Neeraja Chowdary* cases.
The subjects of trade unions, industrial and labour disputes along with all other matters relating to labour welfare and social security are enumerated in the concurrent list and therefore, both Parliament and State Legislatures have jurisdiction to make laws on these matters.\footnote{Indian Constitution, Art. 246 (2) and List III Items 21 to 24 of Seventh Schedule.}

The above constitutional policy directives should have guided the government in its policy on industrial relations. But, no major changes in the industrial relations law have been made so far and the government thinks that the existing provisions of the \textit{I.D.Act} along with other labour legislations are quite adequate to achieve the above goals set by the constitution. In the post constitutional era, the Five-year Plans provided a base and direction to the Indian industrial policy.

**First Five-Year Plan**

The First Five Year Plan stressed the need for industrial peace and economic progress. While it wanted the state to arm itself with powers for intervention in labour disputes, the endeavour had to be to encourage mutual settlement, collective bargaining and voluntary arbitration to the utmost extent, thereby reducing to the minimum occasions for state intervention in industrial disputes and exercise of its special powers.\footnote{Government of India, First Five-Year Plan Document, p. 573.}

**2.4.3 The Labour Relations Bill and the Trade Unions Bill 1950**

With a view to giving primacy to collective bargaining, two new Bills were drafted in 1950 and they were meant to replace the \textit{I.D. Act}, whose anchor was the
war time emergency measure i.e. the compulsory adjudication and prohibition of strikes during adjudication period. These Bills envisaged certification of bargaining agents and conferment of power on trade unions as well as employers to serve a notice requiring the other to commence collective bargaining proceedings. The preamble of the Bill stated that the goal of the governments’ labour policy was to encourage labour and management to become self-reliant so as to make the withdrawal of state intervention possible.  

The existing provisions for conciliation of disputes and for their reference to tribunal for adjudication were retained as safety valves. But, the collective bargaining was made compulsory for both employers and unions under stipulated conditions. These draft Bills drew heavily on the American practice and much was drawn from the corresponding provisions of the Wagner Act. The draft bills were referred to a select committee, which recommended their passage with minor amendments.

Jagjivan Ram, the then Central Labour Minister, in his inaugural address to the tenth session of the ILC, in support of the Bills remarked.

I feel the sooner the employers and workers develop the habit of planned collective bargaining, the sooner will they find themselves freed from the shackles of courts and tribunals, boards and committees which, however inevitable they may be, seem at times so great a burden. In the great industrial countries of the West, collective bargaining has practically superseded state regulation. I would, therefore,

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commend to your most earnest consideration the need for developing the spirit of collective bargaining.34

Giri's approach

The two Bills had to await the first general election and the formation of the first popular government in 1952. V.V. Giri one of the great trade union leaders of that time, was chosen as Labour Minister. His commitment to the development of collective bargaining on sound lines with minimal interference from government was well known. He had made no secret of his dislike for the I.D.Act and he had often declared that compulsory adjudication was his "enemy No.1". The twelfth session of ILC held in 1952 was devoted entirely to a discussion of the role of the state in industrial relations. Giri's inaugural address in this special session remains the most powerful plea ever made by a government spokesman for doing away with the compulsory reference of industrial disputes for adjudication.35 Pleading for the acceptance of Bills, Giri maintained.

It is far better for management and labour to settle their difference amongst themselves than for them to go as litigants and opponents before a labour tribunal or court. I am afraid I cannot conceal my disappointment at the thought that the principle of compulsory arbitration, introduced for the first time as a result of war time exigencies and continued thereafter as a measure inevitable in a period of economic

35 Ramaswamy E.A. supra note 2, pp. 26-27.
uncertainty and emergency, has given a great set back to the growth of trade unionism in the country. What is worse is the deplorable effect that this dependence on a third party has brought about in the outlook and attitude of the parties towards each other. Compulsory arbitration has cut at the very root of trade union organization. Unity among men, particularly trade unionists, is the direct outcome of necessity. But compulsory arbitration sees to it that such a bond is not forged. It stands there as a policeman looking out for signs of discontent and at the slightest provocation takes the parties to the court for a dose of costly and not wholly satisfying justice. Let trade unions become strong and self-reliant and learn to go on without the assistance of policemen.

"It may be that until the parties have learnt the technique of collective bargaining, there are some unnecessary trials of strength, but whoever has heard of a man learning to swim without having to drink some gulps of water"

"Compulsion may be inevitable during war or in times of emergencies, but it is as inappropriate in peace as drugging is to health. If there is even some possibility of a dispute being referred for compulsory arbitration, neither party will disclose its hand in full or be prepared to go to the utmost limit of the concession it could afford to offer... there will be no incentive to agreement. If the parties knew that the consequence of disagreement would be a prolonged strike or lock out causing great loss to the employer and considerable suffering and hardship to the worker, they
It is quite ironic that, while Giri wanted labour to stand on its own feet, labour itself wanted to lean on the crutch of the state support. Except the AITUC, which was under the influence of communists, the other three central trade union federations, INTUC, HMS and UTUC wanted the retention of adjudication system. AITUC wanted legislation on trade union recognition and imposing a legal obligation on employers to bargain in good faith and pleaded that freedom be given to the workers to either go on strike or to refer the dispute for adjudication, upon the failure of negotiations. They were in favour of doing away with the state intervention in industrial disputes. The INTUC, under the influence of the ruling congress party, voiced the fear that withdrawal of the state from the scene would leave the field open to unscrupulous employers to exploit the workers.

Hariharnath Sastry of INTUC differed sharply with Giri's analysis and maintained:

"Far from causing any set back to trade unionism in this country, the system of compulsory adjudication gave impetus to the trade union movement, particularly in the backward areas, by protecting the ill organized workers from the onslaught of section of unscrupulous employers. One clear proof as to the justification of the system of compulsory arbitration during the last five or six years is the fact that today

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all the central trade union organizations in the country have supported the policy of compulsory arbitration in some form or the other”. 37

The Hind Mazdoor Sabha (HMS) and the United Trade Union Congress (UTUC) found nothing wrong with the system. They wanted that it should be open to either party to take the dispute to the labour tribunals.

But, quite contrary to the stand taken by the central trade union organizations, the employers organizations supported the Giri’s approach and this only served to worsen the fears of the unions that they would be out done in the collective bargaining by the superior power of the management. Giri tried his best to convince the unions to accept the new system as an experiment for a period of one or two years, asking them to take a calculated risk.

More than this, the State Governments and important Central Ministries such as Railways, Postal and Teligraphs, Defence and Finance were opposed to the new system proposed by Giri. Thus Giri was forced to retrace his steps in the next ILC as he had accepted his failure. Giri’s failure to secure his objective and his resignation as of Labour in August, 1954 (although the immediate cause of his resignation was his disapproval of government’s handling of a banking industry labour dispute) must be taken as a turning point for Indian Labour policy. In his resignation letter, referring to the stand taken by Ministries at the Centre on the question of the Bills, he expressed himself clearly when he said that the Labour Ministry had almost been rendered superfluous. As Kennedy put it, “Giri made something of a mission of championing

37 Ibid., p. 29.
collective bargaining and deprecating the method of government adjudication and pursued it so widely and energetically that it was soon referred to in the Indian press and labour relations circles as the “Giri’s approach”.38

Although both the governments and the trade unions opposed the Giri’s approach from their own stand points, the fact remained that a great opportunity for a radical policy change was lost. The Centre and State Governments did not want to give up their control and the central trade unions lacked confidence in their own strength to meet the employers across the collective bargaining table.

2.4.4 The Principle of Voluntarism in Industrial Relations

Khandubai Desai, a labour leader of Gandhian tradition, as Minister for Labour, succeeded Giri. He extolled the virtues of adjudication and maintained that it was preferable to open conflict. Gulzarilal Nanda succeeded Desai, another disciple of Gandhiji, whose support for the I.D.Act was well known.

Despite vast powers of the government, vested under the Act, since mid-fifties the number of mandays lost due to strikes and lockouts started mounting. Nanda’s answer to this was to promote the principle of voluntarism within the system of state regulation.

Code of Discipline in Industry

In pursuance of this principle of voluntarism, the code of discipline in industry was announced in 1958 after a discussion in the ILC. This is purely a voluntary arrangement between employers’ organizations and the four central trade unions. The

38 Kennedy, Van Dusen, . supra note 9, p. 45.
government was also a party to the code. It may be emphasized that this code has no legal sanction to back it and the observance of the principles of the code is left to the will of the parties themselves.

The most important aspect of the code is that it calls upon the employers to recognize the majority trade union in their establishments. Instead of providing for recognition through a statutory measure, the code made it a voluntary arrangement. It had worked out certain details as a guide for employers in recognizing the trade unions.

The code enjoined upon the parties to refrain from taking unilateral action in connection with any industrial matter, to utilize the existing machinery for settlement of disputes with the utmost expedition and to abjure strikes and lock outs without notice and without exploring all avenues of settlement. It also discouraged recourse to litigation and recommended that disputes not mutually settled should be resolved through voluntary arbitration. The employers have to set up a mutually agreed upon grievance procedure.

It did not need an expert to foretell that the code was bound to be a failure. The first National Commission on Labour (NCL) commenting on the failure of the code observed:

"The evidence before us, indicate, a measure of failure of all the parties to adhere to the spirit of the code... with the passage of time, the attitude to the code changed and no special attention is now being paid to it. The code began acquiring
rust and the parties were none too eager to take it off; they developed an attitude of indifference".39

The Inter Union Code of Conduct, agreed upon in the same year among the four central trade union federations to maintain harmonious inter union relations, efforts to ensure workers’ participation in management through joint management councils. Workers’ education programmes and model grievances procedure were all part of the scheme of voluntarism practiced during this period. Another development of the period was the setting up of tripartite wage boards for the fixation of wages for the workers in the big industries. As many as sixteen wage boards were set up during the period 1957-64.

2.4.5 Voluntary Arbitration

Another offshoot of the principle of voluntarism was giving legal recognition to voluntary arbitration as a method of settlement of industrial disputes by insertion in the I.D. Act through an amendment in 1956.40 Prior to this amendment also the parties could settle their disputes through arbitration; but the arbitration award was not enforceable at law. This amendment treats the arbitration award on a par with the award in the adjudication and is declared binding on the parties.

This policy of voluntarism could not be expected to be a success under the Indian conditions. The code of discipline came to be forgotten by all concerned after the initial confidence reposed in it having been belied. The codes of inter union

39 Supra note 17, p. 346.
conduct and voluntary arbitration never got off the initial stupor. Since the code was purely voluntary, there could be no sanction against the defaulters. All the trade unions complained of the failure of employers to recognize the trade unions on the basis of the code of discipline. This meant increased conflict not only between employers and trade unions but also among the trade unions themselves. In the absence of a legal obligation on the part of an employer to recognize a trade union as a bargaining agent, a healthy bilateral relationship could not be developed in many industrial establishments. Except a few enlightened employers, many others preferred to avoid recognition of majority union so as to avoid any meaningful dialogue with the workers’ representatives. Such a system cannot build harmonious labour relations. Therefore, “the state has to compel employers to recognize the trade union and deal with it in good faith so that bargaining is not reduced to a mockery”.41

2.4.6 First National Commission on Labour (NCL)

A significant attempt to bring about reforms in the industrial relations policy and law and other labour legislation was undertaken by government of India on December 24, 1966 when it constituted a tripartite commission viz., National Commission on Labour (NCL), under the Chairmanship of Justice P.B. Gajendragadkar, whose concern for social justice to the working class was unique. It is noteworthy that Mr. Jagjivan Ram, who was the first Minister of Labour after independence, had again come back to Labour portfolio and it was under his auspices that the Commission came to be appointed.

41 Ramaswamy E.A., supra note 2, p. 35.
The terms of reference of the commission, which were quite comprehensive touching upon every aspect of conditions of labour and labour legislation, specifically included. "The state of relations between employers and workers and the role of trade unions and employers' organizations in promoting healthy industrial relations and the interests of the nation." The industrial relations policy of the government since Independence, almost for two decades, came in for a critical review by the commission.

The commission, in addition to collecting relevant data from different sources in different forms, appointed four regional study groups to report on the state of industrial relations. These groups, which were heterogeneous in character, included practicing managers, trade union leaders, scholars and government officials. It is quite significant to note that all these four study groups from the four different regions of the country were unanimous in their condemnation of the government's policy on industrial relations. They felt that the availability of compulsory adjudication had almost completely inhibited the development of collective bargaining relationship. They also questioned the efficacy of government labour policy in achieving its purported goals. They maintained that collective bargaining could not be nurtured through lip service.

The Northern regional group in a scathing criticism of the system of compulsory adjudication observed:

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42 Supra note 17, p.1.
43 Ramaswamy E. A., supra note 2, p.36.
"The reliance of compulsory adjudication was justified on grounds of necessity as well as expediency; the poorly organised trade unions were not in a position to bargain collectively with employers on a footing of even near equality; compulsory adjudication would provide a balancing factor, and also help strengthen the trade union movement and meet the needs of planning and economic development which may be endangered if the field was left free for collective bargaining. The experience of the past two decades, however, has amply demonstrated that these expectations have not by any means been fulfilled". The Eastern regional group felt that the compulsory reference of disputes for adjudication had made no dent on the incidence of work stoppages. The Southern and Western regional groups went one step ahead to point out that the government's commanding position was being misused to promote partisan political ends. The misuse of power of reference to meet political ends had always been alleged by non-Congress trade unions. The Southern regional group cited specific instances to show how the Labour Department and police were being used to promote the labour wing of the ruling party.

All the four study groups urged the Government to refrain from interfering in industrial relations, except in very special circumstances, so that labour and management be forced to sit together at the negotiating table and sort out their differences.

45 Ramaswamy E.A., supra note 2, pp. 37-38.
In sharp contrast, the five regional working groups composed of almost entirely of Labour Commissioners, who headed the labour Departments in various State and were responsible for the implementation of the government’s labour policy, felt that government regulation was superior to collective bargaining as a method of ensuring equity and justice. They felt that industrial adjudication had achieved many things for workers, which they could not have achieved through collective bargaining. They argued that the working class in India, being weak, couldn’t stand the strain of prolonged strikes. Therefore, adjudication attempted to correct this imbalance, in addition to meeting the objectives of planned economy in a developing country. Therefore, they finally pleaded for its continuance.

**Recommendations of First NCL**

i) **Independent Industrial Relations Commissions (IRC)**

The NCL had to deal with the above two strongly conflicting views on government’s intervention in industrial disputes in its report submitted in 1969. After very careful consideration, the NCL recommended the elimination of direct intervention by the government and instead proposed Industrial Relation Commissions (IRC) both at Centre and in each State for discharging the functions which the government is entrusted with under existing system. The IRC was to be an authority independent of the executive. Its main functions should: a) adjudication of interests disputes (present Third Schedule disputes), b) conciliation, c) certification of unions as representative unions and d) promoting voluntary arbitration.
The IRCs, which were conceived to be multi-member bodies, were to be constituted with a person having the prescribed judicial qualifications and experience as the president and an equal number of judicial and non-judicial members. The IRC was to have separate wings for the conciliation and for certification of unions. Upon failure of negotiations and a disagreement between the parties to refer the dispute for arbitration, the parties might approach the IRC for adjudication. In non public utility services, the IRC would not interfere unless a strike or lockout, as the case may be, continued for at least thirty days. The IRC would have power to prohibit the continuance of any strike / lockout when it enters upon adjudication. The present Labour Courts were to continue for adjudication of rights and legal disputes.

ii) Collective Bargaining

The NCL was in favour of an effective collective bargaining for settlement of industrial disputes. Recommending greater scope for collective bargaining, the commission felt.

"The requirements of national policy make it imperative that state regulation will have to co-exist with collective bargaining. At the same time, there are dangers in maintaining status quo. There is a case for shift in emphasis and increasingly greater scope for and reliance on collective bargaining. An important prerequisite of it is the grant of union recognition. We have evolved satisfactory arrangements for union recognition by statute as also to create conditions in which such arrangement have a
chance to succeed... collective bargaining cannot exit without the right to strike / lock-out".

iii) Recognition of Trade unions

The Commission attached considerable importance to the matter of recognition of unions. It felt that industrial democracy implied that the majority union should have the right to sole representation. Dealing with the controversy among different trade unions on the method to be adopted for the recognition of a bargaining agent – verification method versus secret ballot – the commission recommended that the proposed IRC would have discretion to choose either method depending upon the circumstances. The IRC would have the power to decide upon the representative character of the unions either by the examination of membership records, or if it considers necessary, by holding an election through secret ballot open to all employees.

iv) Prohibition of unfair Labour practices

The NCL also recommended statutory prohibition of unfair labour practices, on the part of both the employer as well as the recognized union, with appropriate penalties, so that collective bargaining can take place on healthy lines.

46 Supra note 17, p.327.
47 Ibid., p.331.
Government's negative response to the recommendations of NCL

Although the recommendations of NCL have only gone half way in the genuine promotion of collective bargaining, the shift in emphasis in favour of collective bargaining as recommended by it was a welcome measure. The intervention in industrial disputes was to continue in a modified form i.e., not by the government directly, but by an independent IRC. This satisfied many trade unions, which earlier complained of government's partisan approach to strengthen trade unions under the control of the ruling party. But, it is an irony that the government of India, which declared officially through plan documents that its goal was achieving maximum collective bargaining through strong trade union, could not even accept the half way house recommended by the NCL. The twenty-sixth session of ILC in 1969 had rejected all the major recommendations of NCL on industrial relations. The conference, which generally reflects the opinion of the Government, as usual paid customary tributes to the method of collective bargaining, but was not prepared to allow the governments control on industrial relations to lapse. The general feeling in the conference, barring that of the representatives of the communist Government of West Bengal and other communist controlled trade unions, was that the existing system of wage boards should be continued, thus taking away the most vital aspect of employer-employee relationship out of the scope of collective bargaining. They felt that the thirty-day period of direct action in case of disputes of non-public utility services before the IRC undertakes adjudication was unnecessary and uncalled for. Finally, the most important recommendation to create IRCs independent of the
Government, met with stiff resistance from all the government representatives. Thus, the government did not act upon the major recommendations of NCL so far.

2.4.7 Industrial Relations Bill 1978

In 1978, the Janatha Party Government introduced a comprehensive Industrial Relations Bill in Lok Sabha. This Bill sought to replace the existing three important industrial relations laws, viz. The T.U. Act, 1926, the industrial Employment (Standing Orders) Act, 1946 and The I.D. Act, 1947. Although the Bill did not aim at reducing the powers of the government in industrial relations, it sought to confer sole bargaining rights on the dominant union. To prevent multiplicity of unions, the Bill incorporated the NCL recommendation in this regard, i.e. to restrict registration only to unions, which have a minimum of one tenth of membership or one hundred members, whichever is less. The Bill envisaged three types of dispute between employers and workmen. They are a) individual disputes b) Industrial disputes and c) Trade Union disputes. The notable feature of this Bill was that it proposed reference of all individual disputes for adjudication to the Labour Courts by the individual workman himself/herself or by the trade union of which he/she was a member. Thus, the need for the government to make an order of reference in all individual disputes, which are more numerous, was to be done away with by giving freedom to the concerned workman to directly approach the Labour Courts.

Along with these provisions, the Bill also proposed to further restrict the right to strike and this attracted the condemnation of all central trade unions, including
those under the influence of the ruling Janatha Party. But the Janatha Government did not last long thereafter and with the dissolution of Lok Sabha, the Bill lapsed.

2.4.8 The Trade Unions and the Industrial Disputes (Amendment) Bill-1988

The endeavours to bring about reforms in the industrial relations law have continued. The National Labour Conference in 1982 appointed Sanat Mehta Committee to examine proposals for amendments to the T.U. Act and the I.D.Act, by taking into account the recommendations made by the NCL. The standing labour committee considered the recommendations of this committee in September 1986. The result was the introduction of the Trade Unions and Industrial Disputes (Amendment) Bill 1988.

Changes proposed in the Trade Unions Act

The enhanced minimum membership for trade union registration was again proposed with a view to preventing multiplicity of trade unions. The Bill for the first time proposed check-off system; i.e, deduction of union membership subscription from salary, by the employer, upon an authorization given by a workman. The authorization once given was to remain valid for a period of three years. On the basis of such membership the Labour Courts should determine the strength of each union. If the Labour Courts finds that the difference in membership between the trade union with the highest membership and the next two unions is less than three per cent of the total members of all trade unions, it may order a secret ballot for determining the membership of each union. This proposal was to meet the demand of the trade unions
for recognition of trade unions. The consequent changes were proposed in I.D.Act for the constitution of bargaining councils.

The bill also proposed to disqualify even those who were convicted for an offence of participation of inducing such participation in illegal strikes from becoming office bearers of a registered trade union. Perhaps this was considered to be the best method of eliminating all militant trade union leaders from leadership.

The bill also sought to reduce the number of outsiders as office-bearers to two. No person was to become an office-bearer in more than seven trade unions.

**Changes proposed in the I.D. Act**

i) **Bargaining Councils**

The Bill proposed changes in the *I.D.Act* for setting up bargaining councils by employers. Every employer shall establish a bargaining council in his establishment consisting of representation of all the unions shall be in proportion to the number of their members, as determined under the *T.U.Act*. Bargaining councils were also to be set up at industry level in any local area and at national level by the respective governments.

It is significant that this idea of establishment of bargaining councils consisting representative of all trade unions was not in keeping with the spirit of the recommendation of NCL. The NCL recommended the recognition of the majority union with sole bargaining rights. The other non-recognized unions could be permitted only to deal with the individual grievances of their members. Bringing the
representatives of all unions into the bargaining council would rather harm the
prospects of settlement in the bargaining process. Each union will try to outwit the
other by making more popular demands and not accepting even the reasonable
proposals that may be made by the employer. This principle also goes against the
generally accepted norm of one union in one industry. Bargaining councils will
further provide a forum for the continuations of inter union rivalries. Perhaps, this
also encourages the multiplicity of unions because each union is guaranteed a
representation on the bargaining council. Further, it may be commented that the
check-off system, proposed to be introduced, is vulnerable to the employer’s
interference in the trade union matters.

ii) The Industrial Relations Act and not The Industrial Disputes Act

The Bill sought to change the title of the Act as “Industrial Relations Act”. The
statement of Objects and Reasons appended to the Bill stated: “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”.

iii) Industrial Relations Commission

The next significant change proposed was in the composition and
nomenclature of adjudication machinery. The present Industrial Tribunals (I.Trs) were
to be replaced by Industrial Relations Commissions, as multi-member bodies. These
IRCs are not the same as those recommended by the NCL, which were expected to
function independently. The proposed IRCs are only quasi-judicial bodies with merely adjudicatory functions mostly in cases of interest’s disputes. The Labour Courts shall continue to function for adjudicating upon the rights and legal disputes and appeals from their decisions could be taken to IRCs. These IRCs both at the Central and State level were to function as tribunals under article 323-B of the constitution and appeals against their orders or awards were to lie only to Supreme Court. The jurisdiction of High Courts under Articles 226 and 227 over these tribunals was to be excluded. The IRC was to consist of a president and an equal number of judicial and technical members and they were to exercise powers in separate benches consisting of at least one judicial and one non-judicial member.

The exclusive power of the appropriate government to refer disputes for adjudication to the IRC was to be retained however in the case of individual disputes, the workmen could directly approach the Labour Courts.

iv) Extra-ordinary powers to the Government

To make the government more powerful in industrial relations, a new provision conferring extra-ordinary powers on the appropriate Government was proposed. In the interests of industrial peace, the appropriate government could order the employers and workmen to observe such terms and conditions of employment as might be determined by the government and the government could also prohibit strikes and lock-outs in a general way in any establishment.\(^4\) It is doubtful whether such a drastic provision could stand the test of Article 19(1)(g) of the constitution.

\(^4\) Section 10-B of the Bill.
v) More restrictions on strikes and lockouts

More severe restrictions were proposed on strikes and lockouts. But an employer of even a public utility service could declare a lockout without any prior notice on the ground of imminent threat of violence, or damage to property. It is after all not difficult for any employer intending to declare a lockout to manipulate situations of “imminent threat of violence or damage to property”. This virtually lifts ban on lockouts and in practice this meant that prior notice is needed only for strikes and not lockouts. The requirement of giving fourteen days notice for a strike or lockout was proposed to be extended to non-public utility services too. Further, a call for a strike can be given only by the bargaining council by a majority of not less than three fourths of the total membership of the council. There should be no strike by workmen unless they had offered to the employer to refer the dispute for arbitration and the employer had rejected such offer. The minimum punishment for participation in illegal strike was to be fourteen days imprisonment.

It was a foregone conclusion that the trade unions would not agree to such “draconian provisions”, as some central unions called them without resistance. The curbs on the right to strike, the heterogeneous bargaining council, the unwarranted disqualifications for the office bearers of the trade union were all bitterly opposed by the trade unions in general.

2.4.9 Ramanujam Committee (1990)

Soon after the introduction of the above Bill, the Janatha Dal Government replaced the Congress government at the center in 1989. The Janatha Dal Government
laid more emphasis on bilateralism and also introduced a Bill on Workers’ Participation in Management. The ILC held in 1990 recommended that the 1988 Bill be withdrawn and a Bipartite Committee, headed by the veteran trade union leader of INTUC, Shri G. Ramanujam, be constituted to formulate specific proposals for a new Industrial Relations Bill. The committee consisted of eighteen other members, nine representatives each from the Central Trade Union Organizations and the Employers’ Organizations. The committee submitted its recommendations to the Central Government by the end of 1990. In the meanwhile a change of government at the Center had taken place in 1991 and the new Congress Government had not acted upon the recommendations of this committee.

The committee in its “approach”, observed: “Since industrialization plays a crucial role in economic development, industrial harmony is of paramount importance to ensure growth with social justice including promotion of workers interests. Even increasing productivity should be our objective and bipartism the means. 49 The shift in emphasis from tripartism to bipartism is significant as it meant less government intervention in industrial relations.

The committee felt that the term “bargaining” is not a very happy word. Therefore, it suggested that the phrase “collective bargaining” be substituted by “direct/bipartite negotiations”. Apart from this verbal thrust on bipartism, the committee would produce very little in the form of unanimous recommendations. As was expected, on all controversial issues such as the retention of compulsory

adjudication and its structures, trade union recognition, negotiating councils, etc., the representatives of employers and trade unions could not come to a conclusion. It is distressing that even the representatives of central trade unions could not agree on many issues, giving a pretext to the government to postpone any worthwhile reforms in industrial law. In fact, the above analysis clearly indicates that this is what has been exactly happening during the last five decades i.e., from the 1950 Bill onwards.

i) Proposed amendments to the Trade Unions Act

To prevent multiplicity of unions, the minimum members for registration of a trade union was recommend as ten percent of the employees or one hundred employees, whichever is less, subject to a minimum of seven members. The committee proposed that registration should be compulsory for all trade unions in the organised sector. It recommended that not more than one third of office bearers could be outsiders.

ii) Industrial Relations Act

Taking clue from 1978 and 1988 Bills and accepting the official version, the committee "unanimously decided in the very first meeting itself that the new legislation shall be called "The Industrial Relations Act" and will provide for appropriate machinery to settle industrial disputes by direct/bipartite methods with a view to promoting harmonious employer-employee relations." In case of individual disputes, after exhausting the grievance redressal machinery, the workman should have access to a Labour Courts or the adjudicatory wing of IRC. On the question of

50 Ibid., p. 17.
trade union recognition, there was no unanimous recommendation; but majority favoured the recommendation of NCL that the matter be left to the IRC. Setting up negotiating councils with representatives of the both employers and workmen at unit level and industry level was favoured, but there was no unanimity on the details of the system. The committee insisted on promoting voluntary arbitration at every level.

iii) Industrial Relations Commission (IRC)

A majority of the committee recommended setting up of IRCs at Central and State levels, as recommended by NCL. The IRC should be an independent body established on a permanent basis. The IRC was to adjudicate interests disputes and also to discharge the functions of certification of membership of negotiating council, conciliation, mediation and hearing appeals from the awards of concerned Labour Courts and enforcement. The IRCs should be multi member bodies consisting of both judicial and technical members. The writ jurisdiction of High courts over these adjudicatory authorities be taken away as in the case of Central Administrative Tribunals.

iv) Reference of dispute for adjudication by the party raising the dispute

A significant recommendation, which encourages adjudication, was made to enable the parties to take disputes to IRCs directly. It was recommended, “After the failure of negotiations in negotiating council and when arbitration is not available for any reason, the party which raises the dispute may refer the dispute for adjudication to the concerned IRC. At the same time the appropriate government will also have the
power to refer any dispute for adjudication by the concerned IRC on its own initiative in public interest and simultaneously prohibit any strike or lockout.\textsuperscript{51}

But the AITUC, CITU, UTUC, (L.S.), UTUC and TUCC opposed the concept of IRC but wanted the conciliation and adjudication machinery with appropriate modifications. The employers side was unanimously in favour of IRC. The INTUC, BMS, HMS and NLO favoured the setting up of the IRC as recommended by the National Commission on Labour.\textsuperscript{52}

\textbf{v) Strikes and Lock-outs}

The committee recommended a minimum of one month’s notice in essential services and fourteen days notice in other industries. It also recommended that a strike ballot in which at least two thirds of workers employed in the establishment should vote in favour of strike must precede every strike.

\textbf{2.4.10 Second National Commission on Labour}

The Second National Commission on Labour was constituted on 24\textsuperscript{th} December 1998.\textsuperscript{53} The commission was appointed under the Chairmanship of Shri. Ravindra Verma, former Minister of Labour, Government of India. The Commission was asked to take note of the developments that have followed liberalization and globalisation, the demands that they make, and the effects they have on our working class, our industry, our Government and all sections of our society; and to make

\textsuperscript{51} Ibid., p. 35.
\textsuperscript{52} Ibid., p. 36.
recommendations on the law and systems that we need to offer protection and welfare of our working population, and increase the economic efficiency and competitiveness of our industry.

Further, the specific terms of reference of the Second National Commission on labour were. i) to suggest rationalization of existing laws relating to the labours in the organized sector and ii) to suggest on umbrella legislation for ensuring a minimum level of protections to the workers in the un-organised sector. In order to conduct proper study of the matter, the commission has decided to elicit the opinion on the basis of questionnaire administered to organizations & individuals. Specific requests for responses from organization of workers & industries, state Governments, academicians, labour institutes, labour lawyers, labour judiciary and so on. And conducted number of seminars and workshops dealing with different aspects of the study.

The commission had appointed six study groups to make in depth studies on 1) Review of laws 2) Umbrella Legislation for workers in the Un-organized sector, 3) Social Security, 4) Globalisation and its impact, 5) Woman and child labour, and 6) Skill Development, Training and Workers Education and these study groups were chaired by distinguished persons with experience and vision. The study groups, which conducted specialized studies, submitted their valuable reports. Commission also received large number of oral and written evidences. On the basis of these reports and evidence, the commission has arrived at consensus on various matters referred to the

\[54\] Ibid, p.7.
commission. The commission has submitted its report to the Government on 29th June 2002.

**Recommendations of Second NCL**

The commission has made certain recommendations for introduction of changes in industrial disputes Act and Trade Unions Act. And also proposed for enactment of new legislation called Labour Management Relations Act-2002, by consolidating Industrial Disputes Act, 1947, Trade Unions Act, 1926 and Industrial Employment (Standing Order) Act, 1946, and made applicable to establishment or undertaking wherein 20 or more workers are employed. Further the Commission recommended that all the establishments employing less than 20 workers would be taken out of the purview of the general labour laws and brought within the ambit of a separate legislation called “The Small Enterprises (Employment Relations) Act, 2002 to cover all aspects of employment including wages, social security, safety, health etc.,

**i) Retrenchment of Workmen**

The Commission has recommended for removal of the present requirement of obtaining the prior permission of the appropriate Government for retrenchment of workmen in an industry employing more than 100 workmen and observed that prior permission is not necessary for retrenchment in an establishment of any employment size. It is recommended that retrenchment of workmen should be accompanied by adequate Compensation. This Compensation should be different for charitable institutions, sick and running companies. In case of sick ones (defined as erosion of
capital for 3 years of filing for liquidation), the retrenchment compensation should be 30 days wages for every completed year of service. In case of charitable institutions and non-profit organizations, retrenchment compensation should be 45 days wages for every completed year of service and for running companies the compensation should be 60 days wages for every completed year of service. Further, on retrenchment, the workers would also be entitled to two months notice or pay in lieu of notice. 55

ii) Lay off:

The commission has recommended for removal of prior permission of appropriate Government for lay-off of workmen in an establishment of any employment size. It would, however recommend that, in case of establishment employing 300 or more workers where lay-off exceeds one month, such establishments should be required to obtain post facto approval of the appropriate Government. 56 However the commission has recommended for continuation of the present system of 50% wage in case of lay-off 57

iii) Closure

The Commission has recommended that the provisions of Chapter V–B of Industrial Disputes Act pertaining to permission for closure should be made applicable to all establishments to protect the interests of workers in establishments

55 Supra note 53, p. 44.
56 Ibid.
57 Ibid.
which are not covered at present by this provision if they are employing 300 or more workers. The provision for permission to close down an establishment employing 300 or more workmen should be made a part of chapter V-A and chapter V-B should be repealed. Further, such employer shall make an application for permission to the appropriate Government 90 days before the intended closure and also serve a copy of the same on the recognized negotiating agent. If the appropriate Government within 60 days of receipt of application does not grant permission, the permission will be deemed to have been granted. On Closure of an establishment the compensation should be 30 days wages for every completed year of service in case of sick industry. Which has continuously run into losses for the last 3 financial years or has filed an application for bankruptcy or winding up and other non profit bodies like charitable institutions etc., and 45 days wages for every completed year of service in case of profit making organizations. It is also provided that, the workers dues should be paid prior to the closure of the unit, instead of waiting for the liquidators to liquidate the company.\(^5\)

iv. Strikes and Lock-Outs

The Commission has recommended that strike could be called only by the recognized negotiating agent and that too only after it had conducted a strike ballot amongst all the workers, of whom at least 50% support the strike correspondingly, the employer also is not allowed to declare lock-out except with the prior approval at the highest level of the management and except in case of actual or grave apprehension of

\(^5\)\textit{Ibid.}
physical threat to the management or to the establishment. It is also recommended that illegal strike or illegal lockout should attract similar penalties. A worker who goes on an illegal strike should lose three days wages for every day of illegal strike, and the management must pay the worker wages equivalent to three days wages per day of the duration of an illegal lockout. Further recommended that the union, which leads an illegal strike, must be de-recognized and debarred from applying for registration or reorganization for a period of 2-3 years. The Commission has also recommended that the “Go-Slow” and “Work to rule” must be regarded as misconduct.

v) Conciliation, Arbitration and Adjudication

The Commission has recommended to make the conciliation more effective and proposed for conferring of sufficient authority to enforce attendance at proceedings of conciliation. It is also recommended that reporters should not be appointed as conciliation Officer.

The Commission has favoured the arbitration as a method of settlement of disputes than adjudication; through adjudicatory method is considered as inevitable in determining disputes between management and labour. Named arbitrator or panel of arbitrators of all disputes arising out of interpretation and implementation of the settlement and any other disputes also recommends it for incorporation of a clause providing for arbitration. The panel of arbitrations may consist of persons having

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59 Supra note 53, pp. 46-47.
60 Ibid., p. 39.
61 Ibid., p. 45.
experience in labour management relations, labour lawyers trade union functionaries, 
retired judicial officials etc.,\textsuperscript{62}

The Commission has recommended for development of a integrated 
adjudicatory system in Labour matters, consisting of labour courts, Lok Adalats and 
labour relations commissions (LRC) with a power to deal with not only matters 
arising out of employment relations but also trade disputes in matters such as wages, 
social security, safety and health, welfare and working conditions etc. It is 
recommended for establishment of Labour Relations Commission at, the State, 
Central and National level.\textsuperscript{63}

The Commission has recommended for removal of the present system of 
publication of awards of labour courts etc in the official Gazette and advocated that 
they shall be deemed to have come into effect unless an appeal is preferred within the 
prescribed period it is recommended that labour courts shall be empowered to grant 
interim relief in cases of extreme hardship. The Commission has also recommended 
for providing of legal aid to workers and trade unions who are unable to hire legal 
counsels and for levy of token court fee in respect of all matters coming up before 
labour courts and labour relations commissions.

The other important recommendations of the commission includes: i) 
appointment of bi-partite or tri-partite committees in the area of industrial commercial 
activities to function as watch dogs to ensure implementation of labour laws and to

\textsuperscript{62} Ibid.
\textsuperscript{63} Ibid.
bring to the notice of administration in any cases of violation., ii) Establishment of all India Judicial Service and iii) All India Labour Administrative Service to ensure effective and quick disposal of cases and proper implementation of laws respectively.  

vi) Re-Defining of Workman

The Commission has recommended for removing highly paid employees, who takes independent decisions, such as airline pilots, from the definition of “Workmen”. The Commission suggested an alternative that the Government should fix a cut-off limit of remuneration which is substantially high enough i.e Rs.25, 000/- per month persons paid less than Rs.25, 000/- per month shall be treated as workmen. The laws would entitle him right to work of his choice, right against discrimination, prohibition of child labour, access to just and humane conditions of work, right to social security, protection of wages including the right to guaranteed wages, right to redressal of grievances, right to organize and form trade unions and right to collective bargaining and the right to participate in the management.  

vii) Recommendation on Trade Union Laws

The Commission has recommended for inclusion of a provision to enable workers in the un-organised sector to form trade unions, and get them registered even where an employer–employee relationship does not exist or is difficult to establish,

64 Ibid.

65 Supra note 53, pp. 36-37.
and the provision stipulating 10% of membership shall not apply in their case. Further, the commission has recommended for reference of disputes relating to inter-union or intra-union to the labour courts for adjudication. The commission has recommended for effective collective bargaining and to promote settlement of disputes through dialogue and negotiations. It is also recommended for selection of negotiating agents for recognition on the basis of the check off system, with 66% entitling the union to be accepted as the single negotiating agent, and if no union has 66% support, then unions that have the support of more than 25% should be given proportionate representation on the college. Check off system in an establishment employing 300 or more workers must be made compulsory for members of all registered trade unions. Further, it is recommended that recognition once granted, should be valid for a period of 4 years, to be co-terminus with the period of settlement. No claim by any other trade Union/Federation/Center for recognition should be entertained till at least 4 years have elapsed from the date of earlier recognition. The individual workers authorization for check off should also be co-terminus the tenure of recognition of the negotiating agent or college.

Note of Dissent

Shri. C.K. Saji Narayan, Advocate and Member of Second National Commission on Labour has submitted his note of dissent against the proposal of the Commission that 1) Total removal of prior permission to lay-off and retrenchment 2).

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66 Ibid., p.40.
67 Ibid., pp. 40-41.
Raising the limit from 100 to 300 for applicability for closure. 3) Chapter V-B is to be repealed progressively. 4) Post permission after 1 month of lay-off in establishments with more than 300 workers. 5) Varying scale of compensation for sick units and profits making units. 6) If the Government within 60 days of the receipt of application does not grant permission the permission will be deemed to have been granted. Accordingly he said that these proposals are devoid of any rationale.

Criticism of Recommendations by the Trade Unions:

Many national level Trade Unions have criticized these recommendations of the Commission as anti labour and made to facilitate globalisation and liberalization policy of the Government. Further, it is said that the proposals strengthen the 'Hire and Fire' policy of the employers and take away the legal protection given to the workers in case of lay-off, retrenchment, closure etc.

Even after elapse of almost three years after submission of the report by the commission, no steps have been initiated for implementation of the recommendations due to strong apposition by the Trade Unions.

2.4.11. The New Economic Policy

As mentioned earlier, the Janata Dal Government, which appointed the Ramanujam Committee had gone out of the office before it could consider these recommendations. The Congress Government, which came to power in 1991, introduced the New Economic Policy (NEP) with the main thrust of liberalization, privatisation and globalisation of national economy. All controls on industry have been lifted and the doors are thrown open for foreign investments even in vital
infrastructure sector. During the last few years of the operation of the NEP, lakhs of industrial units have been closed down rendering millions unemployed. Voluntary retirement schemes, known fashionably as “golden handshake”, are in vogue in many public sector industries, which are set to reduce their staff strength.

The employers, whose co-operation is essential for the successful implementation of the NEP, have taken the advantage to demand exit policy and a right to hire and fire a free hand in dealing with workers. They want more curbs on strikes and freedom to lay-off, retrench or close down without any restrictions.

The trade unions are busy fighting against the evil effects of NEP on workers. Their concentration is now to protect the jobs of workers through prevention of closures and retrenchments. The government just does not bother to take their opinion in the matter of NEP. The public sector in the country is slowly getting dismantled. The public sector is programmed to go private in future.

In the light of the NEP, suitable changes have to come in the labour legislation in the country. But, fearing wide discontentment among workers, the government wants to bring about changes in labour laws in phases. The then Union Finance Minister, Dr. Manmohan Singh, the architect of NEP, said: “Hire and fire policy not now”, indicating that it will have to wait for some more time. He underlined that “there is need for great flexibility in the labour laws with more freedom to the employers to negotiate with employees without state interference”. But, he said, “it
would take time and would be an end product of the reforms programme rather than be a starting point.  

This statement of the Finance Minister vividly brings out the laissez faire policy implicit in the NEP. Perhaps we may have to go back to the days of the so-called "freedom of contract" between employers and workers, with very little legal restrictions.

2.5 Conclusion

Thus, all the attempts of bringing about any changes in the industrial relations policy having been unsuccessful, the situation now is back to the stage where the matters stood in 1947, when the I.D.Act was enacted. Very sincere attempts to bring a shift in emphasis in favour of collective bargaining through a strong trade union movement have met with failure. In addition to the disagreement among the various central trade unions, which the Government has been using as a pretext for not doing anything in the direction of establishing a more satisfactory bargained relationship, the Government lacked the necessary political will to bring about these changes in the system. The official thinking has always been that a strong trade union movement and collective bargaining might have a detrimental effect on development of economy. Endorsing these views, Charles A. Myers observed: "The over-riding importance of economic development objectives, the concern for left-wing and communist capture of labour protest, and the shortcomings of managerial attitudes and policies towards utilization of labour have all combined to bring Government into the control of

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68 The Hindu, March 10, 1994, p. 16.
labour-management relations to a degree unthinkable in most Western countries today. Government has assumed the rule-making function often left to labour and management in the West.69

Van Dusen Kennedy, a keen student of industrial relations system in India, in an excellent critique of the Indian Government’s labour relations policy, commented:

“My study of unionism and labour relations in India convinces me that their development is not as healthy and orderly as it could be or as the needs of industrial democracy require. But I believe that an important reason is unsuitable public policy and practice, which are founded in their turn on values and intellectual predisposition that guide the whole approach of Indian leadership to the process of social change.70

He says the labour movement; the employers and the academics have so far failed in mounting “the kind of strong, concerted critique that goes to the heart of what is wrong with government policy.71 He further opined that ‘for India, development as a democratic society is as important as economic development and that to this objective the growth of healthy trade unionism and an independent system of collective bargaining can make a substantial contribution’.72

The foregoing discussion clearly brings out the essential conflict between the practices through which Government of India has chosen to implement her policies and her avowed goal of development of a strong, well organized, responsible and

69 Charles A Myers & S. Kannappan, supra note 1, p.312.
70 Kennedy Van Dusen, supra note 9, p-2.
71 Ibid.
72 Ibid., p.8.
healthy trade union movement and a genuine system of collective bargaining that requires a minimum of government’s intervention.

Despite these developments, compulsory adjudication as a method of settlement of disputes has come to stay so much that even trade unions and workers consider it as a necessary supplement or sometimes an alternative to the method of collective bargaining. But, over the years, because of the wage-boards in many big industries, legislative standards with regard to other important terms of employment like bonus, gratuity, etc., and also due to the general reluctance of the appropriate governments to refer interests disputes for adjudication, the compulsory adjudication of interest’s disputes is on the decline. On the other hand, due to the court rulings which left very little discretion in the hands of the appropriate Governments in the matter of reference of individual disputes relating to termination of service and due to direct access provided to Labour Courts in such cases through State amendments to the I.D. Act, the adjudication of rights and legal disputes has become more prominent.

Often time’s collective bargaining may not be a suitable mechanism to settle such disputes involving questions of law- rights and obligations. Therefore, after taking recourse to whatever grievance redressal mechanism that might be available, the individual disputes relating to termination is almost over-flowing into the Labour Courts for adjudication.

Therefore, the discussion in the forthcoming Chapters is concentrated on the method of adjudication and its functioning. To the extent necessary, the other methods of settlement of industrial disputes are also discussed in the next Chapter to bring out the inter-relationship between them and the method of adjudication.