

Industrial Disputes Act, 1947

Labour Law

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Chp. II - Authorities

Chp. II - A & B

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Sec. 9-A Sec. 9-B
(Notice of Change) [Grievances
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Chp. III - References of Disputes [Section 10]

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Objectives & Scope of the Act

Workmen of Bombay
Management of Bombay

- (1) To maintain harmonious relationship between employer and workmen, workmen and workmen and employer and employee.
- (2) To settle down industrial dispute.
- (3) The prevention of illegal strikes & lock-outs.
- (4) Collective Bargaining.
- (5) Relief to the workmen in the matter of lay-off, retrenchment and closure of an undertaking.

<u>Strike</u>	<u>Lock-outs</u>	<u>Collective Bargaining</u>	<u>Lay-off</u>	<u>Retrenchment</u>
Cessation of work or stoppage of work for a certain period.	Temporary closing of a place of employment.	9	Pulling aside workmen temporarily.	Termination by the employer the sum of Rs. 25000.
				except VRS

Closure → closing down of a place permanently

Main Features of the Act

- (1) Any ID may be referred to an industrial tribunal by an agreement of parties to the disputes or by the State Govt. An award shall be binding on both the parties to the dispute.

Strikes & lock-outs are prohibited :-

- (i) during pendency of conciliation and adjudication proceedings.

(4) In public interest or emergency the appropriate Govt. has power to declare the transport (other than railways), coal, cotton, textiles, foodstuff and iron and steel industries to be a public utility services.

(5) In case of lay-off or retrenchment of workmen the employer is required to pay compensation to them.

(6) Provision has also been made for payment of compensation to workmen in case of transfer or closure of an undertaking.

(7) A no. of authorities such as work Committee, conciliation, officers, board of conciliation, courts of inquiry, labour courts, tribunal and national tribunals are provided for settlement of Industrial disputes.

Definition [Section 2]

(1) Section 2(a) - Appropriate Government

Central Govt.

State Govt.

The central as well as the state government are vested with various powers and the duties in relation to matters dealt within this Act.

(2) Section 2(aaa) - Average Pay.

Average pay means the average of wages payable to a workman —

(i) in the case of monthly paid workman — the average

of monthly wages payable in 3 complete calendar months. (4) $\frac{12}{3}$ of

[Consider 3 month wages of the workman]

(ii) in the case of weekly paid workmen —

the average of the weekly wages payable in four complete weeks. [Consider 4 weeks wages of the workman]

(iii) in the case of daily paid workman —

the average of the daily paid payable in 12 full working days. [Consider 12 days wages of the workman]

Section 2(aa) — Arbitrator

Arbitrator includes an umpire. [It means a judge]

Section 2(cc) — Closure

Closure means the permanent closing down of a place of employment or part thereof.

Section 2(e) — Conciliation proceeding

Conciliation proceeding means any proceeding held by a conciliator officer or Board under the Act.

[Board means a board of conciliation under the Act] Section 2(f)

Section 2(ee) — Controlled Industry

Controlled industry means any industry the control of which by the Union has been declared by any Central Act to be expedient in public.

Explanation → (1) An industry which is under the control of the Central Govt. (2) It should be declared by a

Central Act to be an industry, the control of which is expedient in public interest.

Section 2 (b) — Award

Award means an interim or final determination of any industrial dispute or any question relating thereto by any labour court, Industrial Tribunal or National Industrial Tribunal and includes an arbitration award made under Sec. 10.

[Interim award is not the final determination of some of the points involved in an industrial dispute.] It is a provisional or temporary arrangement made in a matter of urgency and subject to a final adjustment on the final determination of a dispute.]

Section 2 (g) — Employer

Employer means —

- (1) In relation to industries carried on by or under the authority of the any department (a) Central Govt.
(b) State Govt. ~~(iii) local authorities~~ or where no authority is prescribed it is the head of the department.
- (2) In relation to an industry carried on by or on behalf of the local authority, — the chief executive officer of that authority.

Section 2 (n) — Public Utility Service means —

[The services which are related to public at large]

- (i) Railway service or any transport service.
- (ii) Service related to major port or dock.
- (iii) Services related to safety of the establishment or the workmen employed in an industrial establishment.

- (v) Any postal or telegraphic or telephonic services.
- (vi) The industry which supplies power, water or other necessities of the life.
- (vii) Services related to sanitation system.

Section 2(P) — Settlement

Settlement means a settlement arrived at in the course of conciliation proceedings. It includes a written agreement between the employer and workman arrived at between the parties and this agreement is signed by the parties.

Section 2 (rr) — Wages

Wages means all remuneration capable of being expressed in terms of money which would, if the terms of employment, expressed or implied were fulfilled, be payable to a workman in respect of his employment or of work done in such employment and includes —

- [Wages means remuneration paid to the workman capable of being expressed in terms of money paid to workman for the services provided by him. The terms of employment may be expressed or implied. It includes —
- (i) allowances paid to the workman or which workman is entitled.
 - (ii) The value of house of accommodation or supply of water, electricity, medical or any other immunities provided to the workman.

- (iii) Travelling allowances or concession.
(iv) Any commission paid or payable on the promotion of business or industry. (7)

Exception [does not include]

(i) Bonus.

(ii) Contribution paid or payable by the employer towards any pension fund or provident fund.

(iii) Gratuity payable on the termination of his service.

Section 2(s) — workman.

Workman means a person who is employed in a industry or establishment to do skilled, unskilled, operational, technical, clerical or supervising work or reward and the terms of employment are expressed or implied. If a workman is dismissed or discharged then that person is coming under this category for this purpose.

Exception [Does not include]

- (i) A person who is subject to Air Force Act, Army Act or Navy Act.
(ii) A person who is employed in the police service or jail.

(iii) A person who is employed as a managerial capacity or an administrative capacity.

(iv) If a person is employed as a supervisor and draws wages exceeding Rs. 10,000/- ^(2007 Amendment) earlier it was Rs. 1,600/-

(8) Define Industrial Dispute ? And when does an Individual Dispute becomes Industrial Dispute ? (Very Imp) (8)

Ans:- Section 2(k) → Industrial Dispute.

Industrial Dispute means any dispute or difference between (1) employers and employees or

(2) Employers and Workmen. or

(3) Workmen and workmen

And such dispute is related to the terms and conditions of the employment or non-employment or ^{retranchment as well as} ^{refusal to} ^{dismissal} of any person.

[or with the condition of labour of any person.]
An industrial dispute pre-supposes the existence of an industry. There can be no industrial dispute in the absence of any industry as defined above.

On scrutiny of the above definition, the following points have to be noted:-

(1) A dispute or differences must exist.

(2) Such dispute or difference should be between any of the classes of the person mentioned in the definition.

(3) The dispute must relate to ~~the~~ or be connected with the employment or non-employment or the terms of the employment or condition of

In the first instance there must be a dispute or difference. (9)

Sindhu Resettlement Corporation Limited
v/s

Industrial Tribunal. [1968 ILLT, 834].

The SC held that a mere demand to the appropriate government, without a dispute being raised by the workman with their employer cannot become an industrial dispute.

The second important aspect of an industrial dispute is that it should be between the parties mentioned in the definition namely:

- (i) employer and employee.
- (ii) Employer and workman.
- (iii) Workmen and workmen.

Srambhu Nath
v/s

Bank of Baroda [AIR 1978 SC 1084]

The SC held that for a dispute to be an industrial dispute it is necessary a demand must be raised on management and rejected by them.

Making such a demand to the Conciliation officer and its communication by him to the management who reject the same is not sufficient to constitute an industrial dispute.

The third essential point is that the dispute or difference must be connected with the employment or non-employment or with the ~~employment~~ condition of labour of any person.

The scope "any person" means that the person may not be a workman but he may be someone in whose employment, terms of employment or condition of labour the workmen as a class have a true and substantial interest.

[It was held in Workmen of Dimakuchi Tea Estate vs Management of Dimakuchi Tea Estate] (AIR 1958 SC 353)

Section 2-A → When Individual Dispute can become Industrial Dispute.

If a workman is dismissed or discharged, retrenches or otherwise terminates ~~his~~ service from the employment by the employer then in such case dispute pending for such dismissal or discharge, retrenchment or termination from service is considered as an industrial dispute and not an individual dispute.

Q. (8) Define and explain the term Industry under Industrial Dispute Act, 1947? (11)

Ans. Section 2(j) — Industry.

(1) Industry means any business, trade, undertaking, manufacture or calling of employers. It also includes any calling service, employment, handicraft or industrial occupation or avocation of workmen.

(2) However, this definition does not explain whether clubs, education and charitable projects are included in the scope of industry. It is also difficult to determine whether an activity is an industry as defined in the Industrial Dispute Act, 1947.

(3) Pursuant to the decision in the Bangalore Water Supply & Sewage Board v. A. Rajappa [AIR 1978 SC 548] the ambit of the term industry was widened. The SC laid down the test popularly known as the "Triple Test".

Triple Test :- Where there is—

- (1) Any systematic activity
- (2) Organised by co-operation between employer and employee
- (3) For supplying services or goods in the society to satisfy human wants or wishes.

~~The SC also emphasised the following points~~

- (i) Whether any investment has been made for the purposes of carrying on such activities.
- (ii) Whether such activity is carried on with a motive to make any gains or profit out of it, are immaterial factors. [Amendment 1982 but not yet enforced].

Exceptions →

- (1) Any agricultural operations.
- (2) Hospitals and Dispensaries.
- (3) Educational, Scientific, Training or Research Institute.
- (4) Institute managed or engaged in social or charitable purpose.
- (5) Khadi or village industry.
- (6) Activity which is related to the sovereign function of the government.
- (7) Any domestic services.
- (8) Any systematic activity being a profession if persons employed there in are less than 10.
- (9) Any activity carried on by a Co-operation Society or by a club or by another institution where person employed there in are less than 10.

(A) Whether Hospital is an Industry?

State of Bombay v/s Hospital Mazdoor Sabha	[AIR 1960 SC 610]
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The SC held that the group of hospitals to be an industry because these hospitals are run by the state government for giving medical relief to citizens and imparting medical education and such medical facilities are

rendered to the society at large with the help of its (1)
Employee. (2)

- (2)

Management of Saydarian Hospital v/s Kuldip Singh

 AIR 1970
SC 1460

The SC held that hospital is not an industry because it is entirely a charitable institution carrying on work of training, research and medical treatment.

- (3)

Dhanraj Giri Hospital v/s Workmen

 AIR 1975 SC 2032.

The SC held that hospital is not an industry because it is not carrying on any economic activity in the nature of trade or business. It is not rendering medical services by bringing in any element of trade or business in its activity.

The last two cases i.e. Management of Saydarian Hospital v/s Kuldip Singh and Dhanraj Giri Hospital v/s Workmen are overruled by Bangalore water supply case and as per the "Triple Test" laid down in Bangalore water supply case, if any establishment fulfill the conditions then it will be an industry.

But all other hospitals, both public and private whether charitable or commercial would be an industry if they fulfill the triple test.

B) Whether University is an Industry?

University of Delhi
v/s
Ram Nath

AIR 1963 SC 1873.

The SC observed that work of imparting education is more a mission than any profession, trade or business. Therefore, it is not an industry.

Osmania University
v/s
Industrial Tribunal, Hyderabad

1960, I LLJ 593.

The HC held that in this case, university is not an industry because such university is imparting education in the society.

Sumerchand
v/s
labour court, Ambala & another

(1992) I LAB
LT 394 (P&H)

The Court held that university is an Industry as the person employed in the University is a workman. (3)

Since the University of Delhi case has been overruled by the SC case in Bangalore water supply case, the present position is that the educational institutions including the university are industry in a limited sense. Now those employees of educational institutions who are covered by the definition of workman under section (s) of I.D. Act, 1947 will be treated as workman of an Industry.

Whether Club & Gymkhana is an Industry?

(1) Cricket Club of India
v/s
Bombay Labour Union [AIR 1969 SC. 276.]

The Court held that the Club is the self service institution so it is not an industry. This institution provides gathering facilities to its members or their guest. So the gathering facilities is available only to the members of the Club.

(2) Madras Gymkhana Club Employees' Union
v/s
management [AIR 1968 SC. 554.]

The Court observed that the Club is a member self-service institution and not an

industry. The club provides the venue for sports, games and other facilities for recreation and entertainment.

Therefore now club would be an industry because they fulfill the Triple Test laid down in Bangalore Water Supply case. Both are systematically organised with the co-operation ~~and~~ of employer and employee for distribution of service to satisfy human wishes.

Authorities

(12)

Inquiry

(A) Conciliating Authorities.

- (1) Works Committee — (Section 3)
- (2) Conciliation officer — (Section 4)
- (3) Board of conciliation — (Section 5)

(B) Inquiry

- (1) Court of Inquiry (Section 6)

(C) Adjudicating Authorities.

- (1) Labour Court — (Section 7)
- (2) Industrial Tribunal (Section 7 - A)
- (3) National Tribunal (Section 7 - B)

Conciliating Authorities.

a) Work Committee — Section 3.

- (1) Where 100 or more than 100 workmen are employed or were employed in last preceding 2 months then the Appropriate Government.

by the general or special order require the employer to constitute work committee. (19)

(2) Equal number of representatives from employer and workman side should be appointed in the committee.

(3) It is the duty of the Committee to promote measures for securing amity and good relationship between the employer and the workman.

C.L.:- | Kemp and Co. Ltd. | (1955) I LLJ 48.
v/s
Their Workmen

It was held that although the decision of the works committee are not conclusive they do have great weight. The work committee is constituted in order to look after the welfare and interest of the workman and they are mainly concerned with the issues related to day to day problems.

Conciliation Officer — Section 4

(19)

- (1) The Appropriate Government by notification in the official gazette may appoint a conciliation officer or officers as it thinks fit.
- (2) The duty of the Conciliation officer is to mediate and promote the settlement between the parties of the dispute.
- (3) A conciliation officer can be appointed for its specified area or areas or for its specified industry or group of industries.
- (4) The appointment ^{of the Conciliation officer} may be either permanently or limited period.

(C) Board of Conciliation — Section 5

- (1) The Appropriate Government as and when occasion arises may constitute such authorities by notification in the official gazette: It is to bring both the parties who are dispute to sit together and thrash out their differences and find out ways and means to settle them.
- (2) The Board shall consists of a chairman and two or ~~more~~ four members, as the appropriate Government thinks fit.
- (3) The chairman should be an independent person and equal number of representatives

Should be appointed from both the sides.

(4) The duty of the Board is try to settle down the disputes by way of settlement.

(B) Inquiry

Court of Inquiry — Section 6

- (1) The Appropriate Government as, and when occasion arises may constitute a court of inquiry by notification in the Official Gazettee.
- (2) A court may consist of one independent person or such number of independent person as the Appropriate Government thinks fit.
- (3) Where a court consists of two or more members one of them shall be appointed as the Chairman.
- (4) Lilavativs State of Bombay / AIR ¹⁹⁵⁷ ~~1957~~ SC 521

~~115~~

In this case, it was pointed out that although section 9 provides the finality in respect of orders passed constituting Conciliation Boards and Court of Inquiry, Constitutional remedies under Article 32, 226 & 227 are not excluded.

Adjudicating Authorities

(I) Labour Court — Section 7

- (1) The Appropriate Government by notification in the official gazette, will constitute one or more Labour Court for adjudication of dispute.
- (2) The matters which are specified under Schedule II should be referred to Labour Court.
 - Interpretation of Standing Order Act.
 - Legality of the orders.
 - Illegality of strike and Lockout, etc.
- (3) A Labour Court shall consist of one person who will be the Presiding Officer of the Court by Appropriate Government.

Qualification

- (1) If he is or has been a judge of High Court or
- (2) He has been a district judge or additional district judge for a period of not less than 3 years or
- (3) He has held any judicial office in India for a period not less than 7 years or.
- (4) He has been the Presiding Officer of a Labour

Court constituted under any other Act for a period of minimum or not less than 5 years or

- (5) He is or has been a Deputy Chief Labour Commissioner (Central) or Joint Commissioner of the State Labour Department having a degree in law and should have at least 7 years experience in the labour Dept. including 3 years of experience as Conciliation Officer. [Added by 2010 Amendment]
- (6) He is an officer of Indian Legal Service in Grade III with 3 years experience in the grade.

II) Industrial Tribunal — Section 7-A.

(1) The Appropriate Government by notification in the official Gazette will constitute one or more Industrial Tribunal for adjudication of dispute.

(2) The matter which are specified under Schedule

- III should be referred to industrial tribunal
- leave with wages.
 - Compensation.
 - Shift working hours.
 - Retrenchment.
 - Interval during working hours.
 - Weekly Rest Day.

(Qualification same as S.7 except judicial officer power)