

INDUSTRIAL DISPUTE ACT, 1947

INTRODUCTION

The Industrial Disputes Act, 1947 came into existence on 1st April 1947.

It was enacted to make provisions for investigation and settlement of industrial disputes and for providing certain safeguards to the workers.

OBJECT

An Act to make provision for the investigation and settlement of industrial disputes, and for certain other purposes.

To ensure social justice to both employers and employees and advance progress of industry by bringing about harmony and cordial relationship between the parties.

To settle disputes arising between the capital and labour by peaceful methods and through the machinery of conciliation, arbitration and if necessary, by approaching the tribunals constituted under the act.

If disputes are not settled, it would result in strikes or lock-outs and entail dislocation of work, essential to the life of the community.

To promote measures for securing and preserving amity and good relations between the employer and workmen.

To prevent illegal strikes and lockouts.

To provide compensation to workmen in cases of layoff, retrenchment and closure.

To protect workmen against victimizations by the employer and to ensure termination of industrial dispute in a peaceful manner.

To promote collective bargaining.

Scope:

The Act provides for settlement of disputes or differences relating mainly to the issues mentioned hereunder:

1. The legality of any order passed by the employer.
2. Discharge or dismissal of workmen.
3. Withdrawal of customary concessions and privileges.
4. Terms of strikes or lockouts.
5. Wages including period and mode of payment.
6. Allowances.
7. Working hours and rests, leave with wages.
8. Bonus, provident fund and gratuity.

9. Shifting.
10. Grading and classifications.
11. Disciplines.
12. Rationalization, retrenchment and closure of establishment.

DEFINITIONS

Industrial Dispute: As per section 2(k) 'industrial dispute' means any dispute or difference between:

1. employers and employers, or between
2. employers or workman, or between
3. workman and workman, which is connected with
 - the employment or non employment or with
 - the conditions of labour, or of any person.

Industry (section 2)

Section 2(J) of the act defines industry as: "industry" means any business, trade, undertaking, manufacture or calling of employers and includes any calling, service, employment, handicraft or industrial occupation or vocation of workmen.

Workman section 2(s)

Workman means any person (including an apprentice) employed in any industry to do any manual, unskilled, skilled technical operational, clerical or supervisory work for hire or reward, whether the terms of employment be express or implied and for the purposes of an proceeding under this act in relation to an industrial disputes, include any such person, who has been dismissed, discharged or retrenched in connection with or as a consequence of that disputes or whose dismissal discharge or retrenchments has led to that disputes, but does not include any such person-

- 1) Who is subject to the air force act, 1950 the navy act, 1957; or
- 2) Who is employed in police services or as an officer or other employee of a prison ; or
- 3) Who is employed mainly in a managerial or administrative capacity; or
- 4) Who, being employed in a supervisory capacity, draws wages exceeding one thousand six hundred rupees per month or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature.

The definition of workman has three essential parts:

- i. statutory meaning of workman;
- ii. Legal fiction, and
- iii. Categories of persons excluded.

Definition of strikes

As per section 2(Q) "strikes" means cessation of work by a body of persons employed in an industry acting in combination or 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 to accept employment.

The essential ingredients of the definitions are:

- 1) There must be cessation of work;
- 2) The cessation of work must be by a body of persons employed in any industry, as defined in section 2(j) of the act;
- 3) The strikes must have been acting in combination, or
- 4) There must be concerted refusal; or
- 5) Refusal under a common understanding of any number of persons who are or have been so employed to continue to work or to accept employment.

strikes is a weapon in the hands of workman or employees, as a tactic in bargaining. Strikes may be the form of general strikes, go slow, stay in, sit down, pen-down, tool down, work-to-rule, gherao, hunger strikes⁹ or sympathetic strikes. However,

In strikes, the workmen have intention to resume to the work. Mere absence from work does not amount to taking part in strike within the meaning of the industrial act, 1947. There should be some evidence to show that absence from the duty was the result of some concert between him and other persons that they would not continue to work. It is also necessary that there should be long hours of strikes. Stoppage and refusal to work, even for a few hours only, would amount to a strike, when there was a concert and combination of the workers in stopping and refusing to work.

Definition of lock-outs

As per section 2(I) Lock-out means the temporary 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.

The definition of lock-out has three ingredients:

- 1) There should be temporary closing of place of employment, or
- 2) There should be suspension of work, or
- 3) There should be refusal to continue to employ any number of persons employed by the employer.
- 4) Lock-out is an antithesis to strike. It is a weapon in the hands of the employer, as a tactic in bargaining. Lock-out is not a closure. In lock-out the employer does not have intention to continue business, if the workman accepts his demands. There is no severance of employer-employee relationship; it, rather, indicates existence of an industrial dispute. Lock-out is not a fundamental right of an employer.

Definition of lay-off

As per section 2 (kkk) lay-off with its grammatical variations and cognate expressions means 'the failure, refusal or inability of an employer on account of shortage of coal, power or raw materials or the accumulation of stocks or the break down of machinery or natural calamity or for any other connected reason to give employment to a workman whose name is borne on the muster rolls of his industrial establishments and who has not been retrenched'.

for this purpose, every workman whose name is borne on the muster rolls of the industrial establishments and who presents himself or work the establishments at the time appointed for the purpose, during the normal working hours on any day and is not given employment by the employer within two hours on any day and is not deemed to have been laid-off for that day within the meaning of this clause.

It is provided that if the workman, instead of being given employment at the commencement of any shift for any day is asked to present himself for the purpose during the second half of the shift for the day and is given employment then he shall have been laid-off only for one half of that day:

Definition of retrenchment

As per section 2(oo) 'retrenchment' means the termination by the employer of the service of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action but does not include-

- a) Voluntary retirement of the workman; or
- b) Retirement of the workman on reaching the age of superannuation, if the contract of employment between the employer and workman concerned contains a stipulation in that behalf; or
- c) Termination of the service of the workman as a result of the non renewal of the contract of employment between the employer and the workman concerned on its expiry or of such contract being terminated under stipulation on that behalf contained therein ; or
- d) Termination of the service of a workman on the ground of continued ill-health.

retrenchment means the termination by employer of the service of a workman for 'any reason whatsoever'⁴, except those expressly excluded by the definition.

this wide literal meaning is more preferable to the natural contextual and narrow meaning, viz. discharge of surplus labour.

Definition of appropriate government

Section 2(a) defines appropriate government in very specific terms. It means:

(a) in relation to any industrial disputes concerning any industry carried on by or under the authority of the central government or by a railway company or concerning any such controlled industry such as may be specified or in relation to an industrial disputes concerning a banking or an insurance company, a mine, or an oil field, or a major port, the central government; and

(b) in relation to any other industrial disputes, the state government.

The central government is the appropriate government for:

1. Any industry carried on by under the authority of the central government;
2. any industry carried on by a railway company;
3. any controlled industry ' (it should be so specified in this behalf for the purposes of s.2(a) (I) of the I.D. act(Bijay cotton mills ltd.vs. their workmen -1960 ILLJ.262(sc) ;
4. ESI corporation;
5. The Indian airlines and air India corporation;
6. The agricultural refinance corporation;
7. The deposit insurance corporation;
- 8 The unit trust of India;
9. A banking company;
10. An insurance company;
11. A mine;;
12. An oil-field;
13. A cantonment board;
14. A major port;

'carried on by or under the authority of the government' means either the industry carried on directly by a department of the government such as posts and telegraphs or the railways or one carried on by such department through any other agency.

AUTHORITIES UNDER THE INDUSTRIAL DISPUTES ACT, 1947

- The Acts provides an elaborative and effective machinery for bringing about Industrial Peace by setting up the following Authorities for the Investigation and Settlement of industrial Disputes.
- Courts of enquiry
- Work committee
- Conciliation proceedings
- Labour courts
- Arbitration
- Industrial and national tribunal (procedures, powers and duties)

COURTS OF ENQUIRY

(1) The appropriate Government may as occasion arises by notification in the Official Gazette, constitute a Court of Inquiry for inquiring into a matter appearing to be connected with or relevant to an industrial dispute

(2) A Court may consist of one independent person or of such number of independent persons as the appropriate Government may think fit and where a Court consists of two or more members, one of them shall be appointed as the chairman.

(3) A Court, having the prescribed quorum, may act notwithstanding the absence of the chairman or any of its members or any vacancy in its number:

Provided that, if the appropriate Government notifies the Court that the services of the Chairman have ceased to be available, the Court shall not act until a new chairman has been appointed

WORK COMMITTEE

1. In the case of any industrial establishment in which one hundred or more workmen are employed or have been employed on any day in the preceding twelve months the appropriate Government may by 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 of representatives of workmen on the Committee shall not be less than the number of representatives of the employer.

2. It shall be the duty of the Works Committee 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 endeavour to compose any material difference of opinion in respect of such matters.

CONCILIATION PROCEEDINGS

- The appropriate Government may, by notification in the Official Gazette, appoint such conciliation officers, charged with the duty of mediating in and promoting the settlement of industrial disputes.
- A conciliation officer may be appointed for a specified area or for specified industries in a specified area or for one or more specified industries and either permanently or for a limited period.
- The appropriate Government may as occasion arises by notification in the Official Gazette constitute a Board of Conciliation for promoting the settlement of an industrial dispute.
- A Board shall consist of a chairman and two or four other members, as the appropriate Government thinks fit.

LABOR COURTS

- The appropriate Government may, by notification in the Official Gazette, constitute one or more Labour Courts for the adjudication of industrial disputes relating to any matter specified in

the Second Schedule and for performing such other functions as may be assigned to them, under this Act.

- A Labour Court shall consist of one person only to be appointed by the appropriate Government.

ARBITRATION

- The Arbitration and Conciliation Act, 1996 came into force with effect from 22.8.1996. It consolidates and amends the law relating to domestic arbitration, international commercial arbitration and enforcement of foreign arbitral awards.
- It applies to the whole of India. It applies to the State of Jammu and Kashmir to the extent of the provisions relating to enforcement of foreign awards, which apply in full, other provisions apply insofar as they relate to international commercial arbitration or conciliation. The Act is based on the conciliation rules adopted by the United Nations Commission on International Trade (UNCITRAL)

WHAT IS ARBITRATION?

- Arbitration is a process of dispute resolution in which a neutral third party (called the arbitrator) renders a decision after a hearing at which both parties have an opportunity to be heard. It is the means by which parties to a dispute get the same settled through the intervention of a third person, but without having recourse to court of law.

TRIBUNALS

The appropriate Government may, by notification in the Official Gazette, constitute one or more Industrial Tribunals for the adjudication of industrial disputes relating to any matter and for performing such other functions as may be assigned to them under this Act.

A Tribunal shall consist of one person only to be appointed by the appropriate Government.

INDUSTRIAL TRIBUNAL

According to Section 7 of the Industrial Dispute Act, 1947 the appropriate government has the authority to appoint the tribunals for adjudicating on the matters of industrial dispute. Generally a tribunal is appointed for adjudicating on the matters which have failed to form a solution through the other machinery of conciliation authorities. These Tribunals are somewhat different from courts though they have been empowered to adjudicate on industrial disputes.

NATIONAL TRIBUNALS

(1) The Central Government may, by notification in the Official Gazette, constitute one or more National Industrial Tribunals for the adjudication of industrial disputes which, in the opinion of the Central Government, involve questions of national importance or are of such a nature that industrial establishments situated in more than one State are likely to be interested in, or affected by, such disputes.

(2) A National Tribunal shall consist of one-person only to be appointed by the Central Government.

(3) A person shall not be qualified for appointment as the presiding officer of a National Tribunal unless he is, or has been, a Judge of a High Court.

(4) The Central Government may, if it so thinks fit, appoint two persons as assessors to advise the National Tribunal in the proceeding before it.

PROCEDURE OF INDUSTRIAL AND NATIONAL TRIBUNALS

(1) Subject to any rules that may be made in this behalf, an arbitrator, a Board, court, Labor Court, Tribunal or National Tribunal shall follow such procedure as the arbitrator or other authority concerned may think fit.

(2) A conciliation officer or a member of a National Tribunal may for the purpose of inquiry into any existing or apprehended industrial dispute, after giving reasonable notice, enter the premises occupied by any establishment to which the dispute relates.

3) Every Board, court, National Tribunal shall have the same powers as are vested in a Civil Court under the Code of Civil Procedure, 1908 (5 of 1908), when trying a suit, in respect of the following matters, namely:-

(a) enforcing the attendance of any person and examining him on oath;

(b) compelling the production of documents and material objects;

(c) issuing commissions for the examination of witnesses;

(d) in respect of such other matters as may be prescribed, and every inquiry or investigation by a Board, court, National Tribunal, shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228 of the Indian Penal Code (45 of 1860).

(4) A conciliation officer may enforce the attendance of any person for the purpose of examination of such person or call for and inspect any document which he has ground for considering to be relevant to the industrial dispute or to be necessary for the purpose of verifying the implementation of any award or carrying out any other duty imposed on him under this Act, and for the aforesaid purposes, the conciliation officer shall have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 (5 of 1908).

(5) A court, Labor Court, Tribunal or National Tribunal may, if it so thinks fit, appoint one or more persons having special knowledge of the matter under consideration as an assessor or assessors to advise it in the proceeding before it.

(6) All conciliation officers, members of a Board or court and the presiding officers of a Labor Court, Tribunal or National Tribunal shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code (45 of 1860).

(7) Subject to any rules made under this Act the costs of, and incidental to, any proceeding before a National Tribunal shall be in the discretion of that National Tribunal, and the National Tribunal, as the case may be, shall have full power to determine by and to whom and to what extent and subject to what conditions, if any, such costs are to be paid, and to give all necessary

directions for the purposes aforesaid and such costs may, on application made to the appropriate government by the person entitled, be recovered by that government in the same manner as an arrear of land revenue.

(8) Every National Tribunal shall be deemed to be civil court for the purposes of sections 345, 346, and 348 of the Code of Criminal Procedure, 1973 (2 of 1974).

POWERS OF NATIONAL TRIBUNAL

Where an industrial dispute relating to the discharge or dismissal of a workman has been referred to a National Tribunal for adjudication and, in the course of the adjudication proceedings, the National Tribunal, as the case may be, is satisfied that the order of discharge or dismissal was not justified, it may, by its award, set aside the order of discharge or dismissal and direct reinstatement of the workman on such terms and conditions,

if any, as it thinks fit, or give such other relief to the workman including the award of any lesser punishment in lieu of discharge or dismissal as the circumstances of the case may require:

PROVIDED that in any proceeding under this section the National Tribunal, as the case may be, shall rely only on the materials on record and shall not take any fresh evidence in relation to the matter.

DUTIES OF NATIONAL TRIBUNALS

Where an industrial dispute has been referred to a National Tribunal for adjudication, it shall hold its proceedings expeditiously and shall, [within the period specified in the order referring such industrial dispute or the further period extended under the second proviso to sub-section (2A) of section 10], submit its award to the appropriate government.

MATTERS WITH IN THE JURISDICTION OF INDUSTRIAL TRIBUNALS (SECTION 7A)

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. Classification by grades;
8. Rules of discipline;
9. Rationalization;
10. Retrenchment of workmen and closure of establishment;
11. Any other matter that may be prescribed.

MACHINERY PROVIDED FOR SETTLEMENT OF INDUSTRIAL DISPUTE ACT, 1947.

| | |
|-----------------------|--------|
| Works Committee | Sec.3 |
| Conciliation Officer | Sec.4 |
| Board of Conciliation | Sec.5 |
| Courts of Enquiry | Sec.6 |
| Labour Courts | Sec.7 |
| Industrial Tribunal | Sec.7A |
| National tribunal | Sec.7B |
| Works committee | Sec.3 |

Where?: In the case where industrial Establishments with 100 or more workers

Members: Equal number of representatives of the Employer and Employees but total No. shall not exceed 20.

Objective: promotion of good relationship between employer and employee(s).

Conclusion: it may be noted that committee cannot decide and pass final judgment .The recommendation of committee are not binding.

Conciliation Officer Sec.4

Appointed by the appropriate Government.

Duty: Settlement of industrial disputes.

Nature : Appointed for a specified area or for specified industries in a specified area or for one or more specified industries and either permanently or for a limited period.

Board of Conciliation Sec.5

Appointed by the appropriate Government as occasion arises for settlement of disputes.

Members: Chairman and 2 or 4 other members. independent Person.

Objective: To induce the parties to come to a fair and amicable settlement of the dispute.

Courts of Enquiry Sec.6

Constituted by the appropriate Government as occasion arises for inquiring into any matter appearing to be connected with or relevant to an industrial dispute.

Members: A Court may consist of one or more independent persons.

Objective : to enquire the matter referred to it by appropriate Govt.& to make a report on matter.

Labour Courts Sec.7

Labour Courts are constituted by the appropriate Govt. for the adjudication of industrial disputes relating to any matter specified in the Second Schedule and for performing such other functions as may be assigned to them under this Act.

Members: Court shall consist of one person only

Submit its a Award to the appropriate Govt. soon after the conclusion of proceedings.

Industrial Tribunals Sec.7a

Tribunals are constituted by the appropriate Govt. for the adjudication of industrial disputes relating to any matter specified in the Second Schedule or the Third Schedule and for performing such other functions as may be assigned to them under this Act.

Members : it shall consist of one person only .

National tribunals Sec.7b

National Tribunals are constituted by the Central Government for the adjudication of industrial disputes which, in the opinion of the Central Government, involve questions of national importance or are of such a nature that industrial establishments situated in more than one State are likely to be interested in, or affected by such disputes.

Members : consists of only one person.

w Period of Binding

Settlements:

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

w 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.

strike and lockout in public utility services.

Sec.22 of the Industrial Disputes Act provides that:

(1) No person employed in a public utility service go on strike in breach of contract:

- (a) without giving notice of strike to the employer within six weeks before striking, or
- (b) within 14 days of giving notice, or
- (c) before the expiry of the date of strike specified in any such notice as aforesaid, or
- (d) during the pendency of any conciliation proceedings and 7 days after the conclusion of such proceedings.

(2) No employer on any public utility service shall lockout any of his workmen

- (a) without giving them notice of lock-out as herein after provided within six weeks before locking out; or
- (b) within 14 days of giving such notice; or
- (c) before the expiry of the date of lockout specified in any such notice as aforesaid; or
- (d) during the pendency of any conciliation proceeding before Conciliation Officer and seven days after the conclusion of such proceedings.

Difference between lock-out and retrenchment

- (1) **Temporary or permanent:** Lockout is temporary measure, while retrenchment is permanent.
- (2) **Relationship:** In lockout the relationship of employer and employee is only suspended; it does not come to an end. In retrenchment such a relationship is severed at the instance of the employer.
- (3) **Motive:** Lockout is with a motive to coerce the workmen; the intention of retrenchment is to dispense with surplus labour.

(4) **Trade dispute:** Lockout is due to an industrial dispute, whereas in case of retrenchment, there is no such dispute

Strike is the 'act of quitting work done by mutual understanding by a body of workmen as a means of enforcing compliance with demands made on their employer, a stopping of work by workmen in order to obtain or resist a change in conditions of employment'.

Lock-out is temporary suspension by employer to give employment to the workmen, unless the workmen accept the demands of the employer.

CONCLUSION

An industrial dispute may be defined as a conflict or difference of opinion between management and workers on the terms of employment. It is a disagreement between an employer and employees' representative; usually a trade union, over pay and other working conditions and can result in industrial actions.

When an industrial dispute occurs, both the parties, that is the management and the workmen, try to pressurize each other. The management may resort to lockouts while the workers may resort to strikes, picketing or gheraos.

It ensures harmonious relations through:

- a) Monitoring of industrial relations in Central Sphere.
- b) Intervention, mediation and conciliation in industrial disputes in order to bring about settlement of disputes.
- c) Intervention in situations of threatened strikes and lockouts with a view to avert the strikes and lockouts.
- d) Implementation of settlements and awards.

Industrial Tribunals are independent judicial bodies that hear and determine claims to do with employment matters. These include a range of claims relating to unfair dismissal, breach of contract, wages/other payments, as well as discrimination on the grounds of sex, race, disability, sexual orientation, age, part time working or equal pay.

The Central Government may, by notification in the Official Gazette, constitute one or more National Industrial Tribunals for the adjudication of industrial disputes which, in the opinion of the Central Government, involve questions of national importance or are of such a nature that industrial establishments situated in more than one State are likely to be interested in, or affected by, such disputes.

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