

20. INDUSTRIAL DISPUTE ACT AND ITS IMPACT ON INDUSTRIAL DEVELOPMENT: AN ANALYTICAL STUDY

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Abstract: The Industrial Disputes (Amendment) Bill, 2009 was introduced in the Rajya Sabha on 26th February, 2009. The bill seeks to amend a few provision of the Industrial Disputes Act, 1947. Industrial Disputes and their settlement have been provided in Industrial Disputes Act, 1947. The Act defines the relevant terms and also defines the Industrial Dispute, Industry and the mechanism of the settlement of dispute. Now we will study different dimensions in detail for managerial perspective. The study of Industrial Dispute prevention involves the study of determining the types of disputes and their causes along with the settlement and prevention of disputes in Management. What is the management attitude towards labour. An exploratory study to use in this paper for industrial dispute act and its impact on industrial development for analysis of different dimensions of this topic and the research paper based on secondary data sources. Finally study gives the suggestions and conclusion about how to prevent the industrial dispute.

Key words: Industry, Organization, Industrial Development, Industrial Dispute, Management, Wages, Employment, Worker and Industrial Dispute Act, 1947

FULL TEXT

Introduction

The term 'Industry' is equivalent to the Latin word 'Industria' which means 'work'? Popularly the word industry refers to a systematic economic activity, a trade or manufacture which makes use of mechanical, chemical and power-driven machinery as well as organization and intellectual aids in production. Industrial disputes are the disputes which arise due to any disagreement in an industrial relation. The term 'industrial relation' involves various aspects of interactions between the employer and the employees; among the employees as well as between the employers. In such relations whenever there is a clash of interest, it may result in dissatisfaction for either of the parties involved and hence lead to industrial disputes or conflicts. These disputes may take various forms such as protests, strikes, demonstrations, lock-outs, retrenchment, dismissal of workers, etc. In India, is the main legislation for investigation and settlement of all industrial disputes? The Act enumerates the contingencies when a strike or lock-out can be lawfully resorted to, when they can be declared illegal or unlawful, conditions for laying off, retrenching, discharging or dismissing a workman, circumstances under which an industrial unit can be closed down and several other matters related to industrial employees and employers.

Position in India

In India, unlike America, right to strike is not expressly recognized by the law. The trade union Act, 1926 for the first time provided limited right to strike by legalizing certain activities of a registered trade union in furtherance of a trade dispute which otherwise breach of common economic law.¹ Now days a right to strike is recognized only to limited extent permissible under the limits laid down by the law itself, as a legitimate weapon of Trade Unions.

The right to strike in the Indian constitution set up is not absolute right but it flow from the fundamental right to form union.²As every other fundamental right is subject to reasonable restrictions, the same is also the case to form trade unions to give a call to the workers to go on strike and the state can impose reasonable restrictions. In the **All India Bank Employees Association v. I. T.**, the Supreme Court held,

"The right to strike or right to declare lock out may be controlled or restricted by appropriate industrial legislation and the validity of such legislation would have to be tested not with reference to the criteria laid down in clause (4) of article 19 but by totally different considerations."

Thus, there is a guaranteed fundamental right to form association or Labour unions but there is no fundamental right to go on strike.⁴ Under the Industrial Dispute Act, 1947 the ground and condition are laid down for the legal strike and if those provisions and conditions are not fulfilled then the strike will be illegal.

Provision of valid strike under the Industrial Dispute Act, 1947

Section 2(q) of said Act defines the term strike, it says, "strike" means a cassation of work by a body of persons employed in any 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 accept employment. Whenever employees want to go on strike they have to follow the procedure provided by the Act otherwise there strike deemed to be an illegal strike. Section 22(1) of the industrial

Dispute Act, 1947 put certain prohibitions on the right to strike. It provides that no person employed in public utility service shall go on strike in breach of contract:

- a. Without giving to employer notice of strike within six weeks before striking;
or
- b. Within fourteen days of giving such notice; or
- c. Before the expiry of the date of strike specified in any such notice as aforesaid.

Types of Industrial disputes

Industrial dispute may take the form of strikes, go-slow tactics, token strikes, and sympathetic strikes, pen –down strike, hunger strike, and bandhs, gheraos and lock out.

A strike is a stoppage of work, initiated or supported by a trade union, when a group of employees act together as a last resort to bring pressure to bear on an employer to resolve a grievance or constrain him to accept such terms and conditions of services as the employees want to enjoy. If however, an employer closes down his factory or place where his workers are employed, or if he refuses to continue in his employ a person or persons because he wants to force them to agree to his terms and conditions of services during the pendency of a dispute. The resulting situation is a lockout. (C B Mamoria)

Disputes according to the code of Industrial relations introduced in the United Kingdom in 1972 are of two kinds (I.L.O., Conciliation of Industrial Dispute, All India Management Association), first Indian edition . 1980, pp 13-14.

- a) **Disputes of rights**, which relate to the application or interpretation of an existing agreement or contract of employment; and
- b) **Disputes of Interest**, which relate to the claims by employee or proposals by a management about the terms and conditions of the employment.

According to the Industrial Dispute Act 1947, and many judicial decisions which have been handed over by courts and tribunals, industrial disputes may be raised on any one of the following issues:

- Fairness of the standing orders;
- Retrenchment of workers following the closing down of a factory, lay-offs. Discharge or dismissal, reinstatement of dismissed employees, and the compensation for them;
- Benefits of an Award denied to a worker; nonpayment of personal allowance to seasonal employees; the demands of employees for medical relief for their parents;
- Wages, fixation wages and minimum rates, mode of payment, and the right of an employee to choose one of the awards when two awards on wages have been given;
- Lock-out and claim for damages by an employer because employees resorted to an illegal strike;
- Payment of hours, gratuity, provident fund, pension and traveling allowance;
- Disputes between rival unions.

Need of study

It is to be noted that these provisions do not prohibit the workmen from going on strike but require them to fulfill the condition before going on strike. Further these provisions apply to a public utility service only. The Industrial Dispute Act, 1947 does not specifically mention as to who goes on strike. However, the definition of strike itself suggests that the strikers must be persons, employed in any industry to do work.

Under the Act, statutory machinery has been constituted for conciliation and adjudication of industrial disputes. It includes:

- The Act provides for appointment of 'Conciliation Officers', by appropriate Government, charged with the duty of mediating in and promoting the settlement of industrial disputes. He/ she may be appointed for a specified area, or for specified industries in a specified area, or for one or more specified industries, either permanently or for a limited period. It is the duty of these officers to bring both the employees and employers together and help them to resolve their differences. If the dispute is settled, he/ she shall send a report, to that effect, to the appropriate Government.
- The appropriate Government may, as occasion arises, constitute a 'Board of Conciliation', which shall consist of a chairman and two or four other members, as the appropriate Government thinks fit. The Chairman shall be an independent person and the other members shall be persons appointed in equal numbers to represent the parties to the dispute. Where a dispute has been referred to a Board, it shall, without delay, investigate the dispute and do all such things as it thinks fit for the purpose of inducing the parties to come to a fair and amicable settlement of the dispute.
- The appropriate Government may, as occasion arises, also constitute a 'Court of Inquiry' to inquire into any matter appearing to be connected with or relevant to an industrial dispute. It shall, thereafter, report about it to the Government ordinarily within a period of six months from the commencement of its inquiry. Such a court may consist of one independent person or of such number of independent persons as the appropriate Government may think fit and where it consists of two or more members, one of them shall be appointed as the chairman.
- The appropriate Government may constitute one or more 'Labour Courts' to adjudicate industrial disputes relating to any matter specified in the second schedule like issues related to standing orders, discharge or dismissal of workers, illegality or otherwise of strikes and lockouts, withdrawal of any customary benefit, etc. and to perform such other functions as may be assigned to them under the Act. A labour court shall consist of one person only to be appointed by the appropriate Government.

- The appropriate Government may constitute one or more 'Industrial Tribunals' to adjudicate industrial disputes relating to any matter, whether specified in the second schedule or third schedule, and to perform such other functions as may be assigned to them under the Act. A tribunal shall consist of one person only to be appointed by the appropriate Government. The third schedule covers the matters such as wages, bonus, allowances and certain other benefits, certain working conditions, discipline, rationalization, retrenchment and closure of establishment.
- The Central Government may, by notification in the Official Gazette, constitute one or more 'National Industrial Tribunals' to adjudicate an industrial dispute 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. Such a tribunal shall consist of one person only to be appointed by the Central Government.
- The Act also makes it obligatory for an employer to set up a 'Grievance Settlement Authority (GSA)' in an industrial establishment in which fifty or more workers have been employed in the preceding twelve months. This authority shall have the responsibility to settle industrial disputes concerning an individual worker employed in that establishment.

Objectives

- To study the concept and causes of development of industrial dispute Act in Indian context.
- To examine problem and prospect of India dispute Act.
- To explore the impact of industrial dispute Act on industrial development.
- To analyze the trends of industrial dispute Act in India.
- To examine the impact of industrial dispute Act for employees.

Methodology

This research paper is based on secondary data sources where analysis of the trend of various disputes in industrial sector in India has been made and the concept of industrial development has been explored.

Data Collection

In this research paper data have to collect from various industrial dispute reports and grey literatures for various government institutions and also to use various online data.

Causes of Industrial Dispute

The disputes between the management and the workers may arise on account of the following factors:

1. Economic Cause

These causes may be classified as:

- Demand for increase in wages on account of increase in all-India consumer price index for industrial workers
- Demand for better social-security benefits
- Demand for higher bonus
- Demand for certain allowances such as:
 - House-rent allowance
 - Medical allowance
 - Night-shift allowance

- Conveyance allowance
- Demand for paid holidays
- Mode or terms and conditions of employment
- Reduction of working hours
- Better working conditions
- Violation of a registered agreement or settlement or award
- Demarcation or role clarity about a job or function

2. Political Causes

As in India, various political parties control trade unions in India. In many cases, their leadership vests in the hands of persons who are more interested in achieving their political interests rather than the interests of the workers.

Every right comes with its own duties. Most powerful rights have more duties attached to them. Today, in each country of globe whether it is democratic, capitalist, socialist, give right to strike to the workers. But this right must be the weapon of last resort because if this right is misused, it will create a problem in the production and financial profit of the industry. This would ultimately affect the economy of the country. Today, most of the countries, especially India, are dependent upon foreign investment and under these circumstances it is necessary that countries who seeks foreign investment must keep some safeguard in their respective industrial laws so that there will be no misuse of right of strike. In India, right to protest is a fundamental right under Article 19 of the Constitution of India. But right to strike is not a fundamental right but a legal right and with this right statutory restriction is attached in the industrial dispute Act, 1947.

NOTICE OF STRIKE

Notice to strike within six weeks before striking is not necessary where there is already lockout in existence. In **mineral Miner Union vs. Kudremukh Iron Ore**

Co. Ltd., it was held that the provisions of section 22 are mandatory and the date on which the workmen proposed to go on strike should be specified in the notice. If meanwhile the date of strike specified in the notice of strike expires, workmen have to give fresh notice. It may be noted that if a lock out is already in existence and employees want to resort to strike, it is not necessary to give notice as is otherwise required. In **Sadual textile Mills v. Their workmen** certain workmen struck work as a protest against the lay-off and the transfer of some workmen from one shift to another without giving four days notice as required by standing order 23. On these grounds a question arose whether the strike was justified. The industrial tribunal answered in affirmative. Against this a writ petition was preferred in the High Court of Rajasthan. Reversing the decision of the Tribunal Justice **Wanchoo** observed:

"...We are of opinion that what is generally known as a lightning strike like this take place without notice.... And each worker striking(is) guilty of misconduct under the standing orders ...and liable to be summarily dismissed...(as)... the strike cannot be justified at all. "

General prohibition of strike

The provisions of section 23 are general in nature. It imposes general restrictions on declaring strike in breach of contract in the both public as well as non- public utility services in the following circumstances mainly:

- a. During the pendency of conciliation proceedings before a board and till the expiry of 7 days after the conclusion of such proceedings;
- b. During the pendency and 2 months after the conclusion of proceedings before a Labour court, Tribunal or National Tribunal;
- c. During the pendency and 2 months after the conclusion of arbitrator, when a notification has been issued under sub- section 3 (a) of section 10 A;

- d. During any period in which a settlement or award is in operation in respect of any of the matter covered by the settlement or award.

The principal object of this section seems to ensure a peaceful atmosphere to enable a conciliation or adjudication or arbitration proceeding to go on smoothly. This section because of its general nature of prohibition covers all strikes irrespective of the subject matter of the dispute pending before the authorities. It is noteworthy that a conciliation proceedings before a conciliation officer is no bar to strike under section 23.

In the **Ballarpur Collieries Co. v. H. Merchant**⁷ it was held that where in a pending reference neither the employer nor the workmen were taking any part, it was held that section 23 has no application to the strike declared during the pendency of such reference.

Illegal Strike

Section 24 provides that a strike in contravention of section 22 and 23 is illegal. This section is reproduced below:

1. A strike or a lockout shall be illegal if,
 - i. It is commenced or declared in contravention of section 22 or section 23; or
 - ii. It is continued on contravention of an order made under sub section (3) of section 10 or sub section (4-A) of section 10-A.
2. Where a strike or lockout in pursuance of an industrial dispute has already commenced and is in existence all the time of the reference of the dispute to a board, an arbitrator, a Labour court, Tribunal or National Tribunal, the continuance of such strike or lockout shall not be deemed to be illegal; provided that such strike or lockout was not at its commencement in

contravention of the provision of this Act or the continuance thereof was not prohibited under sub section (3) of section 10 or sub section (4-A) of 10-A.

3. A strike declared in the consequence of an illegal lockout shall not be deemed to be illegal.

Consequence of Illegal Strike

1. DISMISSAL OF WORKMEN

In **M/S Burn & Co. Ltd. V, Their Workmen**, it was laid down that mere participation in the strike would not justify suspension or dismissal of workmen. Where the strike was illegal the Supreme Court held that in case of illegal strike the only question of practical importance would be the quantum or kind of punishment. To decide the quantum of punishment a clear distinction has to be made between violent strikers and peaceful strikers.

In **Punjab National Bank v/s Their Employees**, it was held that in the case of strike, the employer might bar the entry of the strikers within the premises by adopting effective and legitimate method in that behalf. He may call upon employees to vacate, and, on their refusal to do so, take due steps to suspend them from employment, proceed to hold proper inquiries according to the standing order and pass proper orders against them subject to the relevant provisions of the Act.

2. WAGES

In **Cropton Greaves Ltd. v. Workmen**, it was held that in order to entitle the workmen to wages for the period of strike, the strike should be legal and justified. A strike is legal if it does not violate any provision of the statute. It cannot be said to be unjustified unless the reasons for it are entirely perverse or unreasonable. Whether particular strike is justified or not is a question of fact, which has to be judged in the light of the fact and circumstances of each case. The use of force, coercion, violence

or acts of sabotage resorted to by the workmen during the strike period which was legal and justified would disentitle them to wages for strike period.

The constitutional bench in **Syndicate Bank v. K. Umesh Nayak decided the matter**; the Supreme Court held that a strike may be illegal if it contravenes the provision of section 22, 23 or 24 of the Act or of any other law or the terms of employment depending upon the facts of each case. Similarly, a strike may be justified or unjustified depending upon several factors such as the service conditions of the workmen, the nature of demands of the workmen, the cause led to strike, the urgency of the cause or demands of the workmen, the reasons for not resorting to the dispute resolving machinery provided by the Act or the contract of employment or the service rules provided for a machinery to resolve the dispute, resort to strike or lock-out as a direct is prima facie unjustified. This is, particularly so when the provisions of the law or the contract or the service rules in that behalf are breached. For then, the action is also illegal.

Right of employer to compensation for loss caused by illegal strike

In **Rothas Industries v. Its Union**, the Supreme Court held that the remedy for illegal strike has to be sought exclusively in section 26 of the Act. The award granting compensation to employer for loss of business though illegal strike is illegal because such compensation is not a dispute within the meaning of section 2(k) of the Act.

Causes of Industrial Dispute

The disputes between the management and the workers may arise on account of the following factors:

Economic Cause

These causes may be classified as:

- Demand for increase in wages on account of increase in all-India Consumer Price Index for Industrial Workers.

- Demand for higher gratuity and other retirement benefits.
- Demand for higher bonus.
- Demand for certain allowances such as:
 - House rent allowance
 - Medical allowance
 - Night shift allowance
 - Conveyance allowance
- Demand for paid holidays.
- Reduction of working hours.
- Better working conditions, etc.

Political Causes

Various political parties control Trade unions in India. In many cases, their leadership vests in the hands of persons who are more interested in achieving their political interests rather than the interests of the workers.

Personnel Causes

Sometimes, industrial disputes arise because of personnel problems like dismissal, retrenchment, layoff, transfer, promotion, etc.

Indiscipline

Industrial disputes also take place because of indiscipline and violence on the part of the workforce. The Managements to curb indiscipline and violence resort to lock-outs.

Environmental Factors

- Inflation
- Recession (market changes)
- Natural calamities

- Court decision
- Legislation or lack of legislation or changes
- Political interference
- Non-implementation of labour law.

Management Factors

- Attitudes (authoritarianism, autocratic, rigid)
- Refusal to recognize unions
- Inability to communicate effectively
- Discrimination in application of rules or procedures
- Violation of codes/agreement/laws/awards
- Playing off one union against another.

Trade Union Factors

- Support for poor work ethics or for indiscipline
- Indulgence in violence/ assaults on management
- Providing protection for indiscipline workers
- Wages and allowances, working conditions
- Workload productivity
- Quality
- Organization changes/ modernization/technological changes.
- Closure / lock-out/ sales/ mergers

Management Attitude towards Labour

Managements are generally are not willing to talk over any dispute with their employees or their Representatives or refer it to arbitration even when trade unions wants them to do so, A management unwillingness to recognize a particular trade union and the dilatory tactics to which it resorts while verifying the representative character of any trade union have been a very fruitful source of industrial strife.

Even when representative trade unions have been recognized by employers, they do not, in a number of cases, delegate enough authority to their officials to negotiate with their workers, even though the representatives of workers are willing to commit themselves to a particular settlement.

Some other Causes

- The absence of any suitable grievance redressal procedure, as result of which grievances go on accumulating and create a climate of unrest among the workers.
- When, during negotiations for the settlement of a dispute the representatives of employers unnecessarily and unjustifiably take the side of the management, tensions are created, which often lead to strikes, go-slow tactics or lock outs etc.
- The management insistence that they alone are responsible for recruitment, promotion, transfer, merit awards etc. and that they need not consult their employees in regard to any of these matters, generally annoys the workers, who become un-co-operative and unhelpful, and often resort to go slow tactics. As a result, tension builds up between the parties.
- The Services and benefits offered by a management to its employees do promote harmonious employer-employee relations. But a large number of management has not taken any steps to provide these benefits and services for their workers.

Conclusion and Suggestions

Industrial disputes can be treated as an index variable for the industrial relations situation of a country. Industrial relations actors, i.e. government, employers, management, trade unions and workers have earnestly desired to achieve harmonious industrial relations. In the present study industrial disputes denote work stoppages as well as those differences that are reported and settled through the industrial relations machinery. A comparative analysis of strikes and

lock out suggests that in absolute terms over the period of study the phenomenon of rising and emerging lock out started appearing on the industrial relations scene.

In 2006, 31 industrial disputes resulted in strike action. This is the highest number since 1989. Inspite if this, 2006 cannot be characterized as a year of great industrial unrest. A total of

11 thousand workers were involved in industrial action in 2006; in 2005 this was 29 thousand, and in 2004 104 thousand. At 16 thousand, the number of working days lost as a result of industrial action was substantially lower in 2006 than in preceding years. In 13 disputes, the duration of the strike was less than 1 day and in 17 cases it lasted 5 working days or longer.

There were a few very long strikes, but as they involved only few workers relatively few working days were lost. Most working days are lost through disputes about privatization or takeovers, and negotiations about collective labour agreements. Both these cost about 4.5 thousand working days. Strikes connected with closures cost 4 thousand working days. In India dispute resolution process mainly involves -Litigation, Arbitration, Conciliation, meditation.

Despite best effort of all, dispute arises among people and organisation. It is important to discover these clashes of interest as quickly as possible through such means as gripe boxes, direct observation of behavior, and analysis of records. An open door attitude, personnel counselors, morale surveys, exit interviews, ombudsmen and ombudswomen and grievance procedure.

A grievance is a complaint that the employees feels is serious enough to justify some types of formal submission and action. It may be ridiculous and justified, but whether or not it is a grievance is up to the employees and not to the management. The usual steps in grievance procedure are:

- Conference among aggrieved employee, the supervisor and the union steward

- Conference between middle management and middle union leadership
- Conference between top management and top union leadership
- Arbitration

The manner of processing the grievance on any one level should follow the sequence of functions found in the scientific method i.e. Receive and define the grievance, get the facts, analyze and decide, apply the answer and follow up.

Just as the individual makes certain demands upon the organization, so the organization expects certain things from its members. Codes of behavior are established. For those individual who do not choose to confirm to the codes, negative disciplinary action must be applied. The supervisor should seek to condition behavior and not merely to punish. In the application of penalties, the following guides have been found to be valuable:

- Disciplinary action should be administrative in private;
- An application of a penalty should always carry with it an explanation of what constitute proper behavior;
- Disciplinary action should be applied by the immediate supervisor;
- Promptness is important in the taking of disciplinary action;
- Consistency in penalty is highly essential;
- An immediate supervisor should never be disciplined in the presence of his or her own subordinate;
- After the disciplinary action has been taken, the manger should attempt to assume a normal attitude towards the employee.

REFERENCES

1. MAMORIA, C.B, DYNAMICS OF INDUSTRIAL RELATIONS IN INDIA, HIMALAYA PUBLISHING HOUSE,MUMBAI, 1983, P.249
2. I.L.O, CONCILIATION OF INDUSTRIAL DISPUTES, ALL INDIA MANAGEMENT ASSOCIATION, FIRST EDITION, 1980, P 13-14.
3. SUBRAMANIAN, K.N (1967), LABOUR MANAGEMENT RELATIONS IN INDIA, ASIA PUBLICATION HOUSENEW DELHI.

4. MONAPPA ARUN , INDUSTRIAL RELATIONS, TATA MC GRAW HILL PUBLICATION CO. LTD, NEW DELHI OFFICIAL WEBSITE OF ONGC LTD
5. THE ECONOMICS TIMES
6. INDIAN LABOUR JOURNAL
7. INDIAN JOURNAL OF INDUSTRIAL JOURNAL
8. [HTTP://BUSINESS.GOV.IN](http://business.gov.in)
9. GOVERNMENT OF INDIA, THE SECOND NATIONAL COMMISSION ON LABOUR REPORT(2002) AVAILABLE AT: [HTTP://LABOUR.NIC.IN/LCOMM2/NLC_REPORT.HTML](http://labour.nic.in/lcomm2/nlc_report.html)
10. MADRAS GYMKHANA CLUB EMPLOYEES UNION V. MANAGEMENT OF MADRAS GYMKHANA CLUB. AIR 1968 SC 554.
11. WORKMEN I.S. INSTITUTION V. I.S. INSTITUTION, AIR 1976 SC 145
12. MANAGEMENT OF SAFDARJANG HOSPITAL DELHI V. KULDIP SINGH. AIR 1970 SC 1407
13. Ibid.

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- Chicago Pratap, Singh Bheemvrat. "Industrial Dispute Act and Its Impact on Industrial Development: An Analytical Study." *SOCRATES* 2, no. 1 (2014): 243-261.