CHAPTER – VII

AN EVALUATION OF THE ADJUDICATION METHOD AND OPERATION OF THE SYSTEM
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7.1 Introduction

In this Chapter it is attempted to evaluate the compulsory adjudication method and the functioning of the adjudication system in India during the last fifty-eight years. The operation of the adjudication system for sufficiently long period has provided enough experience and evidence for evaluating the system in the light of the basic assumptions and assurances.

It is generally claimed that the adjudication method has, over the years, contributed to a certain extent in bringing about an improvement in the wage levels and other important service conditions of industrial workmen in the country. This fact was recognised by the First National Commission on Labour (1969)¹ and by almost all the central trade union federations, which are now unanimous in their view of retention of the adjudication system with some modifications.² But it is also the common ground that in the actual working, the adjudication system suffers from some serious drawbacks and limitations. There is also a general feeling that although the adjudication method has succeeded in a certain measure in securing temporary industrial truce, it has not been able to establish the requisite industrial relations environment that is essential for industrial harmony and lasting industrial peace.

² See the Report of the Bipartite Committee on Industrial Relations (Ramanujam Committee), 1990, p. 35-36.
However, given the weak trade union movement in the country, there has developed a tendency on the part of the trade unions to favour the adjudication method through which they can attempt to resolve their problems, without the need to undertake long and arduous struggles. But the drawbacks and the deficiencies of the system are causing an allround concern and, therefore, there is an urgent need to make the adjudication system effective and efficient. Accordingly, this Chapter emphasizes its drawbacks and deficiencies with the purpose of focusing the attention on finding the remedial measures, which will improve the operational efficiency of the system.

7.2 Adjudication System: Evaluation of Drawbacks and deficiencies

When the I.D.Act was enacted, it was decided to continue the method of compulsory adjudication as the primary device for industrial disputes resolution, with the object of ensuring industrial peace and for securing social and economic justice to the working class in India, which was not then sufficiently organized so as to bargain with the employers with equal power. It was considered that “judicial industrial justice” was, under the prevailing conditions, preferable to “voluntary negotiated industrial justice”. The key assumption of this preference was that the adjudication machinery created under the Act would not only resolve disputes peacefully, i.e., without giving room for strikes and lock-outs, but also administer social justice, keeping in view the unequal power relationships of the parties to the disputes. Such administration of social justice, it was assumed, would raise the bargaining power of workmen in the course of time, so that equilibrium in industrial relations could be
achieved.\(^3\) Though it is difficult to assert that the operation of the adjudication system for the last fifty-eight years in India has improved the collective bargaining power of the workmen, it cannot be denied that it has made a substantial contribution towards improving the working and living conditions of industrial workmen. In fact, there is a criticism today that an industrial workman is over protected by the adjudication system, leading to problems of indiscipline in industries. Although, an industrial workman has, undoubtedly, better job protection in law, a genuine complaint against the working of the adjudication system is that in substance this protection to the worker has not been available in practice. The powerful employer to make the protection only illusory has used the adjudication system.\(^4\) Even in case of adjudication of interest’s disputes, the system has not been successful in ensuring an expeditious resolution of disputes. The unduly long time taken for completion of adjudication, not to speak of other deficiencies, by itself renders the system ineffective.

It may be noted that the frames of the *I.D.Act* had the above objectives in mind and accordingly they enacted that the adjudicators shall have procedural freedom and that they can take assistance from assessors. It was expressly enacted that the adjudicatory authorities shall complete the adjudication expeditiously. Later on, certain restrictions also came to be placed on the representation of parties by legal

\(^3\) See *Workmen of Dimakuchi Tea Estate v. Dimakuchi Tea Estate*, (1958) *I. L. L. J.* 500 (S. C) The Supreme Court in this case observed that collective bargaining was one of the objectives sought to be promoted by the *I.D.Act*.

practitioners, with a view to making adjudication less expensive, less technical and expeditious. As against these expectations and the spirit of the above provisions of the Act, the actual working of the adjudication mechanisms showed that they are not much different from the ordinary civil courts. Whatever imperfections can be attributed to the working of the civil courts in India, the same would, more or less, hold good in case of the labour tribunals in the country. It is paradoxical that the labour adjudication system as it operates in India today satisfies none of the objectives for which they were established. It is no wonder that Prof. Debi S. Saini, who has done empirical research on the working of the adjudication system, commented:

"the performance of the industrial adjudication system in the part has been by and large dismal"\(^5\)

Therefore, it is of paramount importance to identify explicitly the various drawbacks and deficiencies in the adjudication system and its operation, to find out the reasons for these defects and to search for solutions to rectify them, so that the adjudication system can be made effective and efficient. If the disputant parties have to have confidence and trust in the adjudication system, it is imperative that the system be suitably reformed and efficiently operated. With this aim in mind, the following discussion examines the above aspects.

7.3 Delays in Adjudication

The time dimension of adjudication of industrial disputes has to be assessed by taking into account the time taken at different stages involved in the whole process.

They are (i) pre-adjudication state (ii) adjudication stage and (iii) post-Tribunal adjudication stage.

(i) Pre-adjudication Stage: Before a dispute comes up for adjudication, as a matter of practice (with some exceptions in case of individual disputes in some States) conciliation proceedings are held and the question of reference of the dispute for adjudication arises only upon the failure of the conciliation. Although Sec. 12(6) of the *I.D.Act* prescribes 14 days, from the commencement of the conciliation proceedings, for submission of a report by the conciliation officer, in practice it is observed that the time taken for submission of a failure report invariably exceeds this limit. The studies conducted in this area indicate that the total time taken by a conciliation officer for submitting the failure report to the appropriate Government from the date of seeking the conciliation service is anywhere between six months to one year.⁶ These delays are mainly due to the practice of calling joint meetings for preliminary investigation before the dispute is officially admitted for conciliation.

On receipt of the failure report, the Government takes time for deciding to refer the dispute for adjudication. This aspect is discussed in detail in Chapter IV. On average, the appropriate Government takes about 6 to 12 months for making a reference. The *I.D. Act* has no fixed any time limit for the appropriate Government in taking its decision to refer the dispute. Therefore, on a modest estimate nearly one year's period is consumed before the dispute comes up for adjudication by a L.C. or I.

In cases where the parties can directly approach the adjudicatory authorities this delay is avoided.

(ii) Adjudication Stage: The thesis being mainly concerned with the adjudication of industrial disputes by the L. Cs and I. Trs., the delays at this stage are of immediate relevance. It is often said that delays of law are proverbial and those of compulsory adjudication are conspicuous. Sec.15 of the I.D. Act imposes an express duty on an adjudicatory authority “to hold its proceedings expeditiously”. Apart from this specific provision, a complete reading of the I.D. Act and the Rules made there under give a clear indication that speedy resolution of industrial conflicts is the main aim of the Act. The fact that compulsory adjudication was the value choice as an alternative to collective bargaining goes to prove that those who chose the policy intended that the adjudication process should be expeditious, in addition to its being less formal and less technical. Since industrial harmony was emphasized as a social value and the adjudication system was envisaged as the key instrument for promoting it, speedy resolution of industrial disputes through adjudication becomes imperative.

The workmen, being ordinarily the weaker side, would be keen on speedy resolution of disputes and no real harmony is possible unless expeditious determination of their demands or grievances is assured to them. Keeping this object in view, the I.D. Rules prescribed time limits for every stage of the adjudication Rule10-B of the Central Rules, introduced by an amendment in 1984, provides the time schedule.
If these Rules of procedure are strictly followed, the cases can be disposed of within a period of 4 to 5 months. At any rate the total time taken for submission of the award should not exceed 6 months. Therefore, this period of six months can be taken as the reasonable period and any time beyond this can be considered as delay.

Although originally the I.D. Act did not specify any time limit for completion of adjudication, responding to the complaints that the Tribunals are taking unduly long time for disposal of cases, Parliament in 1982, through an Amendment to the I.D. Act, inserted Sec.10 (2A) to ensure time bound adjudication of disputes. According to this provision, the appropriate Government has to decide the requisite time within which the award should be submitted and specify such time in the order of reference. But, where the dispute is connected with an individual workman, such period shall not exceed three months. This provision imposes a duty on the adjudicatory authority to complete the adjudication and submit the award to the appropriate Government within the period so specified.

However, the provisos added to this sub-section have diluted the spirit of this amendment, as the Tribunals are empowered to extend the period so specified for reasons to be recorded in writing. It is common knowledge that even after this amendment, made almost 14 years back, things have not improved and the adjudication time continues to be unduly long.

Various empirical studies conducted in different parts of the country show that the time taken for completion of adjudication is anywhere between 3 to 5 years. It is only less than 10 per cent of cases that they are settled within one year. Prof. Debi S.
Saini, in his empirical investigation for the years 1978 to 1982 found that the average time taken by the Industrial Tribunal, Faridabad for completion of adjudication of interest’s disputes was 3 years and one month. Another disturbing fact discovered by Prof. Saini was that “most of the workmen’s representatives involved in the 29 sampled dispute strongly felt against going to the Tribunal in future.” This is a clear proof that workers and unions are losing their confidence in the adjudication system as it operates today due to mainly the inordinate delays involved in it. These depressing facts impelled Prof. Saini to conclude:

“Any industrial- justice discourse, therefore, which merely seeks to make the Tribunal system in its existing frame work effective, is bound to be an exercise in futility. We need to rethink out value choices in industrial justice dispensation.”

In another similar investigation conducted by Dr. P.G.Krishan of Delhi University, with regard to the time taken at Delhi, it was found that about 70 per cent of cases took upto 2 years and in 10 percent of cases the time taken for completion of adjudication was upto 5 years. It was only in 10 percent of cases the time taken was less than a year.

Another researcher Dr. M.L. Monga of National Labour Institute, New Delhi, concluded his empirical investigation on delays with the following observation:

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8 Ibid., p.218.
9 Ibid., p. 227.
As a consequence of mounting delays involved in seeking justice through intervention of this machinery, no wonder, workers may prefer to bear with the status-quo rather than entrusting their fate in the hands of this agency.\textsuperscript{11}

As part of this thesis, the researcher has also conducted an investigation on the question of delays with reference to the Industrial Tribunal and Labour Courts at Hubli, Karnataka and the results of the study are incorporated in the ensuring Chapter. The First NCL had also taken a special note of long delays in adjudication and recommended the replacement of the present I.Trts. by IRCs. The Second NCL has recommended for establishment of Labour Relation Commissions at State, Central and National level and continuation of Labour Courts. The Supreme Court of India deprecated the delays in adjudication in many cases that have come up before it after more than a decade. For example in Workmen v. Hindustan Lever Ltd.,\textsuperscript{12} the Supreme Court deplored that the labour adjudication was getting unduly delayed due to unhealthy litigative practices resorted to by the employers. The Court in this case commented:

"It is most unfortunate that all those unhealthy and injudicious practices resorted to for unduly delaying the adjudication of civil proceedings have stealthily crept in, for reasons not unknown, in the adjudication of industrial disputes for the resolution of which informed forum and simple procedures were devised with the


\textsuperscript{12} (1984) \textit{Lab.I.C.} 1573 (S.C.)
avowed object of keeping them free from the dilatory practices of civil courts. Time without number this Court ... disapproved the practice of raising frivolous preliminary objections at the instance of the employer to delay and defeat by exhausting the workmen the outcome of the dispute; yet we have to deal with the same situation in this appeal by special leave.”

In a similar vein the Supreme Court, speaking through Justice D.A. Desai, in *Delhi Cloth and General Mills Ltd. v Shambunath Mukherjee*¹³ expressed its apprehension that the delays in labour adjudication might ultimately affect the industrial peace, which was sought to be achieved mainly through effective adjudication of industrial disputes.

Again dealing with another important cause for the delays, viz., inadequate number of tribunals (and the Government’s failure to fill the vacancies in time) the Supreme Court in *M. C. Mehta v. Union of India and Others,*¹⁴ decided in 1986, adversely commented on delays by deploring the present state of affairs. The Court observed:

“It is obvious that the number of Industrial Tribunals in Delhi are not enough and it is necessary to take immediate steps to determine how many tribunals are necessary and set up such tribunals so that industrial disputes are adjudicated and disposed of at any early date. We were also surprised to learn that even the two Industrial Tribunals which are set up in the Union Territory of Delhi are without presiding officers to man them ... with the result that there is not a single Industrial Tribunal functioning in Delhi”.

¹³ (1985) 1 L. L. J. 36 (37-38)(S.C.)
¹⁴ (1986) 52 F L R 418 (S.C.)
With these observations the Court directed the Government to take steps to fill the vacancies immediately and also to set up more tribunals for the purpose of speedy settlement of industrial disputes. It is significant to note that this was the state of affairs in the capital city of the country and that too after a specific direction by a division Bench of the Delhi High Court in 1984, on a public interest writ petition filed by the General Secretary of the people's Union of Civil Liberties, for the constitution of adequate number of L.Cs. and I.Trs. in Delhi. The Delhi High Court in this case, *viz, Inder Mohan v., Union of India*¹⁵ expressed its “shock at the starting number of application and references pending before the Labour Courts and Industrial Tribunals in Delhi,” which the Court observed, “Were escalating with terrific speed.”

The Law Commission of India (122nd Report) noted with grave concern the abnormal delays in the adjudication process, both at the Tribunal adjudication stage and at the post – Tribunal adjudication stage. It attributed the delays at the Tribunal adjudication stage to the present structures, i.e., one person only judicial officers, drawn from civil judiciary, and recommended their restructuring on participatory model- multi member body- which, the Law Commission felt, was more conducive for effective and expeditious settlement of disputes.

The Kantharia Committee, appointed by the Government of Maharashtra, also expressed its serious concern on the issue of delays in labour adjudication and made

specific recommendations for avoiding the delays.16 Again the two Labour Law Review Committees appointed by the government of Gujarath, with eminent jurists like Justice D.A. Desai and Prof. Upendra Baxi as members, expressed their anguish at the delays and made definite proposals for overcoming the problem of delays in labour adjudication.

The Sanat Mehta Committee appointed by the government of India in 1982 also expressed its apprehension on the unduly long time taken for adjudication and recommended measures like simplification of procedures, introduction of pre-hearing assessment procedure, direct access in case of all individual disputes, increase in the number of tribunals and special training to the labour judiciary.17 None of the recommendations of the above Committees have so far been implemented.

The present state of affairs with regard to delays in labour adjudication is causing so much anguish to every one concerned with the peaceful settlement of industrial disputes, that Prof. Upendra Baxi, A noted jurist, questions: who bothers for delay in labour adjudication? 18 He observed that delay in dispensing justice was nobody’s problem. Baxi laments that despite the specific recommendations made by various committees and commissions to make the labour justice dispensation effective and expeditious, nothing has been done by the Governments to improve the present

17 Ibid., pp. 92-95.
deplorable conditions. The government’s indifference to act upon these recommendations provoked him to say,

“In India one committee gives birth to another. I am of the firm view that the appointment of committees and commissions in this country remains a mere ritual, just to project the legitimacy by the State.”

According to him, the State’s indifference to the problem of delay is the main problem today. He commented that there is complete lack of judicial person – power planning in the country.

Absence of professionalism among lawyers and labour judges, lack of accountability in their part and want of appropriate training of labour judiciary are, according to him, contributing to the unjust surplus adjudicatory time. He classifies the causes for delay as: System caused delays; Litigant caused delays; Legal Profession caused delays; Judge caused delays and State caused delays.

He concludes by saying that we need to look at the problem of delays in labour adjudication in the over all framework of the Constitution and the duty imposed on the State to ensure social justice to the impoverished masses in India. As he put it:

“The Constitution gives us a just conception of development, and it is to be expressed in one sentence after a lot of study of the Constitution. This guiding charter of ours says that just development consists in disproportionately benefiting the

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19 Ibid., p.50.
impoverished masses in India. The development programme is just, which does not merely benefit the masses of India but disproportionately benefits them more. That is what the concept of social justice connotes under our Constitution. And, delay in labour justice shows clear violation of the duty of State in this regard. We need to look at delay in this overall framework."

(iii) Post Adjudication Stage: The parties aggrieved by the decisions or awards of adjudicatory authorities may challenge them through writ petitions under Arts. 226 or 227 before a High Court or approach the Supreme Court directly under Arts. 32 or 136. In a good number of cases the parties drag on the litigation and the time taken by the High Courts and the Supreme Court is often times unbelievably long. There are lakhs of cases pending before the High Courts and so normally a High Court takes between 3 to 5 years for disposal of cases. There are cases which have been pending for almost two decades before these Courts. These Courts accord no special treatment to labour disputes.

The Law Commission in its 122nd Report noted with special concern the mounting arrears of labour cases in High Courts and Supreme Court and extraordinarily long time taken by them in disposing of these cases. It noted that the matters pending with the Supreme Court in 1985 ranged from those instituted in 1971, i.e., pending for 15 years. Computing the delay in many such cases the Law Commission remarked:

\[\text{Supra note 46, 63.}\]
"The dispute which came before the Supreme Court in 1971 and which is pending here for 15 years must have started before the Labour Court at least 5 years before, if it has not come via the High Court and if it has come via the High Court, 10 years before 1971. Calculating either way, the 1971 disputes pending in the Supreme Court of India must now be pending for over 25 years."\textsuperscript{22}

It is interesting to note that the Supreme Court of India which normally takes very long time to dispose of its own cases, including the Labour matters, directed the High courts, way back in 1975 in \textit{Mahabir Jute Mills v. Shibban Lal Saxena} \textsuperscript{23} to dispose of labour matters within a year of the institution of the petition. The Court's direction was in the following terms:

"We are constrained to observe that Labour matters should have been given top priority and should not have been allowed to be prolonged for such a long period (14 years) in High Court, otherwise inordinate delay results in a situation causing embarrassment both to the Court and parties. It is, therefore, very necessary and in fitness of things that such matters should be given top priority and should be disposed of by the High Court within a year of the prosecution of the petition."

This direction remained only a pious wish. To have a proper grasp of the inordinate delays in industrial adjudication, particularly the delay before the higher judiciary, we may peruse the recent Supreme Court decision, decided in 1990, in

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\textsuperscript{22} The Law Commission of India, 122\textsuperscript{nd} Report (1987), p.71.
\textsuperscript{23} (1975) II L.L. J. 326 (S.C.).
\end{flushleft}
Punjab Land Development and Reclamation Corporation v. Labour Court.\textsuperscript{24} The Supreme Court in this case, by a five judge Bench decision, disposed of in all 17 appeals involving a common question of law. These appeals preferred before the Supreme Court ranged from 1980 to 1983 and related to termination of services of workmen during the years 1963 and 1970 to 1977. In all these cases, except one, the L.C.s had held the terminations illegal and awarded reinstatement with back wages. In the one case where the L.C. upheld the termination, the High Court had quashed the award and directed that the workman be reinstated. The awards of the L.C.s in these cases were passed during the years 1973 to 1980 and all of them were pending before the High Courts and then before the Supreme Court upto 1990.

The total time taken for the disposal of one of these cases was 27 years (1963 to 1990) and in others the over all time ranged between 13 to 20 years. These starting facts clearly reveal that the problem of delays in adjudication including the delay in post-tribunal adjudication stage, is stupendous and unless drastic solutions are immediately put in place, those who have once experienced the ordeal of the adjudication process may not venture again to approach the tribunals for justice.

7.4 Causes for the delays

The main causes for the delay in Labour adjudication is discussed with brief details to suggest solutions to avoid the delays. The delay in adjudication is the consequence of various factors: administrative, procedural and human.

\textsuperscript{24} (1990) 77 FJR. 17 (S.C.)
7.4.1 Delays in conciliation proceedings

The proceedings are conducted for long period without officially admitting the dispute for conciliation in the name of preliminary investigations through joint meetings. To avoid delays at this stage, it is necessary that the Government and the controlling authorities in the Labour Department should ensure, through appropriate instructions and inspections, time-bound conciliation proceedings. Further, adequate training and motivation course for the conciliation officers should be conducted as frequently as may be necessary. In case of individual disputes, it is observed that conciliation is very often a failure and therefore the workmen may be permitted direct access to L.C., without the prior requirement of conciliation proceedings. This arrangement has been done in the State of Karnataka by an amendment to the I.D. Act, where conciliation and a reference by the appropriate Government are no more necessary in case of Sec. 2-A disputes relating to termination of services of workmen.

7.4.2 Delay in making references and misuse of Government's reference power and lack of access

A serious limitation of the labour adjudication system is that the parties do not have direct access to the L.Cs and I.Trs. They have to approach the appropriate Government for a reference, normally after the failure of the conciliation proceedings. The appropriate Government has discretion to refer or not to refer a dispute for adjudication and thus the remedy of the workmen to seek justice through adjudication—the only remedy available to workmen in cases of discharge, dismissal or termination of employment—depends upon the discretion of the Government. Apart
from many complaints against the exercise of this discretionary power on grounds of its misuse for political ends, the Government itself being a party to the dispute as employer in many cases, favourtism, corruption, etc., the exercise of power itself involves considerable delay.

The time taken for reference varies from six months to three years in different States and by the Central Government. The Solution to avoid delays at this stage lies in divesting the Government of the exclusive power of reference and allowing the parties to approach the adjudicatory authorities directly, subject to appropriate conditions. As recommended by the National Commissions on Labour constitution of independent IRCs / LRCs is an effective alternative. Kantharia Committee and Ramanujam Committee recommended direct reference to the I.Trs. By the recognized unions in case of interests disputes and to the L.Cs. by the concerned workmen in case of individual disputes. Since it would be unrealistic to expect the Labour Department of the government to act expeditiously, the above recommendations will provide an acceptable solution to avoid delay at this stage.

However, the law as it stands today, except in some states which have made provision for direct access to LCs and I.Trs in cases of discharge, dismissal, retrenchment or termination of employment, denies direct access for workmen to approach the adjudicatory authorities. The labour adjudication over the years has emerged as one of the remedies to the workmen for peaceful settlement of disputes, and unless direct access to the adjudicatory authorities is provided, the adjudication system cannot be an effective remedy.
7.4.3 Huge Pendency of Cases

The Labour Courts and Industrial Tribunals, generally in the country and particularly in Karnataka State, today are facing the chronic problem of huge backlog cases pending before them for years. "According to the information available as on 1-10-2005, the number of industrial disputes and applications pending before Labour Courts and Industrial Tribunals in Karnataka state was 10,322 and 2113 respectively. (Total: 12,435.)"

Table-1 contains the information relating to the number of Labour Courts working in the state and industrial disputes pending before them as on 1-10-2005. Table-2 presents the data relating to pendency before Industrial Tribunals in the state.

According to the above information, the total pendency of cases in Labour Courts in the state at the end of October 2005 were 10,322. Out of these 36.94 percent of cases were pending in Bangalore itself. The pendency in Hubli Courts is 18.52 percent. The pendency in Mysore and Gulbarga was 14.18 percent and 13.8 percent respectively. The pendency in the Labour Courts at Kodagu-Madikeri, Bijapur, and Chikkamangalore comes to 14.6 percent. I-Additional Labour Court, Bangalore has minimum pendency (109) and the maximum pendency is with the II-Additional Labour Court, Bangalore (1627).

As per Table-2 information, the total pendency of cases in Industrial Tribunals in the state at the end of October 2005 were 2113. Out of these 39.13 percent of cases were pending in Mysore and 37.81 percent were pending in both the Industrial Tribunals, Bangalore. The remaining 23.04 percent of cases were pending in Hubli. I-Additional
Industrial Tribunal, Bangalore has minimum pendency (227) and the maximum pendency is with the Industrial Tribunal Mysore. (827).

**Table-1**

Statement showing the pendency of cases in Labour Courts in the State of Karnataka as on 1-10-2005.

<table>
<thead>
<tr>
<th>Name of Court</th>
<th>Pendency</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Prl. Labour Court, Bangalore</td>
<td>729</td>
<td>7.06</td>
</tr>
<tr>
<td>2 I Addl. Labour Court</td>
<td>109</td>
<td>1.05</td>
</tr>
<tr>
<td>3 II Addl. Labour Court</td>
<td>1627</td>
<td>15.76</td>
</tr>
<tr>
<td>4 III Addl. Labour Court</td>
<td>1350</td>
<td>13.07</td>
</tr>
<tr>
<td>5 Labour Court, Mangalore</td>
<td>220</td>
<td>2.13</td>
</tr>
<tr>
<td>6 Labour Court, Mysore</td>
<td>1464</td>
<td>14.18</td>
</tr>
<tr>
<td>7 Labour Court, Kodagu-Madakkeri</td>
<td>150</td>
<td>1.45</td>
</tr>
<tr>
<td>8 Labour Court, Gulbarga</td>
<td>1433</td>
<td>13.8</td>
</tr>
<tr>
<td>9 Prl. Labour Court, Hubli</td>
<td>1157</td>
<td>11.20</td>
</tr>
<tr>
<td>10 Addl. Labour Court, Hubli</td>
<td>756</td>
<td>7.32</td>
</tr>
<tr>
<td>11 Labour Court, Bijapur</td>
<td>870</td>
<td>8.92</td>
</tr>
<tr>
<td>12 Labour Court, Chikmagalur</td>
<td>457</td>
<td>4.42</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>10,322</strong></td>
<td><strong>100%</strong></td>
</tr>
</tbody>
</table>

**Table-2**

Statement showing the pendency of cases in Industrial Tribunals in the State of Karnataka as on 1-10-2005.

<table>
<thead>
<tr>
<th>Name of Court</th>
<th>Pendency</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Industrial Tribunal, Bangalore</td>
<td>572</td>
<td>27.07</td>
</tr>
<tr>
<td>2 Addl. Industrial Tribunal, Bangalore</td>
<td>227</td>
<td>10.74</td>
</tr>
<tr>
<td>3 Industrial Tribunal, Hubli</td>
<td>487</td>
<td>23.04</td>
</tr>
<tr>
<td>4 Industrial Tribunal, Mysore</td>
<td>827</td>
<td>39.13</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>2113</strong></td>
<td><strong>100%</strong></td>
</tr>
</tbody>
</table>
The huge pendency of cases in the Court causes delay in adjudication of cases as much of courts precious time goes to call work. Therefore, the cases should be transferred from high pendency courts to low pendency courts and further, if necessary temporary courts may be established for clearing of the pendency. The average pendency in all 12 Labour Courts is 1474.5 and in 4 Industrial Tribunal is 528.25. Unless some radical solutions are put in place to clear the arrears as well as to deal with fresh cases, things cannot improve. To clear off the present pendency, there is a need for about 41 Additional Labour Courts and 9 Industrial Tribunals; if we take the normal potential of each adjudicator to dispose of in one year is about 250 cases,

The huge arrears by themselves contribute for the delay, since the presiding officers concentrate more on disposing of the old cases. Unless the matter is taken up seriously and in right earnest, the position cannot be improved.

7.4.4 Non-Specialists as Labour Judges

The L.Cs and I.Trs. are now functioning with judicial officers as the presiding officers. Many of them do not have adequate knowledge of labour problems and issues of industrial relations. There is no system of providing them the requisite orientation and adequate training that are necessary for effective adjudication of labour disputes.

Hence it is necessary to develop a separate cadre of labour judges, who would have adequate knowledge and training in all matter relating to labour management relations. The delays in adjudication and procedural technicalities are often attributed to the presiding officers, who are judicial officers with the background of civil courts.
Since the tribunals under the *I.D. Act* have to deal with the special problems of labour and management, it is necessary that these tribunals are manned by specialists in labour problems and labour laws.

**7.4.5 Granting of unlimited adjournments**

The Industrial Disputes Act Rules clearly specified the period and number of adjournments that can be granted by the presiding officers at the instance of each party. Ordinarily not more than three adjournments, each of a week's duration can be granted at the instance of either party. But in practice it is seen that the presiding officers are very liberal in granting adjournments to the parties, even for causes like "the advocate is busy in other court," etc. The duration of adjournments granted is often contrary to the Rules.

Unless the P.Os strictly adhere to the Rules in the matter of granting adjournments, it is impossible to dispose of the cases within a reasonable time.

**7.4.6 Procedural technicalities and Court formalities**

The procedures followed by the adjudicatory authorities are almost similar to those followed by the civil courts. It is mainly because of the procedural technicalities that the parties, even well informed otherwise, are unable to present their own cases and they are compelled to seek the assistance of advocates or others well trained in these matters.

The court formalities, which are observed by the adjudicators, are also similar to those in civil courts. The robes used by the presiding officer and the advocates, the way of calling the parties, etc., are all similar and the whole atmosphere before the
adjudicator is in no way dissimilar to that of a court. The presiding officers being drawn from the civil judiciary is the main cause for these procedural technicalities and court formalities. It is already discussed that the procedures followed by the adjudicators, including the granting of indiscriminate and innumerable adjournments are mainly responsible for the delay in adjudication. Until recently even where it was possible to record evidence through affidavits, the presiding officers, with the civil court background, were generally preferring the method of recording evidence through examination and cross-examination of witnesses, which involves additional adjudication time. The advocates who represent the parties also feel at home with the normal civil court practices.

This is one important area where reform is needed for simplification of procedures and avoiding the court formalities, so that at least moderately educated workmen would be in a position to present their own cases.

7.4.7 Inadequate number of Labour Courts and Industrial Tribunals

The number of L.Cs. and I.Trs. that are now functioning in the country is quite inadequate and they are unable to cope with the increasing number of disputes coming up before them. Consequently arrears have been mounting in almost all the L.Cs and I.Trs. Neither the Central Government nor any State Government has ever undertaken any person-planning with a view to find out the number of labour tribunals necessary to determine the disputes expeditiously. Although the number of references and disputes coming up before them is increasing, there is no consequent increase in the number of labour Tribunals. As discussed earlier, the Supreme Court had to intervene
to direct the Central Government to constitute adequate number of L. Cs. and I. Trs. in Delhi. It is common knowledge that numbers must be met with numbers. Without increasing the number of labour tribunals, though it is not the only solution, it is futile to expect expeditious disposal of cases.

Therefore, it is necessary that the Central Government and the State Government must undertake proper person-power planning and constitute adequate number of adjudicatory authorities. The Kantharia Committee in Maharastra and Second Labour Law Review Committee in Gujarat have recommended that there should be at least one L.C. in every District and an I. Tr. in every Division, consisting of about four Districts. Unless such steps are taken by the Governments, it is impossible for the existing L. Cs. and I. Trs. to cope with the huge pendency of cases as well as to dispose of fresh cases within the time stipulated in the I.D. Act and Rules.

7.4.8 Governments' failure to fill the Vacancies in time

Even with regard to the functioning of the existing L. Cs. and I. Trs., it is observed that often times the vacancies occurring in the posts of the presiding officers are not filled in time by the appropriate Governments. Consequently they remain non-functional for considerable periods. This results in piling up of fresh cases and the incumbent presiding officer will face the problem of arrears. As discussed earlier the Delhi High Court and the Supreme Court had to direct the Central Government to fill the vacancies immediately. Similar instances have been reported from different parts of the country, where the tribunals could not function for years for want of
presiding officers. For example, the office of the presiding officer of Central Government Industrial Tribunal No. 3 at Dhanbad remained vacant for more than four years, i.e., from April 1984 to May 1988. Even the Principal Labour Court and Additional Labour Court at Hubli vacant since more than one year.

It is also observed that the presiding officers are transferred frequently and the new presiding officer, who is ordinarily a District Judge, takes some time for understanding the labour problems and the labour laws, including the case law. This factor also contributes for the delay.

The remedy for this lies with the appropriate Governments, or High Courts, where LCs/I.Trs. are under High Court control, which should discharge their duties in filling the vacancies promptly and avoid frequent transfers. The presiding officers should normally be appointed for a fixed period of 3 or 5 years.

7.4.9 Non-Compliance with the time-schedules prescribed in Rules

The Industrial Disputes Rules expressly provided time schedule for each stage of the Tribunal procedure, viz., for filing claim statement, written statement, rejoinder, and recording of evidence, arguments and submission of award. Never in practice, these limits are attempted to be complied with by the P.Os.

Therefore, it is essential that there must be some control mechanism to supervise and ensure compliance with the Rules relating to time-schedules and granting of adjournments.

7.4.10 The delaying tactics of parties

It happens quite often that one of the parties, most of the times the employer, is not interested in quick disposal of the case. Therefore, he adopts the strategy of attrition. Instead of seeking expeditious resolution of the dispute, he would try to wear out the other side and cause maximum inconvenience to the opposite party. The employer; representatives generally seek more adjournments and raise all sorts of technical pleas with a view to delay the adjudication proceedings. This creates surplus adjudication time. It is common knowledge that litigant-caused delay is a cultural problem in India. The employer not only tries to delay the litigation before the Tribunal, but also when he loses the case before the Tribunal, drags on the litigation by approaching the higher judiciary and challenging the awards or some times interim order. Quite often he does so not for the purpose of ventilating his legal rights but with the object of wearing out the vulnerable workmen party to the dispute. The employer litigates with the money of the company or the firm. The Supreme Court in a number of cases deprecated such illegitimate litigative techniques on the part of employers. In this respect the various Government departments and public sector industries are equally the defaulters, particularly in respect of preferring appeals mechanically. It is a truism that in this country the Government is the number one litigant. There are many cases wherein the Supreme Court deprecated and admonished the Government agencies, supposed to be model employers, on this score. For example, in Central Co-operative Consumers Ltd. v. Labour Court, H. P.
at Shimla, the Supreme Court has fixed the responsibility for the payment of an amount exceeding three lakh Rupees as back wages on the officer who initially terminated the services of the respondent employee and other officer who authorized the appeal to the Supreme Court against the order of the L.C. and High Court. The following remarks of the Supreme Court on this matter are highly relevant.

"Public money has been wasted due to adamant behavior not only of the officer who terminated the services but also due to cantankerous attitude adopted by those responsible for pursuing the litigation before one or the other authority. Working life of the opposite party has been lost in this tortuous and painful litigation of more than 20 years. That for such thoughtless acts of its officer the petitioner society has to suffer and pay an amount exceeding three lakhs is indeed pitiable. We, however, leave it open to the society to replenish itself and recover the amount of back wages paid by it to the opposite party from the personal salary of the officers of the society who have been responsible for this endless litigation including the officer who was responsible for terminating the services of the opposite party."  

This recent decision of the Supreme Court, it is hoped, will have a salutary effect in preventing the officers of the public agencies from resorting to thoughtless and sometimes vindictive litigation against the hapless workmen.

27 Ibid.
7.4.11 Non exercise of power to grant interim relief by Labour Courts and Tribunals

Though, at present, the adjudicators have no power under the Act to make any interim orders even in cases where the action of the employer is ex-facie illegal. The Supreme Court had conceded to the adjudicator’s power to grant interim relief pending final adjudication.

But the interim relief cannot be the whole of the relief claimed by the workmen. This position of law created situations where grave injustice is caused to the workmen. For example, even where an employer dismisses a workman without concluding a domestic enquiry, the Tribunal has no power to order reinstatement without complete adjudication, which takes a pretty long time and the workman had to remain without job for the full period of adjudication. The employers take full advantage of this situation and resort to unfair labour practices with a view to harassing the workmen.

Similarly, even in cases where the employer denies payment of regular salaries to the workmen, the L.Cs. under Sec. 33-C (2) has no power to grant any interim orders for payment of salary pending final adjudication. With the result, the workmen have to wait for the whole period of adjudication, which takes years, without their wages.

Therefore, to ensure effective adjudication it is necessary to confer power on the adjudicators to make interim order including restraint order in appropriate cases.
and also the adjudicators must exercise their power to grant interim relief which is recognised under various decisions of the apex court.

7.4.12 Lack of Provision to make compromise or a pre-hearing assessment

Neither the Act nor the Rules contain any provision for promoting a compromise of the dispute between the parties during adjudication. The Tribunals do not consider it their duty to make any effort for bringing about a compromise. Similarly, there is no scope for adopting a pre-hearing assessment procedure, "designed to “weed out” inexpensively and at an early stage unmeritorious applications or defences" as done by the Industrial Tribunals in Britain.

7.4.13 Stay Orders of High courts

Delays at the Tribunal adjudication stage are also caused, some times, due to stay order granted by High Courts, when a party challenges the decisions of the adjudicatory authority on preliminary issues. To avoid this delay, it is desirable that the higher judiciary shall not interfere with the decisions on preliminary issues until the award is rendered.

7.4.14 Delay in Publication of Awards

The adjudicator shall submit the award to the appropriate Government for its publication. The appropriate Government shall then "within a period of thirty days from the date of its receipt” publish the award in such manner as the Government

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28 See Michael H. Goodman, Industrial Tribunals – Practice and Procedure;
29 See Sec. 15 of the I.D.Act.
It is mandatory for the appropriate Government to publish the award, unless it is prevented from doing so by an order of a Court of competent jurisdiction. Excepting in such extra-ordinary circumstances, the appropriate Government is duty bound to publish the award, because unless the award is published it cannot become enforceable under the scheme of the Act.

However, the appropriate governments are making undue delay in publication of awards and some times they are published even after expiry of years. Thus, even though the award is passed by the courts, the parties shall have to wait until its publication and expiry of one month after its publication to realise benefits under the award. Therefore, the present system of publication of award shall be removed and awards shall be pronounced in the open court as it is done in case of civil courts. Further, award shall become enforceable after expiry of thirty days of its pronouncement. It helps to avoid unnecessary delay in completion of adjudication process and realisation of benefits under the award.

**7.4.15 Delays before the Higher Judiciary**

As discussed earlier, substantial delays occur when the decision or awards of the adjudicators are challenged before the High Court and/or the Supreme Court. Despite the observation of the Supreme Court that labour matters should be given top priority by the High Courts and that they should be disposed of within a maximum period of one year, things have not improved.

30 See Sec. 17 (1) of the *I.D. Act.*
It is therefore, necessary that the High Courts should take the direction of the Supreme Court seriously and give priority to labour matters. Further, the Supreme Court's jurisdiction under Art. 136 over the awards of the labour adjudicators should be very sparingly used and as desired by the Supreme Court itself the labour cases should be given priority for disposal by the Court. Although no data is available on the pending labour matters before the Supreme Court, G. M. Kothari, an industrial relations expert observed:

"It is estimated that nearly one-sixth of litigation in the Supreme Court pertains to industrial law matters."31

7.5 Consequences of delays in adjudication

"Justice delayed is justice denied" is the well-accepted legal dictum. The consequences of delay in adjudication are quite obvious. In particular, the workmen, being the less resourceful, cannot withstand the long delays, as they are in need of immediate relief. A workman whose services are terminated by the employer cannot wait for long without his job, which alone provides him and his family the requisite sustenance. As the litigation prolongs, the cost of litigation also increases and the poor workmen cannot afford to spend huge sums required for the prolonged legal battle. The delay in adjudication compels the workmen to accept unjust compromises during the pendency of adjudication. Even in case of interests disputes, the workmen who claim certain monetary benefits due to increase in cost of living and so on cannot

wait for long and the delay in adjudication will force them to adopt extra-legal methods to realize their demands.

Although the delay in adjudication may be advantageous to the employer in the short-run, he also stands to lose in the long run, because industrial peace and harmony will be the causalities and he cannot expect wholehearted co-operation in the workplace from the disgruntled workmen. Further, the system of adjudication loses its legitimacy as an effective alternative justice delivery system. The workmen and often the unions resort to the system of adjudication at present, because there is no effective alternative remedy available to them.

Finally, the very basic objective of the I.D. Act, i.e., establishing industrial peace and rendering social justice through peaceful methods of disputes settlement, will be defeated, if the time taken for adjudication is unduly long. Those who have resorted to it once, may not venture to do so again and they may resort to other more expedient methods, which may not be conducive to the maintenance of industrial peace.

7.6 Problems of Adjudication System
A. Juridification of Industrial Relations

More serious shortcoming of the adjudication system has been the juridification or legalization of all labour relations matters. Before the Tribunal, all labour relations questions are converted into legal questions. One of the negative contributions of compulsory adjudication system in India has been the juridification of industrial relations – “the lawful –unlawful dichotomy of industrial actions through
doctrinal legal reasoning” – thereby weakening the norms creating potentialities of the parties through voluntary methods. One of the objectives of the I.D.Act even recognized by the Supreme Court was to promote voluntary method of settlement of disputes. But the working of the adjudication system over the years on lines of court adjudication has resulted in “the lawyer’s approach” to industrial dispute settlement becoming predominant and this has inhibited the development of voluntary efforts to solve the industrial relations problems.

The juridification of industrial relations has resulted in “legal centralism”, so much that most of the trade unions leaders in big industrial cities have taken to full-time lawyering, spending most of their time in pleading rather than leading- called by some as “brief-case trade unionist”. This brief case trade-unionist is denoted by the recent tendency that is developing in union leaders personalize union activities as we as becoming just pleaders of workmen’s cases. Prof. Saini’s observations revealed that the brief-case unionism “helps the ruling party to prevent the labour to unite and struggle for securing industrial equity and democracy.”32 The biggest danger of brief-case unionism is the opportunity it provides for commission of unfair labour practices, at all stages of settlement of disputes, by the union leader through colluding with the managements and converting unions into puppet unions.

These developments, if unchecked, are likely to affect the workmen’s faith in the adjudication system. As envisaged in the I.D. Act the adjudication system should,

32 Debi S. Saini “Leader or Pleaders; Dynamics of Brief-Case Trade Unionism under Existing Legal Framework;” 37, JILI (1995) 73-91.
in its operation, encourage voluntarism rather than weaken it. Ultimately, the workers have to depend on their own power to secure justice and law should, therefore encourage collective bargaining and other voluntary methods of settlement. Although legalisation of industrial relations, in the sense of their regulation through law, up to an extent cannot be so fashioned and operated as to encourage voluntarism, which can secure balance of power between capital and labour. This alone can ensure industrial justice on a long-term basis.

B. Adjudication system encourages litigation

The adjudication system on court lines has the inherent disadvantage of encouraging the tendency of litigation, which is not conducive for creating a harmonious atmosphere in the industry. The parties consider themselves as adversaries and enemies as in the case of court litigation. The Supreme Court itself, while preferring voluntary settlements, described the adjudication system as “unhealthy litigation.” 33 The parties to the dispute, after adjudication, develop the feelings of “the victor and vanquished” and the vanquished party would try to prolong the litigation by challenging the decisions and awards of adjudication before the higher judiciary. Often times the litigation is prolonged not with a view to protect one’s rights but to cause maximum inconvenience and discomfort to the other party, either for its own sake or for the purpose of compelling the other party for an unjust compromise. For this purpose, the parties do not hesitate to resort to all types of

illegitimate litigative tactics, unmindful of its long-term effects on the industrial relations climate in the industry concerned.

The Supreme Court on various occasions condemned such practices on the part of the employers to wear out the workmen in prolonged legal battles. The case of *Delhi Cloth and General Mills Ltd. v. Sambunath Mukherjee*34 which came before the Supreme Court twice, was a lamentable example of how the adjudication often “gets enmeshed in the litigative marshes.” The appellant company on 24-8-1995 in this case removed the workmen from service. The Labour Court ordered reinstatement and the Supreme Court confirmed the award in 1978. But the employer did not implement the award. He moved the Supreme Court again and during the pendency of proceedings, the workman died. The Supreme Court ordered an additional Rs. 1,10,000 as compensation. Justice D.A. Desai, speaking for the Court, with a great agony, lamented:

“This is a tragic end of a frustrating and prolix court proceeding involving the workman in search of social justice and who had been able once to convince the apex Court that the termination of his service was illegal. If industrial disputes are not resolved expeditiously and proceed along the beaten track like the unending civil suits, before long the labour jurisprudence devised to ensure peace and harmony in industry would lose entirely its credibility and a frightening situation may emerge where people would move away from the talking table to direct action.”

These words of caution from a person who has abiding faith in the adjudication system of dispute settlement are a pointer that the system would lose its legitimacy if it continued to function in the way it is functioning now.  

C. Problems with regard to implementation of Awards

It is not uncommon that the employers do not implement the awards of the adjudicatory authorities in time, though they are legally bound to do so. Under the I.D. Act, the adjudicatory authorities have no power to execute their awards. After the award is submitted to the appropriate government, the Tribunal becomes functus officio when the award becomes enforceable. It is the responsibility of the appropriate Government to ensure the implementation of the awards. Therefore, the aggrieved workmen will have to move the appropriate Government for prosecuting the employer for breach of award. Under the Indian conditions, where the Government and its agencies are the biggest defaulters in the implementation of labour laws, and also due to various other reasons including political, it is difficult to secure the sanction of the Government for prosecuting the employer for breach of award.

If the award contains any monetary benefit to the workmen, an application under Sec. 33-C (1) may be made to the appropriate Government for recovery of money. Similarly, of the monetary benefit needs to be qualified, an application may

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be made to L.C. for quantification and recovery. This procedure takes a pretty long time for the recovery.

Therefore, it may be said that there is no effective remedy available to the workmen under the existing law for securing the immediate implementation of the awards. This legal lacuna has activated some State Governments to secure an amendment to the I.D. Act for conferring on the L.Cs. and I.Trs. the power to execute their own awards, like the civil courts. This is only a partial rectification. The decisions of the L.Cs. under Sec. 33-C (2) have even now to be sent to the appropriate Government for recovery of money.

Therefore, for ensuring effective implementation of awards, it is necessary to confer power on L.Cs. and I.Trs. to execute their award and other decision and to punish for breaches of their orders as contempt of court.

7.7 Conclusion

In view of the above limitations and drawbacks in the operation of the labour adjudication system in India, it is generally admitted even by its staunch supporters that the adjudication system is not effective and efficient in its operation and that it has failed in rendering social justice as contemplated by the *I.D.Act* and envisioned in the Constitution. Unless the structural defects and the operational deficiencies, discussed above, are eliminated and the system is thoroughly reformed, on lines suggested above, it is likely to be rejected altogether by the workmen and the trade unions in the country.
But in the interest of industrial peace and social justice, the adjudication method of settlement of disputes has to continue, particularly in the absence of any other effective alternative, for the adjudication of all individual and rights disputes and also of the interests disputes in exceptional cases as well as when the recognized unions choose the method for their own reasons.

Therefore, it is essential that the adjudication system be made effective and efficient in its operation.