

INDUSTRIAL DISPUTES ACT 1947





OBJECTIVES

- ◆ Promotion of measures of securing, preserving Industrial harmony
- ◆ Settlement of disputes between
 - 1- Employer – Workman
 - 2- Employer - Employer
 - 3- Workman - Workman
- ◆ Rights of Registered Trade Union
- ◆ Prevention of illegal- Strike; Lockout
- ◆ Promotion of collective bargaining

INDUSTRY

- ◆ Business, Trade, Undertaking, handicraft avocation
- ◆ Calling of employers





INDUSTRIAL DISPUTE

- ◆ Any dispute or difference between
 - a) Employers and Employers
 - b) Employees and Workmen
 - c) Workmen and Workman
- ◆ Disputes may be connected with Employment/Non employment
 - a) Terms of employment
 - b) Conditions of labour

[demand has to be made by workmen]

WORKMAN

Any person employed for any Industry for includes

- ◆ Manual
- ◆ Unskilled
(Technical, operational
Clerical/supervisory
(up to Rs. 1,600/-)
- ◆ Skilled
- ◆ Discharged
- ◆ Retrenched



STRIKE & LOCKOUT

STRIKE

- ◆ Cessation of work by a body of persons [workman]
- ◆ Concerted refusal to work
- ◆ Duration & Time of Strike -immaterial

LOCK OUT

- ◆ Temporary closing of place of employment
- ◆ Refusal by employer to continue to employ



Strike



■ **Sec. 2(q) defines a strike as follows:**

- i. The cessation of work by a body of persons employed in any industry acting in combination ; or
- ii. A concerted refusal, or a refusal, under a common understanding, of any number of persons who are, or have been, so employed to continue to work or accept employment.

■ **Following ingredients can be postulated from the definition of 'strike':**

- i. Plurality of workmen.
- ii. Cessation of work or refusal to continue to work.
- iii. Acting in combination or concerted action under a common understanding



General prohibition of strikes:

No group of workman may strike in the following 3 situations:

- (a) during the pendency of conciliation proceedings before a Board and seven days after the conclusion of such proceedings;
- (b) during the pendency of proceedings before ¹²²[a Labor Court, Tribunal or National Tribunal] and two months, after the conclusion of such proceedings; ¹²³[* * *]
- ¹⁰⁷[(bb) during the pendency of arbitration proceedings before an arbitrator and two months after the conclusion of such proceedings, where a notification has been issued under sub-section (3A) of section 10A; or]
- (c) during any period in which a settlement or award is in operation, in respect of any of the matters covered by the settlement or award.



Penalties

- ◆ *Penalty for illegal strikes (Sec 26):*

Any workman who commences, continues or otherwise acts in furtherance of a strike which is illegal under this Act, shall be punishable, with imprisonment for a term which may extend to 1 mth., or with fine which may extend to Rs. 50, or with both.

- ◆ *Penalty for instigation of illegal strikes (sec. 27):*

Any person who instigates or incites others to take part on an illegal strike is punishable with imprisonment for a term upto 6 mths., or a fine upto Rs. 1000, or with both.



- ◆ *Penalty for giving financial aid to illegal strikes (sec. 28):*

Any person who knowingly expends or applies any money in direct support of an illegal strike is punishable with imprisonment for a term upto 6 mths., or a fine upto Rs. 1000, or with both.

Case Studies:

- 1. Lakshmi Devi Sugar Mills vs. Ram Sarup (1957-I LLJ. 17 S.C.)**
 - sudden concerted stoppage of work.
 - strikers cannot be exempted from the consequences.
 - employers has the right to suspend the striking workmen.



LOCK-OUTS



- A lock-out means :-
 - ❖ the closing of a place of employment; or
 - ❖ the suspension of work; or
 - ❖ the refusal by an employer to continue to employ any number of persons employed by him.
- It means the closure of the place of business and not closure of business itself.
- Lock-out is usually used by the employer as a weapon of collective bargaining.





ILLEGAL LOCK-OUTS

Penalty for illegal lock-outs

An illegal lock-out is punishable for a term extending to 1 month or with fine up to Rs. 1000 or with both.

Penalty for instigation of illegal lock-outs

An illegal lock-out is punishable with imprisonment for a term which may extend to 6 months or a fine up to Rs. 1000 or with both.

Case Studies :-

Northbook Jute Co. Ltd. Vs. Their Workmen

Indian Cork Mills (P) vs. Their Workmen





LAY OFF

- ◆ Failure by employer to provide employment within 2 hours of presenting himself for work
- ◆ Condition - 50% wages

RETRENCHMENT

- ◆ Termination of service by employer for any reason
- ◆ Exceptions- Disciplinary dismissal, Superannuation, VRS
- ◆ Conditions
3 months` Notice Period or
Pay Prior approval of Govt.

Lay – off

❑ Section 2 (KK) of the Act defines lay – off as “ the failure, refusal or inability of an employer on account of shortage of coal & power or raw material or the accumulation of stocks or the breakdown of machinery or for any other reason to give employment to a workmen whose name is borne on the muster roll of his industrial establishment & who has not been retrenched.”

❑ Lay – off provisions of the Act:

i. Sec, 2 (m) of the Factories Act, 1948.

ii. Sec. 2 (i) of Mines Act, 1952. &

iii. Sec. 2 (f) of Plantation Labour Act, 1951.





- ❑ In Industrial undertaking where lay – off provisions apply, only those workmen will be entitled to lay – off compensation.
- ❑ A workmen is entitled for compensation for all days of lay – off unless there is an agreement to the contrary between him & the employer to the limit of 45 days in a year.



- ❑ No compensation shall be paid to the workmen:**
 - i. If he refuses to accept any alternative employment in the same establishment.**
 - ii. If he does not present himself for work at the establishment at appointed time during working hours at least once a day.**
 - iii. If such laying – off is due to strike or slowing down of production on the part of workmen.**



□ If a workmen has been laid – off by his employer due to shortage of power or natural calamity, the appropriate government makes an enquiry if he thinks fit. If the authority does not communicate the permission within 2 mths. With the employer then lay – off is deemed to be granted. If the appropriate government refuses the permission for lay – off, then lay – off is deemed illegal, then the workmen is entitled for all the benefits from the time he has been laid – off.

Penalty for Lay-off:-

Any employer who contravenes the provisions of lay - off is punishable with imprisonment for a term which may extend to Rs.1000/- or both.





Case study on Lay-off

Madras High Court in P. Joseph and others V/s Loyal Textile Mills (1975-1 LLJ 499):

Badli workman who has completed 240 days of service is entitled to lay-off compensation but here the badli workman had been excluded from lay-off compensation



Retrenchment

- Sec. 2 (oo) defines Retrenchment as the termination by the employer of the service of the workman for any reason whatsoever, otherwise than a punishment inflicted by way of disciplinary action.
- Retrenchment does not include voluntary retirement superannuation, termination of employment on grounds of ill health; do not amount to retrenchment.
- No workmen who has been employed for 1 year can be retrenched until:
 - i. 1 month notice in written & reason for retrenchment.
 - ii. 15 days average pay for every completed year of service.
 - iii. Notice served to the appropriate government.



- 1) No workmen employed in any industrial establishment who has been to continuous service for not less than 1 yr. under an employer shall be retrenched by that employer until:
- 2) Has been given 3 mths notice in written, indicating the reasons for retrenchment. – no such notice shall be necessary if the retrenchment is under an agreement which specify a date for termination of service.
- 3) Compensation shall be equivalent to 15 days average pay for every completed years of continuous service or any part thereof in excess of 6 months
- 4) Notice shall be given to appropriate government or such authority & the permission of such government or authority is obtained.



- 5) Government or authority after making inquiry may grant or refuse the permission to the employer within 3 mths. Of the date of service of the notice.
 - if it does not communicate within 3 mths. Of such notice then the retrenchment is legal.
 - if it does refuse the permission then the retrenchment is illegal.
- 6) Sec. 25 – N is constitutionally valid.
- 7) Authority under Sec. 25 - N exercises powers which are quasi-judicial & not purely administrative



Retrenchment :- Case Study

❖ **Indian Hume Pipe Co. Ltd. Vs. Their Workmen**

(1959-II LLJ. 830)

❖ **State Bank of India vs. R. Sundaramony**

(1976-I LLJ. 478)



Closure

- ❖ Closure has been defined as the permanent closing down of a place of employment or part thereof.
 - ◆ *Under Sec. 25 FFA:*

60 days prior notice to the appropriate government. But this section shall not apply to:

 - a) An undertaking in which less than 50 workmen are employed or were employed on an average per working day in the preceding 12 months.
 - b) An undertaking setup for the construction of buildings, bridges, roads, canals, dams, or for other construction, work or project.
 - ◆ *Under Sec. 25 FFF:*
 - a) An employer / workmen who is in continuous service for a period on 1 yr. is entitled for notice of compensation.
 - b) Compensation under unavoidable circumstances – not exceed the average pay for 3 mths.



◆ Under Sec. 25 – 0

- ▶ An employer who intends to close down an undertaking or an industrial establishment shall serve,
 - a) Approval at least 90 days before the date.
 - b) It shall not apply to an undertaking setup for the construction of buildings, bridges, roads, dams, canals, or for other construction work.
- ▶ If the appropriate government does not communicate the permission within period of 2 months from the application date –
 - The permission applied for shall be deemed to have been granted on the expiration of the said period of 2 months.
- ▶ If the permission for closure is refused –
 - The closure of the undertaking shall be deemed to be ill – legal.



Case study

RETERNCHMENT & CLOSURE

(case: Raj Hans Press v/s Labour Court
Delhi)



Dispute Resolution”

- ◆ A wider perspective: not only court enforcement, mediation and arbitration, but also “co-regulation” and “self-regulation” (e.g. industry delivers codes of practice, overseen by Ombudsman; consumer panels...).



INDUSTRIAL DISPUTE RESOLUTION MECHANISM

- ◆ Industrial Undertaking
 - 1-Works Committee
 - 2-Conciliation officer
 - 3-CG/State Govt. Board
 - 4-Labour court
 - 5-Tribunal
 - 6-Arbitral Tribunal
 - 7-AWARD



Dispute Resolution Machinery

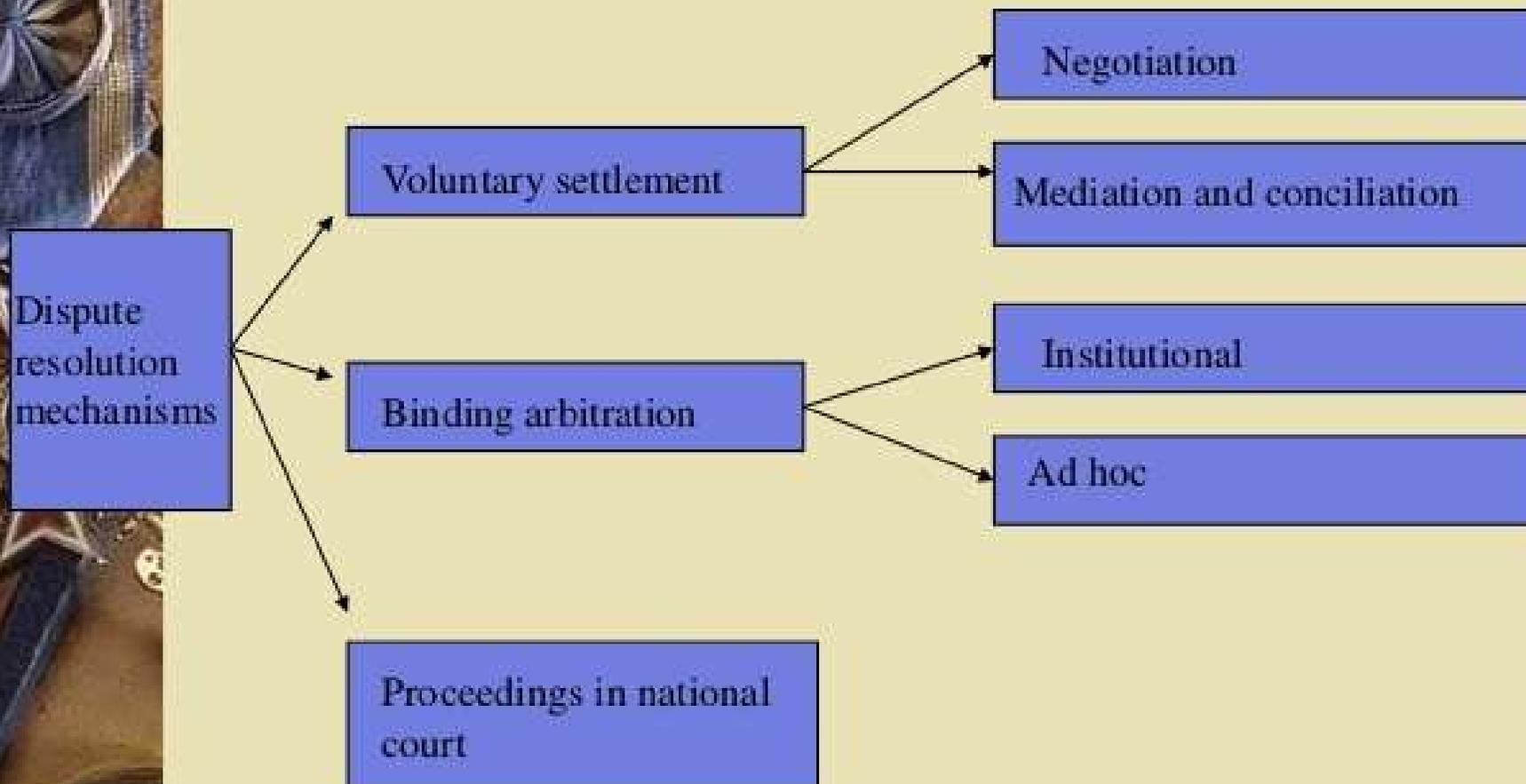
- ◆ **Workers' Participation in Management**
- ◆ **Collective Bargaining**
- ◆ **Tripartite Bodies**
- ◆ **Code of Discipline**
- ◆ **Standing Orders Preventive Machinery**

Settlement Machinery•

- Conciliation
 - Conciliation Officer
 - Conciliation Board
- Court of Enquiry
- Voluntary Arbitration
- Adjudication
 - Labour Courts
 - Industrial Tribunals
 - National Tribunals



Dispute resolution framework



Conciliation

- ◆ Conciliation or mediation signifies **third party intervention in promoting the voluntary settlement of disputes.**
- ◆ The International Labour Organisation has defined conciliation as:
 - ◆ “ The practice by which the services of a neutral third party are used in a dispute as a means of helping the disputing parties to reduce the extent of their differences and to arrive at an amicable settlement or agreed solution. It is a process of rational and orderly discussion of differences between the parties to a dispute under the guidance of a conciliator.”
- ◆ **Conciliation Officers**
- ◆ **Board of Conciliation**
- ◆ **Court of Inquiry**



Arbitration

- ◆ Voluntary arbitration became popular as a method of settling difference between workers and management with the advocacy Mahatma Gandhi, who had applied it very successfully in the Textile industry of Ahmedabad. However, voluntary arbitration was lent legal identity only in 1956 when Industrial Disputes Act, 1947 was amended to include a provision relating to it.
- ◆ On failure of conciliation proceedings, the conciliation officer may persuade the parties to refer the dispute to a voluntary arbitrator. Voluntary arbitration refers to getting the disputes settle through an independent person chosen by the parties involved mutually and voluntarily.





National Commission on Labour (1969) identified following causes for the failure of voluntary arbitration:

- ◆ 1. Lack of arbitrators who command the confidence of the parties to the disputes.
- ◆ 2. Law provides no appeal against the award given by arbitrator
- ◆ 3. Easy availability of adjudication on the failure of negotiation or conciliation.
- ◆ 4. The absence of simplified procedure to followed in voluntary arbitration.

Labour Courts

- ◆ **The Labour Courts can deal with disputes relating to:**
- ◆ a) The propriety or legality of an order passed by an employer under the standing Orders.
- ◆ b) The application and interpretation of Standing Orders.
- ◆ c) Discharge and dismissal of workmen and grant of relief to them.
- ◆ d) Withdrawal of any statutory concession or privilege.
- ◆ e) Illegality or otherwise of any strike or lock-out
- ◆ f) All matters not specified in the third schedule of Industrial Disputes Act, 1947,



Industrial Tribunals.

- ◆ 1 Wages including the period and mode of payment.
- ◆ 2. Compensatory and other allowances.
- ◆ 3. Hours of work and rest intervals
- ◆ 4. Leave with wages and holidays
- ◆ 5. Bonus, profit sharing, provident fund and gratuity.
- ◆ 6. Shift working otherwise than in accordance with standing orders.
- ◆ 7. Rules of discipline
- ◆ 8. Rationalization
- ◆ 9. Retrenchment.
- ◆ 10. Any other matter that may be prescribed.



National Tribunals

- ◆ These tribunals are meant for those disputes which, as the name suggest, involve the questions of national importance or issues which are likely to affect the industrial establishments of more than one state, The employers and unions use adjudication as a primary measure of resolving disputes. About 90 to 95 per cent of disputes are referred to adjudication machinery on an average annually. However, the functioning of adjudication machinery has not been very satisfactory, particularly because of the delays involved and the inefficient implementation of the awards.





By employers Unfair Labour Practices

- ◆ To establish employer sponsored TU
- ◆ To encourage discourage membership of any particular TU
- ◆ To refuse promotion, refuse seniority, refuse increment/promotion, discharge or dismiss any worker taking part in any TU activity or as victimization
- ◆ To abolish regular nature of work replacing by contractual, recruit workers – to break a strike
- ◆ To refuse collective bargaining

BY EMPLOYEES/TRADE UNION

- ◆ To advise or actively support or instigate – deemed illegal strike
- ◆ To indulge in violation, coerce workmen, picketing by physically debarring non-striking workmen from working
- ◆ To refuse to bargain collectively





- ◆ To refuse or use coercion against scarification of bargaining representative
- ◆ To gherao, stage dharna at there sidence of employers or managerial personnel
- ◆ To incite or indulge in willful damage employer`s property
- ◆ To hold out threats of intimidation against any workman to prevent him from attending work

Settlements & Awards



FINAL
SETTLEMENT
—
LINDA DAVIES

Settlement is defined in Sec. 2(p) of the Industrial Disputes act envisages 2 categories:

- (a) a settlement which is arrived at in the course of conciliation proceedings.
- (b) a agreement between the employer & the workmen arrived at otherwise than the course of conciliation proceedings.

Awards is defined as in Sec. 2 (b) as an interim or a final determination of any industrial dispute or of any question relating thereto, by any Labour Court, Industrial Tribunal or National Industrial Tribunal.



On whom it is binding:

All the parties to the industrial dispute;

All other parties summoned to appear in the proceedings as parties to the dispute unless they were so summoned without proper cause;

Where a party referred to in clause (a) or clause (b) is an employer, his heirs, successors or assignees in respect of the establishments to which the dispute relates.

Where a party referred to in clause (a) or clause (b) is composed of workmen, all persons who were employed in the establishment or part of the establishment, as the case may be, to which the dispute relates on the date of the dispute & all persons who subsequently become employed in that establishment or part.



Period of Binding

Settlements:

A settlement arrived at in the course of conciliation proceedings is binding for a period agreed upon by the parties.

If no such period is agreed upon, the settlement will remain in force for a period of 6 mths. From the date on which the memorandum of settlement is signed by the parties to the dispute.

It will continue to be binding until the expiry of 2 mths from the date on which one of the parties gives notice in writing to the other of its intention to terminate the settlement.

Awards:

- i. An award is binding & will come into operation on the expiry of 30 days from the date of its publication.
- ii. It will remain in operation for a period of 1 year from the date on which the award becomes enforceable.
- iii. Government may reduce the said period & fix such periods as it thinks fit. The government may also extend the period of operation by any period not exceeding 1 yr. at a time but the total period of operation of any award cannot exceed 3 yrs. From the date on which it comes into operation.
- iv. Even if period of operation of an award expires, it shall be binding on the parties until 2 mths have elapsed from the date on which notice is given by one party bound by the award to the other party intimating its intention to terminate the award.
- v. If for any reason the award does not become enforceable, it can never come into operation. The date on which an award comes into operation may or may not be the date on which it becomes enforceable



Penalties



Penalty for breach of settlement or award:

- i. Shall be punishable with imprisonment for a term which may extend to 6 months. Or with fine.
- ii. Or with both (and where the breach is continuing one, with a further fine which may extend to Rs. 200 for every day during which the breaches continues after the conviction for the first.
- iii. The court trying the offence, if it fines the offender, may direct that the whole or any part of the fine realized from him shall be paid, by way of compensation, to any person who, in its opinion, has been injured by such breach.





Thank you