

Industrial Dispute Adjudication in India: An Overview

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Abstract

Industries on modern lines began for the first time in the Great Britain. It is only natural to industries to spread its roots to other nations which have close geographical proximity to Britain. Industries affect our daily lives to a great extent. Industries are a source of revenue to government. Both directly and indirectly, it employs millions of people. This study seeks to analyse the industrial adjudication machinery in India. A mechanism for resolving industrial disputes that emerge in India is provided under the Industrial Disputes Act, 1947. The said Act which empowers the statutory authorities to encourage the disputants to arrive at an amicable settlement also provides the duties to be discharged by the authorities. What is an Industry, what is an industrial dispute, what are the powers of authorities appointed under the said statute are all analysed in this study mentioned below.

Keywords: Industry, dispute, adjudication, statute

INTRODUCTION

Every industry has two major components: management that invests capital with the aim of reaping profits, and the labour that works to produce goods and services and earns wages/salary in return. In order to deal with such unpleasant situation, Industrial Dispute Act has been enacted by the parliament, which provides for industrial dispute adjudication machinery. What constitutes industrial dispute varies from case to case. Sometimes, a dispute concerning only to one employee might snowball into Industrial dispute when the trade union of which he is a member espouses his cause and there is a concerted demand by the members of the trade union for redress.

HISTORICAL EVOLUTION OF CONCEPT OF INDUSTRY

In ancient times, the concept of industry was non-existent and in medieval times the concept of industry was in a pre-nascent stage. It is only in 19th century the industry began taking its shape owing to scientific inventions by European scientists. The Industrial revolution first happened in Great Britain, followed by Belgium, France and other European nations. Many of innovations were of British origin. Europeans have exploratory attitude which Asians and Africans lacked. It is this reason that enabled Europeans to colonise Asian countries and African countries easily. The purpose of colonisation was to export raw materials from these backward nations to Industrialised European nations. At that time, the term 'Industry' meant an establishment where raw materials or semi-finished goods were transformed into a final product. But today, the term 'Industry' also includes various establishments which provide services to public irrespective of profit motive.

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Industry is lifeline of any nation. Nations that have prospered today are those who laid importance to industrialisation. Those nations that do not lay importance to industrialisation export raw materials at throwaway price to industrialised nations and import finished products at high prices, making them to continue to remain economically backward.

Today, the term 'Industry' includes education institutions, hospitals, recreational clubs, solicitor's office, software companies, among others. The concept of Industry has evolved much to the surprise of experts and common man.

MEANING AND DEFINITION OF THE TERM 'INDUSTRY'

The term Industry is defined in Industrial disputes Act as any activity carried on by way of co-operation between a management and its workmen (irrespective of such workmen being hired by such management either directly or through any agency, which also includes a contractor) for the purpose of distribution, supply or production of services or goods or both in order to satiate human wants or wishes [1]. Such wishes should not be spiritual or religious in nature. It is immaterial if any capital has been invested in conformity with the above objects or in anticipation of any profits which encompasses the provisions of Dock Workers (Regulation of Employment) Act, 1948 or any such work for the promotion of sales and businesses or both excluding:

1. Any agriculture; or
2. Health care centres; or
3. Handloom industries; or
4. Training, scientific, or research institutions; or
5. Charitable, social or philanthropic service carried on by institutions; or
6. Any activities of cooperative society, club or such like organizations, if the number of persons employed by them in relation to such activity is less than ten; or
7. Any activity of the government which is sovereign functions of the Government; or
8. Any activity which is local in nature; or
9. Any professional who employs less than ten people.

The *Triple Test* was laid down by the Supreme Court in *Bangalore Water supply case* [2], according to which an enterprise will be considered to be an industry if there is:

- i. Systematic activity,
- ii. Organised by way of cooperation between management and workmen, and
- iii. In order to produce and/or distribution of goods and services to satiate human wants and desires.

Whether the venture is public, joint or private; absence of profit motive is irrelevant.

Following enterprises fall within the ambit of meaning of the term 'Industry':

Hospital

Facts of the *Hospital Mazdoor Sabha case* are as follows [3]: The people of state of Bombay who were employed in the hospital had formed Hospital Mazdoor Sabha, a registered trade union. By way of retrenchment, service of two of its members was terminated. The trade union of hospital employees espoused their cause and preferred a writ petition. But the government urged that the writ was misconceived because hospitals do not constitute industry. It was held by the Supreme Court that hospitals come within the meaning of the term 'Industry'.

This judgement was overruled by *Safdarjung Hospital case* [4]. *Safdarjung Hospital case* was subsequently overruled in *Bangalore Water Supply case* supra in which TRIPLE TEST was laid by the Supreme Court and also held that hospitals run by government as part of its sovereign functions do not come within the meaning of the term 'Industry'.

Educational Institutions

The Supreme Court in *University of Delhi v. Ram Nath* case [5] held that activity of imparting education is a mission not a trade or business. However, the Supreme Court in *Bangalore Water Supply case* supra laid down the triple test thereby overruling its earlier judgement as it was inconsistent with triple test. The Supreme court in *Suresh Chandra Mathe v. Jiwaji University, Gwalior and others* [6] held that University is an industry and its staff are to be considered as workmen.

Clubs

The *Cricket Club of India case* [7] and *Madras Gymkhana Club case* [8] are two important cases where it was held that Clubs are not industry and it is wrong to equate it with a hotel. These cases have now been overruled in *Bangalore Water Supply case*. The Cricket Club of India and Madras Gymkhana Club fulfils the triple test laid down by the Supreme Court in *Bangalore Water supply case*. Hence, they come within the ambit of the term 'Industry'.

Evolution of legislations for settlement and investigation of industrial disputes before Independence

We can divide the time-period into three parts:

- i. From 1819 to 1930;
- ii. From 1930 to 1940; and
- iii. From 1940 onwards.

From 1819 to 1930, three legislations are important:

- a. Bengal Regulation VII of 1819 criminalised the breach of contract.
- b. Workmen were guaranteed the right to organise themselves and given immunity from civil and criminal liability with respect to strikes under Indian Trade Unions Act, 1926.
- c. For the purpose of investigation and settlement of trade disputes, Trade Disputes Act, 1929 provided for the establishment of Courts of Inquiry Boards of Conciliation.

Trade Disputes Act was amended in 1938 which provided for the conciliation officers given the duty of settling of industrial disputes.

From 1940 onwards the entire economic structure of the world underwent colossal changes due to World War II which prompted Government of India to Defence of India Rules in 1942 which empowered the government to prohibit strikes and lock-outs.

Industrial disputes Act, 1947 was enacted on 11th of March, 1947 to resolve disputes relating to industries which were encouraged by the government.

In *Dimakuchi Tea Estate case* [9], the objectives of Industrial Disputes Act, 1947 were laid down by the Supreme Court as follows:

- i. To maintain good industrial relations;
- ii. To resolve dispute in a peaceful manner;
- iii. To protect the interest of management and labour;
- iv. To regulate strike and lockout; and
- v. To ensure labourers are adequately compensated in case of retrenchment.

WHAT CONSTITUTES AN INDUSTRIAL DISPUTE? [10]

Any discord between employee and management, or between employees themselves amounts to industrial dispute. Even if a discord concerns a single employee but the cause is espoused by other workmen or trade union, then it amounts to an Industrial Dispute.

Disputes relating to wages, bonus, working conditions, clash of personalities, authoritarian leadership, strict discipline matters, pressure by the management on workmen to not to take part in

strike or trade union activities, etc. are industrial disputes when espoused by trade union or other workmen of the industry.

MECHANISM IN INDUSTRIAL DISPUTES ACT, 1947

Works Committee [11]

The concept of works committee was conceived and brought into practice in 1947 under Industrial Disputes Act, 1947 for the purpose of promoting measures for resolving disputes amicably and ensure good relations between employers and employees. Its purpose is to ensure that employers and their employees get along well with each other with least differences between them. Its concern is to ensure that the problems that arise in day-to-day working of the establishment are resolved in an amicable manner [12].

As per Section 3 of the ID Act, 1947 an employer employing 100 workers or more workmen, is required to constitute a works committee. Such committee should consist of representatives of management and employee of the establishment. And it should be ensured that the committee consists of more number of members representing the workmen than that of the employer. As per Rule 39 of the Industrial disputes (Central) Rules, 1957 the total number of members of such committee should not exceed 20.

It has been held in *Kemp and Co Ltd* [13] that the purpose of rules framed under the Industrial Disputes Act is to enable the works committee to resolve the disputes that arise between the employer and their employees.

Some of the difficulties faced by the works committee are as follows:

- Illiteracy and lack of understanding on the part of employees;
- Lack of appreciation on the part of management and workmen's representatives;
- Too much expectation by the workers from these representatives;
- Lack of cooperation and in some cases even opposition of the trade union leaders;
- The works committee is considered as a rival by the trade unions;
- Categorising the electoral constituencies into groups based on sections, departments or shops will only increase the problem of rivalry, thereby weakening the workmen in such committees;
- Statutory provisions do not clearly define the jurisdictions of these committees, thereby helping the recalcitrant employer; and
- Absence of machinery that enforces the solutions agreed between the management and works committee.

Functioning of the works committee have been successful for the following reasons:

- Existence of cooperation and cordial relations between the workers and management;
- Sympathetic attitude by the management in encouraging the workers to put forward their grievances and suggestions; and
- Foresight of the managements in having prior consultation with the works committee before bringing any changes in respect of welfare measures, service conditions, etc. [14].

Grievance Settlement Authorities [15]

It is mandatory for every establishment to constitute Grievance Redressal Committees as the situation demands for the purpose of resolution of grievances, if the establishment has 20 or more workmen on its payroll. The disputes that arise between the management and workmen shall be resolved by an administrative process called grievance procedure in day-to-day running of business.

There are equal numbers of management and labour representatives on the committee. The committee should consist of six or less than six members. The position of the Chairperson shall be rotated alternatively on yearly basis between members representing the management and the workmen.

It is mandatory for the committee to complete its proceedings before the expiry of 30 days from the date of receipt of the complaint. If anybody is aggrieved by the committee's decision, then they should appeal to the employer. And such employer on receiving the appeal shall dispose-off the appeal before the expiry of 30 days from the date on which the appeal has been received by the him. It is the duty of the employer to state the reasons for his decision and send a copy of it to the workmen concerned.

Conciliation Officers [16]

Any individual may be appointed by the competent government, either permanently or temporarily, for a certain region or set of industries by means of a notification in the official gazette. The ID Act empowers the conciliation officers to hold conciliation proceedings to resolve industrial disputes in a fair and amicable fashion without undue delay. Such proceedings are conducted in private.

Conciliation officers have following duties:

- When an industrial dispute exists or is apprehended, he shall conduct conciliation proceedings in prescribed fashion.
- For the purpose of settling a dispute, the conciliation officer will investigate the dispute referred to him and all relating matters without any delay. For the purpose of settling the industrial disputes in a fair and amicable way, he is empowered to do all such things as he thinks fit.
- If the parties to the dispute have arrived at a settlement, then the officer without any delay sends a report signed by the disputing parties to the appropriate government accompanied by a settlement memorandum.
- If the parties to the dispute were unable to reach a resolution, the conciliation officer should make a report to the relevant authorities. In this report he should mention the reasons explaining why no settlement could be arrived at by the parties to the dispute. He should also mention in the same report the steps that were taken by him to ascertain the facts.

The appropriate government has the discretion to refer such unresolved disputes either to the labour court or to industrial tribunal if it is of the opinion that it is a case fit for reference to the above mentioned forum in the clause. If the case is not referred by the appropriate government to any of the above mentioned fora, then the appropriate government shall record the reasons for not referring it and forward a copy of it to the parties to the dispute.

Powers of Conciliation Officers

Just like the Civil Procedure Code vests the civil courts with many powers, the Conciliation officers are also vested with same powers. He is vested with the power to enter the premises after giving reasonable notice to the parties and inspect it or any machinery, appliances or articles. He is also vested with the power to interrogate any person in respect of anything situated in the premises concerning the subject matter of the conciliation. He can summon for the production of the documents and inspect any documents which he has reason to believe that to be relevant to the dispute.

Board of Conciliation [17]

The ID Act gives the relevant government the authority to establish a Board of Conciliation with the goal of settling labour disputes. The competent government shall notify the public of the establishment of such a Board in its official gazette.

The head of the Board should be chosen by the competent government from among independent candidates.

The board shall also comprise of members representing the disputing parties and the total number of such members shall be either two or four. Only on the recommendation of parties to the dispute, a person shall be appointed as a member to represent that party on the board.

The appropriate government shall appoint such persons to represent that party to the dispute as it thinks fit, if the parties to the dispute have not appointed a person to that extent within the time prescribed by the law.

Even if the chairman or any of the members of the committee are absent or any vacancy in its office, the board may function if they have quorum required.

The Board and conciliation officer both have a similar mode and procedure of function. During the pendency of the procedure relating to the dispute before the Board, the appropriate government may prohibit any strike or lockout. The board must produce its findings within 2 months of the day it was tasked with handling the issue, preferably considerably earlier.

In the course of conciliation proceedings if any settlement has been arrived at by the disputing parties, then it shall be binding on the following:

- All workmen who on the date of the dispute have been employed by the industry which has been a party to the dispute;
- Workmen who are employed in that establishment subsequent to date of dispute; and
- All parties to the dispute, their legal heirs and successors.

Conciliation proceedings have been a failure for the following reasons:

- i. No qualification or experience is prescribed by the ID Act for the purpose of appointment as conciliation officer or a member of a board of conciliation.
- ii. Lack of proper personnel in resolving the dispute.
- iii. The conciliation officers appointed are unqualified, inexperienced, untrained and unaware of ground realities.

Court of Inquiry [18]

In case the industrial dispute has not been resolved by way of conciliation proceedings, then the appropriate government may by way of notification in the official gazette constitute a court of enquiry under section 6(1) of the ID Act. The appropriate government is empowered by section 6(2) to appoint one or more independent persons to the Court of inquiry. When the court of inquiry has two or more members, the appropriate government has the discretion to appoint one of the independent member as the chairman.

According to Sub-section 3 of Section 6 of the Act, the court of inquiry is empowered to function even if the chairman or a member is absent. But the court shall not function if the office of chairman is vacant. The court will resume its functions provided a new chairman has been appointed by the appropriate government. In order to advise the Court of Inquiry, it has been empowered by the ID Act to appoint any number of persons as assessors if such persons have specialised knowledge of the matter before it. Within 6 months of the day the inquiry began, the Court of Inquiry must investigate the disputes that have been submitted to it and provide a report with findings to the relevant government [19].

Voluntary Arbitration [20]

When there is a dispute, parties usually approach court, seeking relief. This process will take years together to grant relief to parties to the dispute as our courts have already been burdened with lots of cases. In order to avoid this, the ID Act empowers the parties to a dispute to voluntarily submit their dispute to arbitration which ensures quick relief to both the parties. The arbitrator shall be an impartial person appointed by mutual consent of parties or by statutory provisions. This method is one of the effective methods of resolving a dispute at the earliest.

Advantages of arbitration are as follows:

- It takes realities of the situation into account.

- It fulfils the expectations of the parties.
- It is voluntary based.
- It promotes mutual trust.

India adopted compulsory adjudication till 1956 and had failed to recognise voluntary arbitration. In 1956, the government through Industrial Disputes (Amendment) Act, 1956 inserted Section 10A which gave legal sanctity to voluntary Arbitration.

Steps involved in reference of a dispute to Voluntary Arbitrator are as follows:

1. Parties are authorised by section 10A (1) of the ID Act to refer their dispute to Voluntary Arbitrator. But before it, following conditions must be fulfilled:
 - The Industrial dispute that is to be referred to arbitration must be existing or be apprehended.
 - The agreement which provides for referring disputes to arbitration shall be in writing.
 - The dispute has to be first referred to a voluntary arbitrator before it is submitted to adjudicatory authorities such as Labour court, Industrial Tribunal or National Tribunal.
2. Method by which arbitrator is selected: The next step in voluntary arbitration is selection of arbitrator. The parties to a dispute then shall appoint arbitrators to arbitrate in a dispute. If the number of arbitrators is even in number, then the parties to the dispute should appoint an umpire. When the arbitrators are equally divided, then the decision of the umpire will prevail.

Following are the essentials of Arbitration agreement:

- The agreement that provides for arbitration must be in writing.
- Rule 7 of the Industrial Disputes (Central) rules, 1957 states that the agreement that provides for arbitration must be in Form C.
- The parties to the dispute should sign it.
- The consent of the arbitrator(s) must accompany the arbitration agreement.
- Such arbitration agreement has to be forwarded to the appropriate government for the purpose of publication.
- It is only after publication of the agreement the dispute can be referred to the arbitrator(s) for resolution.

Failure to comply with the above conditions shall prove to be fatal to the arbitration award.

The arbitration agreement that the parties to the case have engaged into, governs the arbitrator's area of authority. He shall act impartially and not receive any favour or hospitality from any parties to the dispute.

Does the arbitrator have the same authority as the Labour Court, Industrial Tribunal, or National Tribunal, or not? This question was answered in affirmative by Justice Krishna Iyer in *Gujarat steel tubes vs Gujarat steel tubes Mazdoor Sabha* [21] and held that the arbitrator is clothed with similar powers as labour court and industrial tribunal.

The High Courts have been endowed with power of superintendence over all lower courts and tribunals within its jurisdiction. A question arose whether a High Court has power to interfere with the award of the arbitrator. The Supreme Court in *Engineering Mazdoor Sabha v. Hind Cycles Ltd.* [22] answered it in negative and held that 'arbitrator' is not a 'tribunal' and High Courts do not have power of superintendence over arbitrators.

But in *Rohtas Industries Ltd* [23] case, Justice Krishna Iyer held that the High Court has power of superintendence over Voluntary arbitrator too just as it has over tribunal.

Whether an appeal under Article 136 of the Constitution lie to Supreme Court from Arbitration Award or not?

In *Engineering Mazdoor Sabha v. Hind Cycles* [24] it was held that an appeal would not lie to Supreme Court under Article 136 from an award because arbitrator is not a tribunal and is not clothed with inherent Judicial Powers. But in *Rohtas Industries Ltd case* [25], the Supreme Court extended the application of Art 136 to an award of the arbitrator under Section 10A.

Adjudication System in India

The last method in resolving a dispute is refer it to a statutory adjudication authorities such as Labour Court, Industrial Tribunal and National Tribunal. It is left to the discretion of the appropriate authorities to refer the industrial dispute to the adjudicatory authorities. Industrial Disputes in the West are resolved by the process of Collective bargaining between the Management and the trade unions, but in India, it is done by adjudicatory process because trade unionism is weak and not on equal footing with the management.

Labour Court [26], Industrial Tribunal [27] and National Tribunal [28]

A three-tier adjudication system has been introduced in India by way of Industrial Disputes (Amendment and Miscellaneous Provisions) Act, 1956. The labour Court, Industrial Tribunal and National Tribunal are ad hoc bodies provided under the ID Act and they all consist of a single member called presiding officer. Section 7 and 7A of the ID Act empowers the Central and State government to establish any number of Labour Courts and Industrial Tribunals with pre-determined jurisdiction to adjudicate industrial disputes. And Section 7B empowers the central government to establish National Tribunals to adjudicate industrial disputes considered as national importance by the Central government.

CONCLUSION

Industrial Disputes Act, 1947 is to a good extent a capable statute of resolving disputes concerning industries. As discussed earlier it provides mechanism for resolving industrial disputes. Resolving a dispute is a right that must be given to a workmen and employer under Industrial laws and labour policy and this is inalienable. The functioning government may send an industrial issue to a labour court, an industrial tribunal, or a national tribunal when the works committee or grievance redressal committee has been unable to resolve it. In comparison to other methods of conflict resolution, adjudication has far higher costs and takes longer. The adjudicatory authorities must be sensitised of industrial disputes before being appointed as adjudicatory authorities. In adjudication system, the decision makers and lawyers are in control of the procedure, not the litigants. The adjudicatory authorities must be given free hand to hear the case and do away with strict rules of procedure which will benefit all the stakeholders. Pre-institution mediation must be encouraged because it will bring the situation of each party to the notice of each other which in turn will help them appreciate their position. Referring the dispute to adjudicatory authority will only worsen the matter because the courts are already burdened with umpteen number of cases. Hence, the disputants should take recourse to those modes which help them redress the disputes in a simple and faster way.

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