CHAPTER 5
DEVELOPMENT OF INDUSTRIAL DISPUTE LEGISLATION
5.1 Industrial dispute legislation

Labour legislation is essentially, a socio-economic enactment pertaining to the various human problems in relation to industry. It is the duty of a modern society to do as much as possible to improve and ameliorate the conditions of working class that has been hit hard as a result of large scale industry. Modern industrialization creates social and economic problems which the labour legislation attempts to tackle.

The importance of industrial disputes legislation in India hardly needs any special explanation. Labour welfare has special significance in Indian circumstances where the constitution itself provides for the promotion of human conditions of work. The constitution also enjoins full enjoyment of leisure and opens new avenues of social as well as cultural opportunities for the workers. Since independence the need for labour legislation became imperative. Employers and Workers Act, 1860 covered only a section of workmen employed in the construction of railway canals and other public works. It dealt with disputes concerning wages only. After the second World War Government attention was drawn towards enacting some legislations to deal with industrial unrest. In 1929 the Trade Disputes Conciliation Act, was passed on the model of British Trade Disputes Act, 1919.
The Act embodied the ad hoc Boards of Conciliation and Courts of Enquiry comprising an independent Chairman and several members. It prohibited strikes and lock-outs without a previous notice of fourteen days. It also could not establish any permanent machinery to settle the disputes by conciliation works and courts of enquiry. Thus the legislature machinery was ineffective. Despite The Trade Union Act of 1926, the registered trade unions bodies were in general never strong enough to confront the powerful managements on an equal footing. As the Royal Commission on Labour which enquire into the lab our problem in 1931 said, "The conditions necessary for the avoidance of disputes were not thought out prior to the instructions of such ineffective machinery.(1)" The Indian National Congress which was fighting for National liberation was also anxious to avoid industrial conflicts by prompt and impartial examination of the same and settlement through conciliation and arbitration authorities whose decisions were to be binding and enforceable (2).

The Bombay Trade Disputes Act of 1934 was the first legislation which provided for a permanent cadre of conciliators even though there was no provision for conciliation boards. This act totally ignored the arbitration of disputes.

Later the Bombay Industrial Disputes Act of 1938 was passed which provided for a permanent machinery for both conciliators and arbitrators between disputes. The
Act made provisions for conciliation and conciliators' boards. Conciliation was made compulsory under this Act. However, the Act failed in prescribing the publication of the report of conciliation which vitiated the true spirit of conciliation by bringing pressure of public opinion on conciliating body. Arbitration was kept voluntary under the Act, and provision was made for the establishment of Industrial courts or Boards of industrial arbitration. Since all the members of these courts were to be selected from the High Court judges, no provisions were made for the appointment of assessors to assist these Judges in dealing with certain issues requiring legal experts. The Courts were often incompetent to deal with industrial matters. Further arbitration being voluntary under the Act, it was generally resisted by the employers. Even for public utility service, (3) the arbitration was not made compulsory. The provisions of the Act relating to legislation and representation of Trade Unions were also found to be unfair. The Act discriminated between organized and unorganized unions and encouraged the growth of company unions which could cut at the roots of genuine trade unions. The Act provided for replacement of one representative union by another union even if it was not recognized by the employer. But the minimum membership required for such a union was kept so high as 25 per cent of the labour force which could rarely be attained by any union. Strike and lockouts were heavily restricted under this
Act. No Internal machinery was provided for prevention of industrial disputes under this Act. Thus the Act failed to cope up with the mounting industrial unrest in the country. The defence of India Act, Rule 81-A empowered the Government to intervene in industrial disputes by this rule to refer any disputes to conciliation or arbitration and make the decision arrived at binding on the parties.

The Bombay Industrial Disputes Act of 1903 was a pioneer legislation radically different from various previous legislations. It succeeded considerably in reducing industrial strikes and provided for an elaborate machinery for settlement of industrial disputes by conciliation and arbitration. However, the Act was exposed to criticism on several grounds.

The Bombay Industrial Disputes Act of 1933 was amended in 1941 and 1942. The Government was given powers to refer industrial disputes to the courts if it affected the industry concerned adversely and would cause prolonged hardships to the community. The amendment to the Act of 1942 excepted the employers from notifying the changes regarding hours of work and rest periods. A third amendment to the Act was passed in Bombay in 1945 which gave powers to the labour officer to convene a meeting of workers.

Despite the Government's anxiety to step into the field of industrial relations from time to time, no comprehensive legislation could be enacted to deal
with industrial disputes before the year 1946-1947.

5.2 A. THE INDUSTRIAL DISPUTES ACT OF 1947

The wartime emergency legislation ceased to be operative from September 30, 1946, but wartime experience convinced the Government that such rules were extremely useful if they were incorporated in the permanent labour laws of the country. The Government also felt that if would do much to check the industrial unrest which was gaining momentum owing to the stress of the post-war industrial readjustment. The central Governments passed the Industrial Disputes Act of 1947 replacing the Trade Disputes Act of 1929. Similar acts in this respect were passed in the same year in Bombay, Uttar Pradesh and Madhya Pradesh to deal with provincial labour discontent. The Bombay Industrial Relations Act of 1947 replaced the previous Industrial Disputes Act of 1938.

The Industrial Disputes Act of 1947 contained four principles relating to the settlement of industrial disputes. The principles are as under: (4)

1. If disputes are not resolved by mutual negotiations, attempts may be made by a statutory authority (conciliation officer of Board of Conciliation) to conciliate between the parties to effect an agreement or compromise.

2. The best way of resolving disputes which are not resolved by mutual negotiations or conciliation is not trial of strength by strikes and lock-outs but by adjudication of the disputes by a labour court of trib-
unilateral reference made to such labour court or tribunal by the Government, with or without consent of the parties, or by voluntary arbitration of the dispute by an independent arbitrator voluntarily chosen by the parties, and making the award of the adjudicator or the arbitrator to be legally binding on the parties.

3. In the interest of industrial peace and having regard to the interest community as whole unfettered right to strike or lockout cannot be conceded.

4. Strikes and lockouts cannot be resorted to in certain cases during conciliation proceedings, absolutely during tendency of proceeding before Labour Court or Tribunal or an Arbitrator.

The whole of India except the State of Jammu and Kashmir comes under the jurisdiction of the Industrial Disputes Act. It applies only to the workmen which includes all industrial employees except supervisory staff drawing emoluments over Rs.500 per month and managerial and administrative staff.

The main purpose of the Act is to provide machinery for investigation and settlement of industrial disputes. It makes provisions for setting up the following authorities. The different authorities are set up with different ends in view.

1. Works Committee;
2. Conciliation Officer;
3. Board of Conciliation;
4. Court of Enquiry;
5. Labour Court;
6. Industrial Court;
7. National Tribunal;
8. Arbitrator.

In 'Negotiation' only the parties to the disputes are involved. The parties to the disputes, the employer and the workmen, settle their difference by themselves without the intervention of any third party. It is obvious that existence of a representing majority of the workmen is a requisite condition for direct negotiations between employer and workmen. The other is the attitude of the employer to have a bilateral talk with the disputants and the healthy response from the labour not to indulge in exorbitant demands to such a high pitch as it would be impossible to meet them. Unfortunately direct negotiations are still rare in India because these conditions hardly obtain in the country.

5.3 Works Committee

Section(3) of the Industrial Disputes Acts 1947 States:
"In the case of any industrial establishment in which one hundred more workmen are employed on any day in the preceding twelve months, the appropriate government may be general or special order require the employer to constitute in the prescribed manner a works committee consisting of representatives of employers and workmen engaged in the establishment, so however, that the number or representatives of workmen on the committee shall not
be less than the number of representatives of the employer. The representatives of workmen shall be chosen in the prescribed manner from among the workmen engaged in the establishment and in consultation with their trade union, if any, registered under the Trade Union Act, 1926 (XVI of 1926)."

The Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practice Act provided that where there is a recognized union for any undertaking under any law for the time being in force, the recognized union shall appoint its nominees to represent the workmen who are engaged in such undertaking or establishment.

The object of the Works Committee as provided in law, is to promote measures for securing and preserving amity and good relations between the employer and workmen and, to that end, to comment upon matters of their common interest or concern and endeavor to compose any material difference of opinion in respect of such matters" (5)

The duty and authority of the Works Committee must not extend to anything more making comments on matters of common interest between employer and workmen. The functions of the works committee and the Trade Union often overlap. On many occasions the Trade Unions treat the works committees as employers’ sponsored unions.

5.4 Conciliation

Conciliation is the first step in the system provided
under the Industrial Disputes Act for settlement of industrial disputes which are not resolved by mutual negotiations. Conciliation involves intervention in the dispute by a third party appointed by the Government. Then conciliation is an attempt to settle the disputes with the assistance by an outside statutory authority. The Act provides two types of conciliation machinery: (a) Conciliation Officers, (b) Conciliation Boards.

(a) Conciliation Officers

"The appropriate government may, by notification in the official gazette appoint such number of persons as it thinks fit, to be conciliation Officers, charged with the duty of mediating and promoting the settlement of industrial disputes." (6) A conciliation Officer may be appointed for a specified area or for a specified industry in a specified area or for one or more specified industries, either permanently or for a limited period. The main duty of a conciliation Officer, as his very name suggests, is to conciliate between labour and management. This duty is compulsory in disputes in public utility services but optional in the case of other industrial establishments. The Act provides that in the case of public utility services, the conciliation Officer must hold conciliation proceedings as soon as notice of strike or lock-out is received by him. In case of non-public utility services, where strike notice has not been served the conciliation Officer has the discretion
either to hold or not to hold conciliation Proceedings.

If a settlement is arrived as during the course of conciliation proceedings, a memorandum of settlement is drawn up and signed by the parties to the disputes. A copy of the memorandum and his report on the proceedings are sent to the Government.(7)

If no such settlement is arrived at during the course of conciliation proceedings, the conciliation Officer shall, as soon as practicable after the close up of the investigation, send to the appropriate government a full report setting forth the steps taken by him for ascertaining the facts and circumstances relating to the dispute and for bringing a settlement thereof, together with a full statement of such facts and circumstances and the reasons on account of which in his option, a settlement could not be arrived at.(8) On the receipt of such report, the government concerned may refer the dispute to a Board of conciliation, if it thinks it is necessary. If the government does not refer the dispute to the Board, it shall communicate the reason for it to the parties. In order to expedite the proceeding, a maximum time limit of 14 days since the date of reference of the dispute to the conciliation officer, is laid down for submission of the report of conciliator. The government concerned if so desires can limit the time.

(b) Board of Conciliation

The government may, as occasion demands by notifica-
tion in the official Gazette, constitute the Board of Conciliation for promoting the settlement of an Industrial dispute. (9) A Board shall consist of a chairman and two or four other members. The Chairman shall be an independent person and other members shall be persons appointed in equal numbers to represent the parties to the dispute and any person appointed to represent shall be appointed on the recommendations of that party. If a party fails to nominate a person to represent it on the Board, the government may appoint such person as it thinks fit to represent that party. Unlike a conciliation Officer, the Board cannot admit a dispute in conciliation on its own; the Board has not jurisdiction until a reference is made to it by the government. The Act provides that after the failure of the conciliation by the conciliation Officer the government may make a reference of the dispute to a Conciliation Board, Labour Court or Tribunal. In actual practice Conciliation Boards are rarely constituted.

Under Section (13), if a settlement is arrived at, the Board shall send a report to the government together with a memorandum of the settlement signed by the parties to the dispute. If no such settlement is reached, the Board shall send a full failure report to the government. The time permitted for submission of the report is two months from the date of the notice under Section (22). The government can reduce this period or extend it but not more than two months. In case the
dispute referred to the Board relates to a public utility service and no settlement is arrived at, the government, if it does not refer the case to a tribunal as required by Section (10) of Act, has to communicate to parties its reasons for not doing so.

5.5 Courts of Enquiry

"The appropriate government may, as occasion arises by notification in the official gazette constitute a court of enquiry for enquiring into any matter appearing to be connected with of relevant to any industrial dispute." (10) A court of enquiry consists of one independent person or of such number of independent persons as the government may think fit, and where a court consists of two or more members, out of them one shall be appointed as the chairman.

The duty of Court of Enquiry is to enquire into matters referred to it and submit report thereof to the appropriate government, usually within six months of commencement of its enquiry.

5.6 Labour Court

When conciliation machinery fails to bring about a settlement, the Act provides for adjudication of industrial disputes to Labour Court and Tribunals. Under Section 12(5) on receipt of failure report of a condition, the government has to consider whether it would be appropriate to make a reference of the dispute to the adjudication. The reference to the adjudication is at the discretion of the Government. If both the parties
agree to a reference of the disputes to adjudication, it is obligatory on the part of the Government to make the reference. Reference of a dispute to the adjudication with the agreement of the parties is called 'Voluntary adjudication,' in contradiction of Compulsory adjudication' where the government makes a reference to adjudication without the consent of either any or both the parties to the disputes, the parties have compulsorily to submit to such adjudication.

"The appropriate government may by notification in the official Gazette, constitute one or more labour labour courts for the adjudication of industrial disputes, relating to any matter specified in the second schedule(11) and for performing such other functions as may be assigned to them under this Act."(12) A Labour Court shall consist of one person only to be appointed by the Government, according to Section 7(3). Assessors may be appointed to advise a court in the proceeding before it, but the advice of these assessors is not binding.

When an industrial dispute is referred to a labour Court, it holds its proceedings expeditiously and shall, as soon as it is practicable on the conclusion, submit its award to the Government which will declare it binding by a written order.

Where the Government is a party to the dispute and it feels that it is expedient on public grounds to give effect, according to section(17)A, it lays the sward
before legislature. The legislative Assembly may by its resolution confirm, modify or reject the award, and then in accordance with the resolution the award is declared binding by the Government.

5.7 Industrial Court

"The appropriate Government may, by notification in the official Gazette, constitute one or more Industrial Tribunals for the adjudication by Industrial Disputes relating to any matter, where specified in the second schedule (13) or the third schedule "(14)"(15) The Act authorizes the industrial court to make conclusive and binding awards, since very little use was made of the machinery provided by the Trade Disputes Act, 1929, proceedings and decisions of which were not binding on the parties.

It is obligatory on the Government to publish the awards within thirty days of their receipt. Normally an award becomes enforceable on the expiry of thirty days from the date of its publication. However, power vests in the Government to modify or reject any award on public grounds affecting national economy or social justice.

5.8 National Tribunals

Under Section (7)B, the Central Government may constitute one or more National Industrial Tribunals for the adjudication of industrial disputes which, in the option of the Central Government involve questions of national importance or are of such nature that industrial estab-
lishments situated in more than one State are likely to be interested in, or affected by such disputes. The National Tribunal will have one person only who will be appointed by the Central Government. The Central Government may if it so thinks fit, appoint two persons as assessors to advise the National Tribunal in the proceedings.

5.9 Strikes and Lock-Outs

Section 22(1) prohibits persons employed in a public utility services from strike without giving to the employer the notice of strike, or within 14 days of giving such notice or before the expiry of the date of strike specified in notice or during the pendency of any conciliation proceedings before conciliation officer and seven days after the conclusion of such proceedings.

Section 22(2) prohibits an employer on any public utility service, without giving notice of lock-out (before six weeks) or within 14 days of giving notice before the expiry of the date of lock-out specified in any such notice or during the pendency of any conciliation proceeding before a conciliation officer and seven days after the conclusion of such proceedings.

Under Section (23), no workman who is employed in any industrial establishment shall go on strike in breach of contract and no employer of any such workmen shall declare a lock-out during the pendency of conciliation proceedings before Board and seven days after the conclusion of such proceedings, during the pendency of
proceedings before Labour court, Industrial court, National Tribunal and after two months after the conclusions of such proceedings or during any period in which a settlement or award is in operation, repeat of any of the matters covered by the settlement or award.

A strike or a lock-out shall be illegal if (a) it is commenced or declared in contravention of Section (22) or Section (23) or (b) it is continued in contravention by an order made under sub-section (3) of Section 10.(16)

The Act lays down that a workman who is a party to the dispute can be represented in any proceedings by any officer of a registered trade union while the employer can be represented by any officer of an association of the employers. Entry of legal practitioners in any conciliation proceedings under this Act is prohibited, while to the court or tribunal it is permitted on the consent of the other party and with the permission of the Court or Tribunal as the case may be.

Section (37) provides that no suit, prosecution or other legal proceedings shall lie against any person of any thing which is done in pursuance of this Act or any rules framed thereunder. Under Section (38) the Government may, subject to the conditions of previous publication, make rules for the purpose of giving effect to the provision of this Act.

5.10 Amendments to Industrial Disputes Act

The Government of India promulgated certain ordinance and passed certain amending Acts to supplement the
provisions of the Industrial Disputes Act. The Central Government promulgated an ordinance, known as the Industrial Disputes (Banking and Insurance Companies) Ordinance in April 1949, which was replaced by an Act in December 1949. The Central Government constituted an Industrial Tribunal in June 1949, and referred disputes relating to various banking companies to it.

The Central Government promulgated another ordinance known as the Industrial Tribunal payment of Bonus (National Saving Certificate) Ordinance of 1949, which authorized Industrial Tribunals to direct the payment of maximum of 50 per cent of bonus in the shape of National Saving Certificates, of such value as they specify, provided that it did not reduce the amount of bonus payable in cash.

The Madras High Court ruled out that Government was not empowered by the Industrial Disputes Act to refer all possible dispute to an Industrial Tribunal. Therefore, the Industrial Disputes (Madras Amendment) Act was passed in 1949, which laid down that the awards made by any Industrial Tribunal constituted under the Act by the Government of Madras, shall not be questioned by any Court on the ground of the legality of such a Tribunal. The amending Act also empowered the Madras Government to declare any industry to be public utility service and not only those specified in the Act.

In May 1950, the Industrial Disputes (Appellate Tribunal) Act was passed. The Act provided for the
establishment of a Labour Appellate Tribunal and made certain incidental changes in the existing law relating to industrial disputes. For example the creation of the Appellate Tribunal led to more litigation, and in 1956 was replaced and Appellate Tribunal was abolished.

To remove certain legal laws pertaining to such matters as the filling of vacancies in the Tribunal the Act was amended by an ordinance in December 1951, which was replaced by an Act in March 1952. This gave appropriate Government to include within the scope of a general adjudication even units in which no disputes may actually have arisen.

In order to provide some compensation to the textile worker who were affected by retrenchment and lay off, the Government brought an important Industrial Disputes (Amendment) Act in December 1954.

One more important amendment has been brought in the form of the Industrial Disputes (Banking Companies) Decision Act of 1955. It was amended in 1958 to make some changes in the formulation of payment of dearness allowance.

The Industrial Disputes (Amendment and Miscellaneous provision) Act was passed in August 1956. The important provisions of the Act are

1. A new definition of "Workmen" was given under which supervising personnel have been included provided their wages do not exceed Rs. 500 per month and they do not exercise functions mainly of managerial or administra-
tive nature.

2. An employer shall not introduce any change in respect of certain specified matters merely as wages, contribution of provident fund, hours of work, etc without giving to the workers concerned 21 days notice.

3. The employers have been given the right to take action against a workman if it is necessary, even during pendency of proceeding of a disputed case. In those matters which are connected with the disputed case, in those matters which are connected with the dispute. But if action involves discharge or dismissals, then the permission of the authority dealing with the dispute is essential.

4. The Industrial Disputes (Appellate Tribunal) Act, 1950 has been repealed and the previous system of Tribunal has been substituted by a three-tier system of Tribunals, which consist of (a) Labour Court, (b) Industrial Tribunal, and (c) National Tribunals.

5. Provision has been made for voluntary reference of disputes to arbitration by the parties themselves by written agreement or for the enforcement of agreements between employers and workmen reached otherwise than in the course of conciliation.

6. It has enhanced penalty provision to ensure implementation of awards.

7. Services in Banks, Cement Industry, defense establishment, hospitals, dispensaries and fire brigade can also be declared public utility services.
8. It also provided for certain essential amendments to the Industrial Employment Act, 1946.

In April 1957, an ordinance was promulgated with retrospective effect from December 1956, which provided that the Compensation for retrenchment would be paid even in case of bonafide closure of an undertaking or transfer of its ownership. The Ordinance, however, made it clear that workmen would not be entitled to any compensation if they were re-employed by the new owner on the same or equally good terms.

The Act was again amended in 1964 and 1965. The Industrial Disputes (Amendment) Act, 1964 provided for (a) declaration of air transport service and a permanent public utility service, (b) power to the Central Government and the State Government to declare any industry in their respective sphere as a public utility service, (c) appointment of an umpire in case of difference of opinion between the arbitrators, (d) prohibition of strikes and lock-outs during arbitration proceedings, (e) termination of award or settlement by proper notice by a majority of workmen only, (f) payment of full compensation to workmen in case of closure on the expiry of leave or license and (g) a revised procedure for the recovery of money due from and employer.

The following new provisions were brought in the Industrial Disputes (Amendment) Act, 1965;

1. The widening of the definition of the terms 'Indus-
trial Dispute'.

2. Imposition of penalty for non-implementation of awards and settlements even after conviction.

3. Inclusion of Industrial Disputes concerning Indian Air Lines' and Air India Corporation' within the Central sphere.

4. Payment of compensation of all days even after the expiry of first 45 days.

5.11 The 'Industrial Disputes(Amendment) Act of 1971 provides as follows

1. The Central Government has been declared as the Appropriate Government in relation to the industrial disputes concerning Industrial Finance Corporation and Life Insurance of India.

2. Ports and Docks were declared as permanent public

5.12 Utility Services

3. Undertaking closed merely on the basis of financial difficulties, etc., shall not be deemed to be closed down on account of unavoidable circumstances beyond the control of the employer for the purpose of restricting compensation to workers.

4. Powers have been given to Labour Courts and Tribunals to go into the merits of dismissals, discharge and retrenchment and set aside the order of dismissal or discharge and direct reinstatement of workmen or give such other relief to the workmen including milder punishment in lieu of discharge of dismissal as considered proper by it.
The Industrial Disputes (West Bengal Amendment) Act, 1971 provided two months notice by an employer for closing his undertaking.

The Act further Amended in June 1972 provides that an employer who intends to close down his undertaking shall serve at least 60 days notice before the date of intended closure, a notice in the prescribed manner on the Appropriate Government stating clearly the reasons for the closure. The Act does not apply to those undertakings where workers are less than 50 or less than 50 workmen employed on an average per working day in the preceding 12 months. Further, no notice will be required to be served in the case of undertaking set up for construction of buildings, roads, canals, dams and other construction works and projects.

5.13 The Bombay Industrial Relations Act of 1946

Some of the advanced industrial states like Maharashtra passed their own separate Acts for the prevention and settlement of industrial disputes. In 1934, the Bombay Province passed the "Trade Disputes Conciliation-Act", which was later amended during the World War II. The newly created State of Maharashtra comprises, besides areas from the erstwhile Bombay province areas formerly belonging to the Central provinces and Berar as well as the Marathawada area of the former princely State of Hyderabad. The State Labour Department has been administering three different Acts regarding Industrial
Disputes settlement: (a) The Industrial Disputes Act of 1947 (Central). The Bombay Industrial Relations Act 1946 and (c) The provinces and Berar Industrial Disputes Settlement Act of 1947. After the World War II, the Government examined the laws and passed a more comprehensive Act known as the Bombay Industrial relations Act, 1946, which came into force in 1947. The present Maharashtra Government has entrusted 19 Central Labour Laws and five State labour laws to the labour wing to administer and to implement. (17)

The Bombay Industrial Relations Act, 1947 provides a comprehensive machinery for settling and preventing industrial disputes based on the principles of Industrial Disputes Act 1938.

Changes have been made in the provisions regarding representation of workmen, rights of Trade Unions, Labour Court, etc.

(i) Representation of the parties to the Disputes

Under section 30 of Bombay Industrial Relations Act, 1946, the following shall be entitled to appear or act in the order of preference specified as the representative of employees in an industry in any local area: (a) a representative Union for such industry, (b) a qualified or primary union of which the majority of employees directly affected by the change concerned members, (c) any qualified or primary union in respect of such industry authorized in the prescribed manner in that behalf by the employees concerned, (d) the labour
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officer if authorized by the employees concerned, (e) the
persons elected by the employees in accordance with the
provisions of section 28 and (f) the labour Officer.

In a proceeding under this Act, an association by
employers shall be entitled to represent: (a) any
employer who is a member of association, (b) any employer
connected with same industry not being a member of the
association, who has intimated in writing to the pre-
scribed authority that he has agreed to be represented
by the association in such proceedings.

Section 32 observes that a conciliator, a Board, an
Arbitrator, a Wage Board, Labour Court and Industrial
Court may consider for the ends of justice to permit an
individual, whether an employee or not to appear in any
proceedings. Further, it points out that no such indi-
vidual shall be permitted to appear in any proceedings
in which a representative union has appeared as the
representative of employees.

(ii) Authorities Constituted under this Act

The State Government may by general or special order
notify in the official gazette confer and impose all or
any of the powers and duties of the Commissioner of
Labour on any person whether generally or for any local
area. (18)

(iii) Registrar of unions

Under Section 5(1) (IA) the Government may appoint
the Registrar of Union and the Additional Registrars of
Unions. The Registrar of Unions is appointed for whole
State of Maharashtra and additional Registrars can be appointed for the whole State or for any local area. The State Government may also appoint the Assistant Registrar of Unions for any local area. The Registrar after making inquiry, recognizes unions for any concerned in an industry to be an undertaking, any section of an undertaking to be an occupation.

(iv) Conciliators and Board

The State Government may appoint under Section(6), Chief Conciliator, Additional Chief Conciliators and special Conciliators according to the need based on area and industry. When an industrial dispute arises the Government may constitute a Board of Conciliation for promoting settlement which shall consist of an independent person and an even number of members who represent the interests of employees and employee

(v) Labour Officer

Under Section(8) the State Government may appoint Labour Officer and Assistant Labour Officers for any local area or areas. The Act empowers a Labour Officer to enter and inspect a place used for the purpose of any industry, any place used for the office of any union and any premises provided by an employer for the residence of his employees. Labour Officer may call the meeting of employees on the premises where they are employed. Labour Officer can appear in any proceedings. His duties are to watch the interest of employees and promote harmonious relations between employer and em-
employees, investigate the grievances of employees and represent to employer and make recommendations to them in consultation with the employees, to report to the State Government. The existence of any industrial disputes of which no notice of change has been given with names of party.

(vi) Labour Court

Section (9) indicates that the Government may constitute one or more Labour Court for specified areas and appoint persons having prescribed qualifications to preside over. Labour courts shall have the power to decide disputes regarding the legality of an order passed by an employer, the application and interpretation of standing order, any changes made by an employer or an employee in respect of an industrial matter. Industrial disputes referred to it under Section 71 or 12, in respect of which is appointed as the arbitrator by submission, whether a strike, lock-out or any change is illegal under this Act.

(vii) Industrial Court

The Government constitutes the industrial Court consisting of three or more members, one of whom shall be its president. Members are to be independent persons not connected with industry who is or has been a judge of High Court. Industrial Court can entertain appeals against the decisions of a Registrar, Labour Commissioner and Labour Court. In also decides all disputes referred to it in accordance with the Bombay Industrial
Relations Act. A Court can also interpret the provision of the Act and rules. No decision, award or order of a Labour Court shall be called in question in any proceeding in any Civil or Criminal Court.

(viii) Standing Orders

Section 35 calls from an employer within six weeks from the date of application of this Act to submit a draft Standing Orders regulating the relations between him and his employees for the approval of the Commissioner of Labour. On the receipt of the draft standing orders the Commissioner of Labour will consult representatives of employees and employers, and after making inquiry he settles the Standing Orders. Any person aggrieved may appeal to the Industrial Court. The Industrial Court in appeal may confirm, modify, add to the Standing Orders. No alterations shall be made for the period of one year from the date of its coming into operation in any standing orders. Any employer and employee can go to the Commissioner of Labour for change.

(ix) Joint Committees

A joint committee consists of such number of members as may be prescribed, half the number shall be in the prescribed manner be nominated by the Union from among employees in the undertaking or occupation concerned and other half appointed by the employer concerned. A joint committee has no authority to deal with matters relating to a change in standing orders or any other
matters affecting the terms of contract between employer and employees.

(x) Wage Boards

The Wages Board consists of equal number of independent persons nominated by the Government to represent employer and employees. The issues affecting the whole of an industry such as standardization of wages, rationalization, etc., could be referred to Wage Board. Each industry may have separate Wage Board. Appeals from the decision of wage boards lie to the Industrial Court and the decision can be reviewed. Wage Boards are better equipped to understand the pros and cons of a particular industry for which they are constituted. The Industrial Courts being more judicial in character, they are not competent to give a decision on purely economic items. The decisions of the Wage Boards being binding on the parties, they have the advantages of adjudication also.

There are four Wage Boards in Maharashtra: (a) Wage Board for the Cotton Textile Industry, (b) Wage Board of the silk Textile Industry, (c) Wage Board for the Sugar industry, and (d) Wage Board for Cooperative Banks Industry in Maharashtra.

(xi) Illegal Strikes and Lock-outs

Under section 97, a strike and lock-out shall be illegal if they are declared in contravention of the procedure laid down in the Act for settlement of industrial disputes or in contravention of the terms of a registered agreement, or after two months of completion
of conciliation proceedings. The Act thus puts heavy restrictions on strikes and lock-outs.

(xii) Court of Enquiry

A Court of Enquiry shall enquire into industrial matters as may be referred to it by the Government, including any matter pertaining to conditions of work or relations between employer and employees in any industry and in any aspect of any industrial disputes. Every proceeding before a Court of Enquiry shall be deemed to be a judicial proceeding. A Court of Enquiry may refer to the Industrial Court any point of law arising in any proceeding.

(xiii) Penalties

Under Section 101, the Act grants protection to workmen against dismissal, discharge or any other punishment by employer, if employee is an officer by a registered Union, is entitled to the benefit of a registered agreement, has appeared or intends to appear as a witness in proceeding, as an officer or member of an organization, the object of which is to secure better industrial conditions, is an officer or member of an organization which is not declared unlawful, is representative of employees, has gone on a strike which has not been held illegal by a Labour Court.

"Prevention is better than cure", The Act provides for peaceful settlement of industrial disputes, prevents industrial disputes by making an employer to formulate standing orders and to establish internal machinery for
settling day to day differences. The Act tried to see the growth of strong made union and collective bargaining by one registered union for an industry in a local area. The authorities constituted under this Act are suitable to achieve industrial peace. The provision of Labour Officer, standing orders and approved Union needs appreciation.

For the prosperity of an industry, industrial peace and economic justice are necessary. It is, therefore, necessary that every labour relation Act should achieve its object of industrial peace. This brief description of the industrial disputes legislation in India and Maharashtra indicates clearly that they have achieved an effective remedial stature method of negotiations, mediation, conciliation, settlements of industrial conflict, and also a system of creating altering and ending employment conditions and terms, provisions for regulating Trade unions and associations for labour.

There are certain basic human needs which must be satisfied if the labour legislations intend to eliminate conflict between workers and employer for healthy development of national economy. The harmonious relation between employer and employees are an urgent need. More legislation is not sufficient. What is needed most is proper implementation of legislation and good human relations. Good labour relations can not be brought about by legislation. The enlightened labour and management working together can accomplish more by peaceful
5.14 General Criticism against Enforcement Machinery.

There is one common criticism which is generally levelled against the Labour Enforcement Machinery of the Commissioner's Office. This criticism is to the effect that the various Labour Laws are not being properly implemented by it and that the benefits available to them under the same are not reaching them at all. This criticism is not all together without substance. However, it must be started here that, for proper enforcement, adequate machinery is necessary. According to the statistics available, the total number of establishments covered under the various scheduled employments in respect of which minimum rates of wages have been fixed/revised so far, are approximately 6,48,000 in the entire State (This does not include agricultural holding). The total number of officers appointed as Inspectors under the minimum wages Act (excluding 14 cadre posts working on Mathadi boards and 4 administrative functionaries) only. Thus each Inspector gets on an average 5,062 establishments for enforcement of minimum Wages Act, alone. It must however be remembered here that these Labour Officers are also Inspectors under the Labour enactments mentioned above as well. According to the present norms of Inspections each officer has to visit 100 establishments per month. At this rate each officer would require more than 3 years time to cover all the 5,062 establishments under his charge in
respect of the Minimum Wages Act, alone. This inadequacy of the Enforcement Machinery is the largest single factor, which inhabits proper enforcement. Besides there are certain other legal aspects, which normally are not taken into consideration by the critics, while criticizing the Enforcement Machinery. Under the minimum wages Act, 1948 the Inspector cannot straight away prosecute an employer, if he pays any workers less than the prescribed minimum wages, unless the worker first files a claim before the Authority stipulated under the Act and gets his claim decreed. Experience shows that the workers or their Unions do not normally go to the prescribed Authority to get their claims decreed first, but insist on prosecutions being launched by the officers concerned against the defaulting employers, which under the existing law, is not possible, at present. Similarly, under the Contract Labour Act, there is a provision for abolition of the contract system in any establishment, but there is no provision for absorption of the workers, who are rendered unemployed as a result of such abolition. The workers and their Unions expect that the persons rendered unemployed would automatically be absorbed by the principal employer and, when the principal employer refuses to do so, a piquant situation is created and the criticism is directed towards the Enforcement Machinery. Thus the creation of an adequate Enforcement Machinery, with necessary amendments to the relevant Labour Laws and
coupled with proper facilities of conveyance and communication to enforcement of the Labour Commissioner's Office, both quantitatively and qualitatively. (19)

REFERENCES

3. Ist Schedule
   a) Transport (other than Railway) for the Carrying of passengers or Goods (by land or Water).
   (b) Banking
   (c) Cement
   (d) Coal
   (e) Cotton Textiles
   (f) Food stuff
   (g) Iron and steel
   (h) Defence Establishment
   (i) Service in Hospital and dispensaries
   (j) Fire Brigade Service
   (k) Oxygen and Acetylene

   (l) Mineral Oil (Crude Oil), Motor and Aviation spirit, Diesel oil,
       Kerosene Oil, Fuel Oil, diverse Hydro Carbon Oil, and
       their blends including synthetic fuels, Lubricating oil and the like
(m) Vaccines
(n) Sera
(o) Antibiotics
(p) Catgut
(q) Chemical Fertilizer Industry
(r) Rayon spinning Industry
(s) Industry Engaged in the Assembly of Maharashtra Aircraft and their Components.
(t) Industry engaged in the manufacture of nylon, polyester filament yarn.
(u) Poultry Farming
(v) Animal Feed Manufacturing


5. Section 3(2) Industrial Dispute Act, 1947.
7. Section 12(3) Industrial Dispute Act, 1947.
8. Section 12(4) Industrial Dispute Act, 1947
10. Section 6(1) Industrial Dispute Act, 1947.
11. Section 40, Industrial Dispute Act, 1947, Second Schedule:
(a) The propriety or legality of an order passed by the employer under the standing orders,
(b) The application and interpretation of standing orders,
(c) The discharge or dismissal of workmen including reinstatement of or grant of relief to workmen wrongly dismissed,

(d) Withdrawal of any customer concessions or privileges,

(e) Illegality or otherwise of a strike or lock-out, and

(f) All matters other than those specified in the Third Schedule.

12. Section 7(1) Industrial Dispute Act, 1947,


14. Section 40 Industrial Dispute Act, 1947, Third Schedule

(a) Wages including the period and mode of payment.

(b) Compensatory and other allowances.

(c) Hours of work rest intervals.

(d) Leave with wage and holidays.

(e) Bonus, Profit, sharing, provident fund and gratuity.

(f) Shift working otherwise than in accordance with standing orders.

(g) Classification by grades.

(h) Rule of discipline.

(i) Rationalization

(j) Retrenchment of workmen and closure of establishment, and

(k) Any other matter that may be prescribed.
15. Section 7 A(1) Industrial Dispute Act, 1947.

16. Where an industrial dispute has been referred to a Board, (Labor Court, Tribunal or National Tribunal) under this section the appropriate government may by order prohibit the continuance of any strike or lock-out connected with such dispute which may be in existence on the date of the reference.


18. Section 4, Bombay Industrial Relation Act, 1946.