CHAPTER IX

CONCLUSIONS AND SUGGESTIONS
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9.1 Conclusions

In the Indian system of industrial relations, the State plays a vital role in the regulation of industrial relations as a mediator and adjudicator. Although the labour and management are theoretically free to determine their own relations, in practice due to the ready availability of the state conciliation and adjudication machinery, a meaningful and orderly bargained relationship could not develop even after fifty eight years of independence. Compulsory adjudication as a method of settlement of industrial disputes continues to occupy the central place. In addition to the historical reasons, the political and ideological factors have been mainly responsible for the inertia in the area of industrial relations. Even the government is also reluctant to bring about any useful policy changes as any change in the present system might involve relinquishment of its regulation and control and as a result policy changes attempted also did not bear fruit.

The state intervention in the settlement of industrial disputes started with the Trade Disputes Act, 1929 through ad-hoc conciliation Boards and Courts of inquiry, to prohibit strikes and lockouts in Public Utility Service industries and to punish the persons joining or abetting to join illegal strike. Further Rule 81-A of Defence of India Rules, 1942 gave power to the government to intervene in industrial relations through compulsory reference of disputes to Industrial Tribunals and no emphasis was given to collective bargaining.
The Industrial Disputes Act, 1947, which provides the legal framework for the Government's intervention in industrial disputes through conciliation and adjudication, has not undergone any major changes in this regard, despite the demands of the labour and recommendations of various commissions and committees for a thorough reform of the Act with a view to shifting the emphasis in favour of collective bargaining. Though, the Trade Unions Act, 1926 provides for registration of trade unions and certain privileges and immunities, it does not confer a right to recognition on the registered trade union; consequently no legal obligation is placed on an employer to collectively bargain in good faith with even majority union.

Though an attempt was made to promote harmony in industrial relations through tri partite bodies like Indian Labour Conference and the Standing Committee, five year plans, the Labour Relations Bill and the Trade Unions Bill 1950 and code of discipline announced in 1958. No much change has taken place.

A significant attempt to bring about reforms in the industrial relations policy and law was made in 1966 by constituting a tripartite National Commission on Labour. The Commission has recommended for establishment of independent Industrial Relations Commissions (I.R.C.S) and elimination of direct Government intervention. The I.R.C.s., which were to be independent of the executive, were to discharge the functions of (a) adjudication of interest disputes (b) promoting conciliation (c) constitution of unions as representative unions and (d) promoting voluntary arbitration.
As in the case of the 1950 Bills, the N.C.L. recommendations also met with stiff resistance by the Central and State Governments, which are not willing to give up their stranglehold on industrial relations.

Further, the Industrial Relations Bill, 1978 and Industrial Disputes (Amendment) Bill 1988 sought to bring about some halfhearted measures to promote collective bargaining with provision for recognition of trade unions. But due to some objectionable features like further restrictions on the right to strike etc., the Bill were opposed by majority trade unions and they were allowed to lapse. The Bipartite Committee headed by G. Ramanujam, was constituted in 1990 to formulate specific proposals for a new Industrial Relations Bill. The majority members of the Committee reiterated the recommendations of the NCL with regard to recognition of trade unions and the establishment of the independent I.R.Cs. But, the Congress Government, which came to power in 1991, shelved these recommendations, as it was very much pre-occupied with the implementation of the new economic policy.

The Second National Commission on Labour was constituted in the year 1998 and the Commission submitted its report to the Government of India on 29th June 2002. The Commission has made certain recommendations for introduction of changes in the industrial disputes Act and Trade Unions Act. It has 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 orders) Act, 1946 to be applicable to establishments or undertakings employing 20 or more workmen. It has also recommended for enacting
"The Small Enterprises (Employment Relations) Act, 2002 covering all aspects of employment including wages, social security, safety, health etc., applicable to all establishments employing less than 20 workmen.

The main areas of changes proposed by the Commission in the method of settlement of disputes and in other areas are: i) making of conciliation more effective and popularization of arbitration method over compulsory adjudication, ii) development of an integrated adjudicatory system in labour matters, consisting of labour courts, Lok-adalats and labour relations commissions (L.R.Cs.) 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. It is recommended for establishment of labour Relations Commission at the State, Central and National level, iii) Removal of present system of publication of awards of labour courts in the Official Gazette, iv) providing of powers to labour Courts to grant interim relief in cases of extreme hardship, v) providing of necessary legal aid to workmen and trade unions who are unable to hire legal counsels and levy of token court fee in respect of labour courts and labour relations Commissions, and vi) liberalisation of rules relating to lay off, retrenchment, closure etc.

However, National level trade unions have criticized many of these recommendations as anti labour and made to facilitate globalization and liberalization policy of the Government. The proposals would also strengthen ‘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. Due to strong opposition by the Trade Unions these proposals are not being implemented even after the elapse of three years of these recommendations.

On the other hand in view of new Economic Policy (NEP) adopted by the government, the employers are demanding for 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, retrenchment or closure without any restrictions.

Though in the light of N.E.P. suitable changes have to come in the labour legislation in the country, adequate measure are to be taken to safeguard the interest of working class for ensuring their welfare and well-being.

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 Industrial Disputes Act was enacted. The sincere attempts to bring a shift in emphasis in favour of collective bargaining through a strong trade union movement have met with failure due to lack of political will on the part of government and nothing concrete could be achieved in this direction. As a result, compulsory adjudication has come to stay to such an extent that even the trade unions consider it as a necessary supplement and sometimes even a real alternative to the collective bargaining.

A critical analysis of the provisions relating to Industrial Disputes and methods and machineries for their settlement under the Industrial Disputes Act has clearly established that the machinery provided under the Act for settlement or adjudication
of industrial disputes is not functioning very efficiently and effectively. Therefore there is a need for bringing necessary reforms in the existing system to make it more relevant.

Disputes are characteristic of society and more so in an industrial society. The inherent conflicting interests of capital and labour in an industrial organization give rise to disputes between the employer and workmen. These disputes have to be resolved from time to time by the formula of reconciling the interests of both the parties, as they cannot altogether be eliminated.

Industrial disputes may be classified as individual and collective and depending upon the nature of issues involved they may be rights or interests disputes. This classification of industrial disputes is highly relevant for the purpose of applying different procedures of settlement. While individual and rights disputes may be more advantageously settled through arbitration or adjudication machinery, the interest disputes may be more conveniently settled through collective bargaining mechanisms, as they involve the principle of give and take. But the Indian law does not specifically distinguish between these types of dispute.

Although the Industrial Disputes Act does not make any clear-cut distinction between these different types of dispute, the matters specified in Second Schedule are mainly rights disputes and the matters in the Third Schedule are interests disputes.

As a result of growing concern with the effects of industrial disputes on industrial growth, economic development and over all socio political stability,
considerable significance has been attached to the establishment of effective procedures for resolving industrial disputes.

The Industrial Disputes Act provides a machinery for resolving the industrial disputes through different methods such as settlement between the parties (Collective Bargaining) Works Committees, Conciliation, Investigation, Voluntary arbitration and compulsory adjudication.

The settlement of disputes through direct negotiation (collective bargaining) between parties is accepted as a superior arrangement for resolving labour disputes. Because it is a system based on bipartite agreements and as such superior to any arrangement involving third party intervention in matters which essentially concern employees and workmen.¹

The multiplicity of trade unions and their political connections, the reluctance of employers to share power with the workmen and the Government’s policy on industrial relations have been the important factors that are inhibiting the growth of collective bargaining. Further, the availability of compulsory adjudication even for interest’s disputes, and the continued dependence of trade unions on Government intervention have been hampering the growth of collective bargaining. The fact that even today there is no central law on recognition of trade unions is a clear indication of Government’s reluctance to encourage trade unionism and collective bargaining.

The machinery of Works Committees, contemplated by the Industrial Disputes Act as a deliberating body to ensure “amity and good relations” between the employer

and workmen have become both irrelevant and dysfunctional. Even in the very small number of industries where they exist, have also failed to achieve their objectives.

The conciliation as a method of settlement of industrial disputes is widely prevalent in almost all countries. The Industrial Disputes Act contemplates two types of machinery for performing the functions of conciliation such as: i) Conciliation Officers and ii) Boards of Conciliation. These authorities provide assistance to the parties to carry forward the negotiations with a view to helping them to reach an agreement without or with minimum of strikes and lockouts.

However, the parties in expectation of future adjudication do not participate in conciliation proceedings with full interest to thrash out the dispute. The parties look upon conciliation very often as merely a hurdle to be crossed for reaching the next stage. Thus, conciliation machinery has become a empty formality and it needs to be strengthened by bringing necessary reforms is the area to ensure smooth and quick settlement of disputes.

Appointment of Inquiry Committee by the government for investigation or inquiry into the matters “connected with or relevant to an industrial dispute”, though used in the initial stages of Government’s intervention, but now it is completely out of use. The 1988 Bill proposed to delete this machinery from the Act.

The system of voluntary arbitration is another effective method of settling industrial disputes envisaged under the Industrial Disputes Act. Despite of all the efforts made by the Government to popularise this method, voluntary arbitration has

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not yet become popular in India. The absence of healthy and orderly collective bargaining traditions and the availability of compulsory adjudication are considered as factors responsible for the poor response to the system from the parties. Further, absence of a uniform and statutory system of recognition of trade unions and the consequent disorderly development of trade union movement in the country are hardly congenial for the voluntary arbitration to progress.

Lastly, the system of compulsory adjudication provides a forum for resolution of industrial disputes, to which the parties are compelled to resort, whether they liked it or not. The main idea is to empower the Government, whose responsibility it is to maintain industrial peace, to compel the parties to abide by the decision of the adjudicator, with a view to avoiding confrontation and trial of strength, which are considered harmful not only to the parties but also to the society as well as to the economy of the nation.

However, compulsory adjudication of even interest disputes, with a view to avoiding strikes and lockouts, as they are likely to threaten the vital interests of the community, may become desirable in times of emergencies and to some extent in public utility services as a measure of last resort. Similarly, in disputes involving the rights of the parties, where the parties do not arrive at a voluntary settlement, their existing rights and duties will have to be determined by a judicial process. Therefore, the question of improving the operational efficiency of adjudication, so as to render justice to the parties expeditiously at less cost and with least technicalities becomes highly relevant.
Regarding the role of government in the adjudication system; the study has established that government has major role to play in adjudication system under the provisions of industrial disputes Act. The intervention of the Government in the adjudication system is extensive. Except the actual adjudication, the Government performs every other incidental function. From the initial function of constituting the adjudicatory authorities and referring disputes to them for adjudication, up to the ultimate function of ensuring the implementation of their awards are entrusted to the appropriate Government under the scheme of adjudication provided by the Industrial Disputes Act.

The appropriate Government which has the exclusive power to refer disputes for adjudication except in cases of applications under Section 33, 33A, 33 C(2) and in case of dismissal, discharge, retrenchment or otherwise termination, wherein a workmen may directly approach Labour Courts for adjudication of such disputes under the relevant state amendments to Industrial Disputes Act made in some states like Karnataka, Tamil Nadu, Andra Pradesh.

The power of the appropriate government to refer disputes for adjudication under Section 10 (1) of the Industrial Disputes Act has been held to be of an administrative in nature. The language of Section 10 (1) makes it clear that the appropriate Government shall have the discretion in deciding to refer a dispute. The appropriate Government should exercise its discretion bonafide and after applying its mind to the material before it. The condition precedent for the exercise of the power of reference is either the existence or the apprehension of an industrial dispute. The
question of expediency of referring the dispute for adjudication is normally within the domain of the appropriate Government. The Supreme Court in a number of decisions has clarified the nature of the Government power and the extent of judicial review.

The extent of judicial review by a writ court over the exercise of this discretionary power has undergone a change over the years. At the beginning the Supreme Court held that the Writ Court's jurisdiction in this regard was quite limited and it could intervene only in cases where the discretion is not exercised according to law. But in recent times the Supreme Court has been taking the view that the Government cannot refuse to refer the disputes for adjudication, unless "the dispute raised is a totally frivolous one ex-facie." Further, in case of individual disputes relating to discharge or dismissal, the Supreme Court held in many recent cases that the appropriate Government has no discretion to refuse to refer the dispute for adjudication in view of the special jurisdiction of the adjudicatory authorities under Section 11-A of the Industrial Disputes Act. Thus Government's discretion has almost been transformed into a duty. In view of this shift in the judicial stand, many state governments have brought amendments to the Act enabling the individual workmen to directly approach the Labour Courts for adjudication of disputes relating to termination of service of workmen.

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Since adjudication of industrial disputes has been looked upon as an important remedy for the workmen for peaceful and just resolution of their disputes with the employer such remedy cannot be left to the choice or mercy of the Government. If the remedy depends upon the discretion of the Government it cannot be considered to be a remedy at all, not to speak of an effective remedy.

The powers conferred by Section 10 (1) on the appropriate Government do not carry with it the power to withdraw, cancel or suspend a reference, which has already been made. However the order of reference may be amended subsequently to add to or amplify the scope of reference and also to correct any clerical errors. The terms under Section 10 (1) that the Government may at any time refer indicates that Government may refer a dispute for adjudication even though on an earlier occasion it had refused to refer the same. Similarly, these words do not admit any period of limitation. All the same, the Government should refer the disputes within a reasonable time. The policy of industrial adjudication is that very stale claims should not be generally encouraged or allowed, unless there is a satisfactory explanation for the delay. Although in practice disputes are referred for adjudication after the failure of conciliation, it is not a condition precedent.

The exclusive power of the Government to refer disputes for adjudication has been a matter of controversy as it has been objected to by the trade unions right from the beginning. The NCL and Ramanujam Committee have already recommended a change in the policy in this regard. Many researchers and experts have also

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recommended that the exclusive Government’s power to refer disputes for adjudication should be done away with.

It is submitted that first, in the cases of all rights disputes the workmen should be enabled to directly approach the Labour Courts. Secondly, in case of interest’s disputes, the recognized unions also must have the option of taking the disputes for adjudication. Thirdly the Government may continue to have the power to refer the disputes for adjudication in case of certain emergencies and in public utility services as a measure of last resort.

Other important functions of the appropriate Government under Industrial Disputes Act are: i) power to prohibit the continuance of strikes or lockouts after making a reference, ii) power to include similar establishments in a reference, whether or not any dispute exists or is apprehended in such establishments, iii) power to make Rules regulating the procedure to be followed by the adjudicatory authorities, iv) publication of awards, v) power to defer enforceability and to reject or modify awards in certain cases, vi) power to reduce or extend the period of operation of awards, vii) power for implementation of awards, viii) power to transfer adjudication proceedings, ix) power to refer an award to an adjudicatory authority to remove doubts as to interpretation of awards, x) power to exempt government establishments from the provisions of the Act, xi) power to add to first schedule and also to amend second or third schedule.

The chief objective of the I.D. Act is to ensure peaceful settlement of industrial disputes through the compulsory adjudication method as an alternative to strikes and
lockouts. The adjudication machinery under the *I.D. Act* consists of Labour Courts (L.Cs) and Industrial Tribunals (I.Tr.s) to be constituted by the appropriate Governments. The Central Government may also constitute a National Tribunal (N.Tr) for adjudication of disputes involving questions of national importance or disputes concerning inter-State establishments. The L.Cs. and I.Trs. shall consist of “one person only” to be appointed by the appropriate Government. The qualifications prescribed by the Act for appointment as Presiding Officer (P.O.) of a L.C. or I.Tr contemplate the appointment of judicial officers with some experience. Normally, District Judges or Additional District Judges are appointed as P.Os. In case of N.Tr, only a serving or retired High Court Judge can be appointed as the P.O. The matters specified in the Second Schedule, which are all rights disputes, are within the jurisdiction of the L.Cs. The matters specified in Third Schedule, which are generally interests disputes, are within the jurisdiction of I.Trs, although Industrial Tribunal may also adjudicate upon the Second Schedule matters.

It is commonly agreed that adjudication of dispute, i.e., the formal hearing of a case and the formulation of an award, requires a “judicial mind” and not “administrative mind”. But it is of utmost importance to note that industrial adjudication involves not merely the administration of justice according to law, but reconciling and adjusting the conflicting claims of parties with the objective of maintaining industrial peace and harmony based on the cardinal principle of social justice. In the case of adjudication of interests disputes, the adjudication requires going beyond the realm of law in order to create new standards in service conditions.
for the disputing parties, Such an exercise, no doubt, demands not merely legal knowledge but a proper understanding of the problems of labour and labour relations. Further, the *I.D. Act* contemplates expeditious settlement of disputes, with least formality and at lesser cost, by taking into account not the legal technicalities but the socio-economic factors underlying the industrial conflicts. But the judges drawn from the civil judiciary are prone to be precedent oriented, technical and traditional and therefore, it is no wonder that the dilatoriness and formal approach quite evident in the administration of civil justice have also crept into the dispensation of industrial justice, thus defeating the very objectives of the *I.D. Act.* The experience of “judicial officers only” as labour judges during the last half a century has not been a happy one and therefore it is time to restructure the labor tribunals so as to ensure that they would be specialist tribunals in the real sense.

The law Commission of India in its 122nd Report recommended the restructuring of L.Cs. and I.Trs. on the basis of the principle of participatory justice so as to generate confidence in the disputing parties. The Law Commission recommended, “the judge of a labour court should be assisted by two lay judges drawn from rank of workmen and employers.” Similarly, the I.Trs., to be called as IRCs, should be composed of a retired Supreme Court or High Court judge as president and equal number of members drawn from the rank of trade union leaders and employers organizations.
The First NCL also recommended the restructuring of the present I.Trs. dealing with interests disputes. It recommended multi member Industrial Relations Commissions (IRCs) consisting of judicial and non-judicial members. The non-judicial members are to be selected from those eminent in the field of industry, labour or management. The Sanat Mehta Committee and Ramanujam Committee supported the idea of restructuring the present I.Trs. on lines recommended by the NCL. Further, the Second NCL has also recommended for constitution of multimember Labour Relations Commissions (LRCs) for adjudication of the disputes.

Originally, it was intended that the adjudicatory authorities should have some flexibility in the matter of procedures. But the Rules made by the appropriate Governments and the various rulings of the Supreme Court left very little room for flexible procedures. The Rules framed by the appropriate Governments have provided almost similar procedures as adopted by the civil courts. This has paved the way for all the technicalities and delays to infiltrate into industrial adjudication. It is observed that though the adjudicatory authorities strictly follow the various procedural details, they never adhere to the time limits specified in the Rules for each stage of adjudication.

The procedures and practice now adopted by the adjudicatory authorities make it almost impossible for the completion of adjudication without delays. Therefore, this is one of the most important areas of focus in industrial adjudication where innovation in procedures, keeping broadly to the principles of natural justice, is the need of the times. On the lines of the civil court practices, adjournments are very freely granted to
the parties and this is one of the reasons for the abnormal delays in industrial adjudication.

The adjudicatory authorities have to act within their jurisdiction. The absence of jurisdiction deprives the award or any decision of any conclusive effect is the well-known legal principle.

It is recognized right from the beginning that the jurisdiction of the tribunals under the Act is something extra-ordinary as it extends to doing things, which the ordinary courts cannot do. Industrial adjudication may involve the extension of existing agreement, or making a new one, or in general creation of new obligations or modification of old ones. The basic principle involved in industrial adjudication is the harmonizing of the conflicting interests and competing claims between the employer and workmen.

For effective adjudication of industrial disputes, the adjudicatory authorities have been conferred with various powers. A detailed discussion of these powers of the adjudicatory authorities yields the conclusion that at present, on the whole, the adjudicatory authorities have ample powers to award appropriate relief to the parties. However, the power to grant interim relief needs to be specifically provided for by a statutory amendment as attempted by the 1988 Bill. Further, the law relating to the disciplinary jurisdiction of the adjudicatory authorities needs to be simplified and clarified in certain aspects. Similarly, the jurisdiction of the adjudicatory authorities under Secs. 33, 33-A and 33-C (2) need to be clearly laid down so as to avoid the present confusion. The adjudicatory authorities must be empowered to execute their
awards and orders without delay by taking out contempt proceedings against the party responsible for non-implementation of an award. The Rules made by the appropriate Governments must provide more flexibility to the P.Os. to follow simple procedures, which are necessary for expeditious disposal of cases. The adjudicators should also be empowered to grant interim stay of certain prima facie illegal orders of an employer and also the direct the employer and employees to observe certain norms pending final adjudication.

The fifth objective of the study was to critically analyse Awards and judicial review of Awards. The term “award” has been defined as an interim or final determination of any industrial dispute or any question relating thereto by an adjudicator. The word “determination” implies that there must be adjudication on merits. There are certain decisions of the adjudicatory authorities, which do not fall within the definition of award. Again the decisions on preliminary issues do not constitute award. There is a conflict of opinion among various High Courts on the question whether the order of a tribunal granting interim relief should be treated as an award. The awards must be submitted to the appropriate Government for publication and they will become enforceable on the expiry of 30 days from the date of publication. The tribunals have power to order retrospective operation of awards. An award shall remain in operation for a period of one year from the date on which the award becomes enforceable. Further, it continues to be binding on the parties until one of the parties bound by the award terminates the award by giving tow months notice.
An award after its publication shall be final and “shall not be called in question by any court in any manner whatsoever.” The finality contemplated seeks to oust the jurisdiction of the civil courts and indicates that no appeal shall lie against the awards. However, the orders and awards of the adjudicators are subject to judicial review by the High Courts and Supreme Court, under their writ jurisdiction. Further, the Supreme Court may also grant a special leave to appeal from the awards under Art.136 of the Constitution.

The writ jurisdiction is of a supervisory nature and therefore the Writ Court cannot sit in appeal over the findings of the tribunal. The Writ Court cannot go into the merits of the dispute. The writs of certiorari and prohibition are issued to control the improper exercise of power by the inferior courts or tribunals on the specific grounds such as: i) Violation of Fundamental Rights ii) Violation of other constitutional safeguards; iii) Jurisdictional errors a) absence of jurisdiction; b) Excess or lack of jurisdiction; c) Declining jurisdiction, or d) wrong decision on the jurisdictional issues. iv) Error of law apparent on the face of the record; v) Violation of the principles of natural justice; vi) Perverse findings (no evidence rule); vii) Fraud or collusion.

The Supreme Court under Art.136 enjoys very wide powers of interference with the decisions of the tribunals in the exercise of its special leave appeal jurisdiction. Although the power is an appellate power, the Court had generally restricted the ambit of its jurisdiction and interferes so as to prevent any substantial injustice to the parties. In addition to the above stated grounds, the Supreme Court
interferes with the decisions or awards of the tribunals on the grounds such as: i) Where the appeal raises an important principle of industrial law requiring elucidation and final decision by the Supreme Court; ii) That the appeal discloses such other exceptional or special circumstances which merit consideration of the Supreme Court; or iii) That the Court is of opinion that there is a substantial miscarriage of justice.

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) 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. 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. 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

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8 See the Report of the Bipartite Committee on Industrial Relations (Ramanujam Committee), 1990, pp. 35-36.
and arduous struggles. But the drawbacks and the deficiencies of the system are causing an all round concern and, therefore, there is an urgent need to make the adjudication system effective and efficient.

Experts in the area contemplated the system of adjudication through specialist tribunals with the definite objectives of providing an expeditious settlement without the normal court formalities or procedural technicalities, at a lesser cost. But the actual working of the adjudicatory mechanisms demonstrates that none of these objectives are accomplished. The following drawbacks and deficiencies are identified in the working of the system of adjudication.

It is noticed that there are abnormal delays in the adjudication process. There are delays at the pre-adjudication stage (conciliation and reference), actual adjudication stage and at the post-adjudication stage (judicial review of awards). On an average about 4-5 years time is taken for the final settlement of disputes through adjudication. The delays in adjudication have already resulted in the loss of confidence in the system among the working class, which suffers most from the delay.

The main causes for delays in adjudication of disputes are: i) Delay in conciliation proceedings, ii) Delay by the appropriate Government in making reference and misuse of Governments reference power and lack of access iii) huge pendency of cases, iv) appointment of non specialist Presiding Officers, v) granting of unlimited adjournments, vi) procedural technicalities and court formalities, vii) Inadequate number of L.Cs./ I.Tr.s., viii) Government’s failure to fill the vacancies in time, ix) Inadequate infrastructure facilities, x) Non compliance with the time
schedules prescribed in the Rules, xi) The delaying tactics adopted by the parties, xii) Non exercise of power to grant interim relief by Labour Courts and Tribunals, xiii) lack of provisions to make compromise or pre-hearing assessment procedures, xiv) Stay orders by the High Courts, xv) delay in publication of awards, xv) Delays in higher judiciary. Apart from these defects, the adjudication system suffers from various problems such as: i) juridification of Industrial Relations, ii) it encourages litigation, iii) it is expensive; iv) there is a Problems of implementation of awards

In view of the above defects and limitations in the system and the draw backs in its operation, it may be concluded that at present the adjudication system is not effective and efficient in its functioning. Therefore, unless the structural defects and the operational drawbacks, pointed out above, are eliminated and the system is thoroughly reformed, on the lines suggested below, it is likely that the system would be rejected altogether by the workmen and the trade unions in the days to come.

The working of Labour Courts and Industrial Tribunal at Hubli, in the State of Karnataka and their performance has been studied. The performance of the labour Courts and Industrial Tribunals at Hubli is sought to be assessed with the help of the data collected from these Labour Courts/Industrial Tribunals for the period of five year viz. 1999-2003 regarding pendency, institution and disposal of the different category of cases i.e. (i) Reference under Section 10 (1)(c) and 10 (1) (d) (ii) KID u/s 10 (4-A) (iii) Applications u/s 33 C (2) (iv) ESI Cases.

The rules of procedures have clearly stipulated time limitations for each stage of adjudication and imposed overall limitation on the number of adjournments to be
granted. In practice, the proceedings before the Labour Courts/Industrial Tribunals are conducted on the familiar Civil Court pattern and adjournments are very liberally granted by the Presiding Officer's unmindful of the Rules in this regard. The chief findings of the studies are as follows:

(a) Pendency of Cases:

The data relating to pendency of cases before Labour Courts/Industrial Tribunals, Hubli shows that there are about 2459 cases pending at the end of the year 2003 in all the Labour Courts and an Industrial Tribunal at Hubli. The pendency in Principal Labour Court is more (1089) than Additional Labour Court (788) and Industrial Tribunal (582). This yields the conclusion that the Labour Courts and Industrial Tribunal at Hubli have huge pendency of cases and this is one of the reasons for delay in adjudication of the cases.

Further, the jurisdiction of the Principal Labour court, spreads over 6 districts and the Court is conducting its sittings at Bellary and Davanagere and thereby lot of precious Court time is wasted in traveling etc. and hence it is better to establish a separate labour court with a jurisdiction over Chitradurga, Davanagere and Bellary districts, which contributes 438 cases out of total pendency of 1089 cases before the Principal Labour Court.

The time wise pendency of cases before these Labour Courts and Tribunal at the end of the year 2003 shows that out of 2459 cases 32.20% (792) are pending for a period less than 1 year. 17.7% (436) cases were pending between 1 to 2 years. 13.81% (341) cases were pending between 2 to 3 years and 10.5% (257) cases were pending
between 3 to 4 years and huge number of cases i.e. 25.7% (633 cases) were pending for above 4 years. This yields to the conclusion that Labour Courts/Industrial Tribunals at Hubli have not been completing the adjudication of disputes within the time prescribed by the Act and Rules i.e. (within 3 months in cases of termination disputes and within 6 months in other disputes). Hence, it can be said industrial adjudication in Labour Courts/Industrial Tribunals; Hubli is not expeditious and effective.

(b) Institution of Cases.

On an average, during the years 1999-2003, 329.2 Reference Cases were instituted in both the Labour Courts and an Industrial Tribunal at Hubli. Average cases instituted before Labour Courts under Section 10 (4A) Industrial Disputes Act directly (termination cases) is 286.8 and under Section 33 C (2) money recover cases are 86.5 during the said five years period. Further the data reveals that there is a continuous decline in institution of termination cases from 1999 to 2003. Hence it can be said that it may be because of delay in adjudication of these cases, there is a decline in workmen approaching these authorities for redressal of grievances.

(C) Disposal of cases:

The average disposal of cases per year during the years 1999 to 2003 by these Labour Courts/Tribunal was 913 cases. The total disposal of cases during the five years period in all these Courts/Tribunal was 4565 cases. The total disposal of cases during this five years period is more than total institution of cases (4000 cases) during the said period. It shows that the Labour Courts/Industrial Tribunal at Hubli are doing
their best for speedy disposal of the cases. The senses study of all the cases disposed of during the years 1999-2003 by both Labour Courts and an Industrial Tribunal shows that there is a abnormal delay in disposal of cases

The study of 72 sample cases (25 cases from each labour courts and 22 cases of Industrial Tribunal) disposed during 1999-2003, selected at random i.e. 2 reference cases, 2 KID cases and one Section 33 C (2) case or ESI Cases, total five cases per year from among the briefs available in the Labour Courts and Industrial Tribunal, Hubli also reveals that, the average time taken for disposal of cases by Principal Labour Court, Hubli is 4 years 7 months 26 days. Similarly the average time taken for disposal of sample 25 cases during 1999-2003 by Additional Labour Court, Hubli is 3 years 11 months and 11 days. The average time taken for disposal of 22 sample cases during the above said period by Industrial Tribunal is 4 years 19 days.

The analysis of the senses studies as well as study of sample cases clearly confirms the hypotheses that there is a abnormal delay in adjudication of cases by the Labour Courts and Industrial Tribunal at Hubli.

The study of above-mentioned sample cases also revealed that the average number of adjournments granted per case by Principal Labour Court, Additional Labour Court and Industrial Tribunal, Hubli is 43, 29 and 48 respectively. Though the Rules provide for granting only 3 adjournments at the instance of each party, the Presiding Officers have been very much liberal in granting the adjournments and without mentioning the specific reason for adjournment. Hence it can be concluded
that the hypothesis that granting of more number of adjournments is one of the reasons for delay in adjudication of the cases.

Further, the opinion survey was conducted with the help of a questionnaire in order to elicit the opinion of those who are actively involved in the adjudication process. The scope of the survey covered the various aspects of adjudication such as:

(i) Operational deficiencies and limitations of the adjudication system.

(ii) Opinions on the reform proposals and

(iii) Suggestions to make the adjudication system effective, efficient and expeditious.

Out of 103-targeted respondents 82 have sent their responses.

All the respondents (100 percent) have agreed that there are abnormal delays in the adjudication of industrial disputes. A majority of respondents (97.56 percent) agreed that huge pendency of cases is also causing delay in adjudication of cases. 93.90 percent of the respondents are of the opinion that the delay in adjudication is because of appointment of non-specialist Presiding Officers to Labour Courts/Industrial Tribunals as they are not well versed in the Industrial relations matters and hence proposed for appointment of Labour Law Specialist Judges. 92.68 percent of respondents felt that granting of unlimited adjournments is one of the main reasons for delay in adjudication and hence proposed for curtailment of adjournments.

Similarly, 93.90 percent of the respondents indicated that there is an urgent need to simplify the procedures followed by the adjudicatory authorities. Further, 87.80 percent of the respondents have felt that lack of adequate Labour
Courts/Industrial Tribunals is also one of the reasons for delay in adjudication of the cases and proposed for establishment of more Labour Courts/Industrial Tribunals.

All the respondents unanimously felt (100 percent) that the delay in filling of vacancies of Presiding Officers of Labour Courts/Industrial Tribunal is one of the main reasons for delay in adjudication of the cases and proposed for immediate filling of vacancies. Further all the respondents opined that the system of publication of award is causing unnecessary delay in conclusion of adjudication proceedings.

Further, 81.70 percent of respondents felt that primacy must be given to collective bargaining for settlement of disputes, especially interest disputes. 96.34 percent respondents felt that representation of parties by Advocates help to effective adjudication of disputes 84.14 percent of the respondents opined that service of Assessors helps the Presiding Officers in just adjudication of the cases. 62.19 percent of respondents felt the need of imposition of time limitation on raising disputes. However majority of the Workmen and Trade Union leaders (60 percent) opposed the proposal.

All the respondents (100 percent) strongly felt the need for providing execution powers to Labour Courts/Industrial Tribunals. 81.70 percent of respondents opined that there is a need for providing all necessary infrastructures to Labour Courts/Industrial Tribunals for facilitating speedy disposal of cases. Further, majority of the respondents (87.80 percent) felt that delay in adjudication of cases causes mental harassment and agony to the parties, affects livelihood in some cases and
creates unemployment problems, cause great monitory loss to management and also results in loss of confidence in adjudication system.

This analysis of data collected from Labour Courts/Industrial Tribunal and opinion survey clearly indicates that the adjudication system, at present, is not effective and efficient and its deficiencies and drawbacks are to be done away with to ensure speedy disposal of cases.

The analyses of the data has clearly substantiate the following hypotheses formulated for the study:

1. There is a enormous delay in adjudication of Industrial Disputes.
2. The misuse of Governments power of reference and lack of access to parties would result in delay in adjudication.
3. The huge pendency of cases is one of the causes for delay in disposal of cases.
4. Appointment of non-specialist Presiding Officers is also responsible for delay in adjudication.
5. Granting of unlimited adjournments is causing delay in disposal of cases.
6. The stringent procedural technicalities and court formalities are also contributing to delay.
7. Lack of adequate Labour Courts and Industrial Tribunals and excessive cost of litigation are also hampering adjudication process.
8. Government’s negligence in filling up vacancies of Presiding officers in time is also one of the reasons for delay in adjudication.
9. The requirement of publication of awards would cause further impediment on completion of adjudication process.

The overall conclusion of the investigation is that, if the above drawbacks are removed the adjudication method will become an effective method of settlement of industrial disputes.

In the light of the above study and conclusions drawn from it, the following suggestions are made to improve the adjudication system and to ensure its effective and efficient function for speedy dispensation of justice

9.2 Suggestions

1. Removal of the system of Reference: The system of reference of industrial disputes for adjudication to LCs/ I.Trs. by appropriate Government is causing unnecessary delay in commencement of adjudication proceedings. The parties also must be provided with a right to raise all the rights and interests disputes directly before the LCs/ I.Trs., in addition to powers of appropriate Government to refer the disputes. To overcome this problem the following amendment to sec. 10 of ID Act may be introduced.

Amendment to Section 10: In the place of sub-section 4 of Section 10 the following clause shall be substituted.

“(4A) Notwithstanding anything contained in section 9C and in this section, in the case of a dispute falling within the scope of section 2A and Second Schedule, the individual workman concerned may, within 1 year from the date of communication to him of the order of
discharge, dismissal, retrenchment, or termination or any other matter specified in Second Schedule, or by a Trade Union in case of any disputes pertaining to any matters specified in Third Schedule, within one year from the date of failure of conciliation, may apply in the prescribed manner, to the labour Court/Industrial Tribunal for adjudication of the dispute and the Labour Court/Industrial Tribunal shall dispose off such application in the same manner as a dispute referred under sub-section(1).

Explanation: An application under sub-section (4A) may be made even in respect of a dispute pending consideration of the government for reference on the date of commencement of such Amendment to Industrial Disputes Act.

2. Reduction of Pendency of Cases: The study reveals that huge number of cases are pending in different Labour Courts and Industrial Tribunals in the state of Karnataka in general and at Hubli in particular. Therefore, it is suggested that to clear of the pendency more Labour Courts and Industrial Tribunals may be established on temporary basis on the line of Fast Track Courts.

3. Appointment of Specialist Presiding Officers: The experts in the area of Labour Laws contemplated the system of adjudication through specialist tribunals with definite objectives of providing expeditious and effective dispensation of justice. However, the present system of appointment of non-specialist presiding officers, who are drawn from civil judiciary, is failing to achieve the above said objective, as these judicial officers in majority of cases are neither specialized in labour laws nor practiced labour laws at any time before they became judges. Therefore, to overcome
this problem, and to provide for appointment of Specialist Presiding Officers, the incorporation of following provision is suggested.

(a) **Amendment to Section 7:** In the place of existing clause (b) of sub-section (3) of Section 7 the following clause shall be substituted.

“(b) he has a post-graduate degree in labour laws and has five years standing at the bar or he has practiced labour law for seven years.”

(b) **Amendment to Section 7A:** In the place of existing clause (aa) of sub-section (3) of Section 7A the following clause shall be substituted.

“(aa) he has a post-graduate degree in labour laws and has five years standing at the bar or he has practiced labour law for seven years.”

4. **Curtailment of Adjournments:** Though the Rules provides for granting of only three adjournments at the instances of each parties, the adjournments are very liberally granted by the L.Cs/I.Trs. Therefore, compliance with the procedural rules relating to the number and period of adjournments shall be made compulsory for the P.O.s.

5. **Simplification of Procedures:** The procedures to be adopted by the adjudicatory authorities shall be simplified so as to make the adjudication proceedings informal, less technical and expeditious. For simplification of procedures certain measures shall be adopted such as: i) use of summary trial procedures in appropriate cases, ii) collection of evidence through affidavits and counter affidavits instead of oral evidence may be done in appropriate cases, iii) the adjudicatory authorities shall be
given flexibility in the matter of procedures to be followed and the Rules providing for the civil court procedures shall be discarded, iv) the time limits for different stages of proceedings shall be observed without any deviation, v) oral arguments shall be limited and written arguments shall be made compulsory.

6. Establishment of more number of Labour Courts and Industrial Tribunals: At present the territorial jurisdiction of Labour Courts and Industrial Tribunals spreads over a vast area and which is causing inconvenience to the parties and also consuming lot of court time in conducting sittings at different places. Apart from this, looking at the huge pendency of cases in different L.Cs/ I.Trs. in Karnataka in general and at Hubli in particular, to clear of the pendency more number of L.Cs/I.Trs. should be established for speedy disposal of cases..

7. Filling of Vacancies of P.O.s in Time: The P.O.s are to be posted immediately whenever it becomes vacant due to transfer or retirement etc., of P.O.s of L.Cs / I.Trs. If the vacancies are not filled in time it leads to unnecessary burden on the incharge court and also results in delay in adjudication of the cases of not only vacant court but also the work of incharge court.

8. Removal of System of Publication of Awards: At present the awards passed by LCS/ I.Trs. are required to be published in the official Gazette. Though, they are required to be published within thirty days from the date of receipt of award from the LC/I.Tr., the appropriate Government is making unnecessary delay in publication of awards and the award becomes enforceable only after expiry of thirty days from the date of publication in the Gazette. This is causing unnecessary delay in completion of
the adjudication process and the poor workmen shall have to wait for many more months for realisation of fruits under the award. Therefore, the award shall be pronounced in the open court as it is done in case of civil courts and shall become enforceable after expiry of 30 days from the date of pronouncement of the award. It helps to avoid unnecessary delay in completion of adjudication process and realisation of benefits under the award. To overcome the delay in publication of awards and its enforceability the following amendment may be made to sec.17 and sec 17A of I.D.Act

**Amendment to Section 17:** (a) In the place of sub-section (1) of Section 17 the following sub-sections shall be substituted.

"(1) Every report of the Board or court together with any minute of dissent recorded therewith, every arbitration award and every award of labour court, tribunal shall come into force immediately "

(b) In the place of existing Sub-section 2 of Sec 17 the following sub-section shall be substituted:

"(2) Subject to the provisions of section 17A, the award under sub-section (1) shall be final and shall not be called in question by any Court in any manner whatsoever.

**Amendment to Section 17 A :** In the place of sub-section (1) of Section 17A the following sub-sections shall be substituted.
(1) An award (including an arbitration award) shall become enforceable on the expiry of thirty days from the date of its coming into force under section 17.

9. Providing of Execution Powers to Labour Courts and Industrial Tribunals:

Under the *I.D. Act*, the adjudicatory authorities have no power to execute their awards. Therefore, the aggrieved workmen will have to move the appropriate Government for prosecuting the employer for breach of award, which causes undue delay in implementation of awards. Therefore, for ensuring effective implementation of awards, it is necessary to confer power on L.Cs. and I.Trs. to execute their awards and other decisions and to punish for breaches of their orders as contempt of court. To overcome this problem the following amendment to Sec. 11 of *I.D. Act* may be introduced.

**Amendment to Section 11:** Section 11-B may be inserted to Section 11 of *I.D. Act*.

Sec.11-B: “A Labour Court or Tribunal shall have the power of a Civil Court to execute its awards or any settlement as a decree of a Civil Court”

10. Other General Suggestions:

a) The Conciliation proceedings shall be conducted and finalised within the time prescribed by the law i.e., 14 days.

b) The adjudicatory authorities shall be statutorily empowered to grant interim relief and to make appropriate interim stay orders, including directions to the parties to observe certain conditions during the pendency of adjudication.
c) The infrastructure facilities in LCs/I.Trs shall be improved by providing adequate and trained person-power, modern equipments, supply of Labour Law Journals etc.,

d) The adjudicators shall strictly adhere to the time schedules prescribed by the rules for every stage of adjudication.

e) The adjudicators shall make proper use of their powers to grant interim relief and to order exemplary costs so as to prevent the parties from resorting to delaying tactics.

f) The services of the assessors shall be used by the P.O.s whenever necessary for just and proper adjudication of the cases.

g) There shall be a time limitation for raising the industrial disputes as the undue delay in raising disputes at any time leads to arisal of stale disputes, which cannot be effectively adjudicated by LCs/I.Trs due to non-availability of pertinent records, death of parties etc. Thus limitation of 3 years from the date of arisal of cause of action shall be prescribed.

h) The settlement of disputes through collective bargaining shall be promoted to reduce pressure on adjudicatory authorities and recognition of Trade Unions shall be made statutory obligation on employers for effective collective bargaining.

i) The P.Os of LCs/I.Trs may also be given holidays as the civil court judges are given for their mental relaxation, which results in effective adjudication of the cases.
j) The High Courts and Supreme Courts shall not ordinarily grant stay orders on the proceedings before the adjudicators.

k) The High Courts and Supreme Courts shall dispose of the petitions for judicial review of awards on a priority basis.

It is respectfully submitted that, if the above suggestions are faithfully implemented, it will make the adjudication machinery more effective and efficient and ensure speedy dispensation of justice to the parties.