

**B.A.LL.B. VII SEMESTER**  
**SUBJECT – LABOUR AND INDUSTRIAL LAW**  
**CODE – BL-701**

**TOPIC -Industrial Disputes Act 1947**

**Introduction**

The history of exploitation of labour is as old as the history of civilization itself. There has been an ongoing struggle by labourers and their organizations against such exploitation, but it continues in one form or the other. Prior to the year 1947, industrial disputes were being settled under the provisions of the Trade Disputes Act, 1929. The Experience of the working of the 1929 Act revealed various defects, which needed to be overcome by a fresh legislation. Accordingly the Industrial Disputes Bill was introduced in the Legislature. The Bill was referred to the select committee. On the recommendations of the Select Committee amendments were made in the original Bill. The Industrial Disputes Bill having been passed by the Legislature received its assent on 11th March, 1947. It came into force on first day of April, 1947 as THE INDUSTRIAL DISPUTES ACT, 1947 (14 of 1947).<sup>1</sup> It was enacted to make provisions for investigation and settlement of industrial disputes and for providing certain safeguards to the workers. The Act contains 40 sections divided into 7 chapters. So an industrial dispute as a conflict or difference of opinion between management and workers in the terms of employment. It is a disagreement between an employer and employees' representative. 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. The Industrial Disputes Act, 1947 is an important legislation in the direction of attaining fair treatment of labour and industrial peace.

**Objective of the Act-<sup>2</sup>**

To secure industrial peace and harmony by providing machinery and procedure for the investigation and settlement of industrial disputes by negotiations. The Act also lays down:

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<sup>1</sup> The Industrial Disputes Act, 1947 (14 of 1947).

<sup>2</sup> For Statement of Objects and Reasons see Gazette of India 1946, Pt. V. pp. 239-240; are report of select Committee, se ibid, 1947 Pt. V. pp. 33-35.

- (a) The provision for payment of compensation to the Workman on account of closure or lay off or retrenchment.
- (b) The procedure for prior permission of appropriate Government for laying off or retrenching the workers or closing down industrial establishments
- (c) Unfair labour practices on the part of an employer or a trade union or workers.

### **Applicability<sup>3</sup>**

The Industrial Disputes Act extends to the whole of India and applies to every industrial establishment carrying on any business, trade, manufacture or distribution of goods and services irrespective of the number of workmen employed therein.

Every person employed in an establishment for hire or reward including contract labour, apprentices and part time employees do any manual, clerical, skilled, unskilled, technical, operational or supervisory work, is covered by the Act.

This Act though does not apply to persons mainly in managerial or administrative capacity, persons engaged in a supervisory capacity or executing managerial functions and persons subject to Army Act, Air Force and Navy Act or those in police service or officer or employee of a prison.

### **Important definitions**

The term employer has been defined under the industrial dispute act of 1947 under section 2(g)

#### **Employer<sup>4</sup> means-**

- (i) in relation to an industry carried on by or under the authority of any department of the Central Government or a State Government the authority prescribed in this behalf, or where no authority is prescribed, the head of the department;
- (ii) (ii) in relation to an industry carried on by or on behalf of a local authority, the chief executive officer of that authority;

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<sup>3</sup> See section 1 of the industrial Disputes Act, 1947.

<sup>4</sup> Section 2(g) of the industrial Disputes Act, 1947.

The employer, according to the definition is the person authorized to do the work in the capacity as an employer under the leadership of either the Central Government or the state government or the local authority.

**Industry**<sup>5</sup> The term Industry is defined under section 2 (j) of the act as any business, trade or undertaking manufacture or calling and includes any calling, service, employment, handicraft or industrial occupation or avocation of workmen.

Sec. 2 (j) gives the definition of industry, which was elaborated upon by the Supreme Court in the **Bangalore Water Supply and Sewerage Board v. R. Rajappa**.<sup>6</sup> The term industry has been given a wide scope and the judgment overruled several earlier decisions. The triple test was laid down in this case where it was laid down that there should be a systematic activity, organized by the cooperation between the employer and the employee, for the production of goods and services. The court held-

Any activity will be industry if it fulfills the 'triple test', as under:

- Systematic and organized activity
- With the cooperation between Employers and employees
- For the production and distribution of good and services, whether or not capital has been invested for this activity.

It is immaterial whether or not there is profit motive or whether or not there is a capital.

If the organization is a trade or business it does not cease to be one because of philanthropy animating the triple test, cannot be exempted from the scope of definition of industry.

Dominant nature test – whether there is complex of activities, the test would be the predominant nature of services and integrated nature of departments. All departments integrated with industry will also be industry.

The exceptions to industry are-

- Casual activities (because they are not systematic).
- Small clubs, co – operatives, research labs, gurukuls which have an essentially non employee character.

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<sup>5</sup> section 2 (j)

<sup>6</sup> 1978 AIR.S.C.548

- The single door lawyer taking help from the clerk (because there is no organized labour).
- Selfless charitable activities carried on through volunteer's e.g. free legal or medical service.
- Sovereign functions – strictly understood, i.e., maintenance of law and order, legislative functions and judicial function.

An industry exists only where there is a relationship between the employer and the employee and where the former is engaged in business, trade or undertaking and the later is engaged in any calling service employment or handicraft.

### **2(s) “Workman”<sup>7</sup>**

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 any proceeding under this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of, that dispute, or whose dismissal, discharge or retrenchment has led to that dispute, but does not include any such person-

- (I) Who is subject to the Air Force Act, 1950 (45 of 1950), or the Army Act, 1950 (46 of 1950), or the Navy Act, 1957 (62 of 1957); or
- (ii) Who is employed in the police service or as an officer or other employee of a prison, or (iii) who is employed mainly in a managerial or administrative capacity, or

### **Industrial dispute<sup>8</sup>**

“Industrial dispute” means any dispute or difference between employers and employees, or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person.

Industrial dispute as defined under Sec. 2(k) exists between-

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<sup>7</sup> See section 2(s)

<sup>8</sup> See section 2(k)

(a) Parties to the dispute who may be

1 Employers and workmen

2 Employers and Employers

3 Workmen and workmen

(b) There should be a factum of dispute not merely a difference of opinion.

(c) It has to be espoused (means supported) by the union in writing at the commencement of the dispute. Subsequent espousal will render the reference invalid. Therefore date when the dispute was espoused is very important.

(d) It affects the interests of not merely an individual workman but several workmen as a class who are working in an industrial establishment.

(e) The dispute may be in relation to any workman or workmen or any other person in whom they are interested as a body.

**Jadhav J. H. vs. Forbes Gobak Ltd:** <sup>9</sup>In this case, it was held that, a dispute relating to a single workman may be an industrial dispute if either it is espoused by the union or by a number of workmen irrespective of the reason the union espousing the cause of workman was not the majority of the union.

When an Individual Dispute Becomes An Industrial Dispute?

Before insertion of Section 2-A of the Act an individual dispute could not *per se* be an industrial dispute, but it could become one if taken up by the Trade Union or a number of workmen. The Supreme Court and majority of Industrial Tribunals held that, a dispute raised by a dismissed employee would not be treated as an industrial dispute, unless it is supported by a trade union or by a body or the section of workman.

For an individual dispute to be declared as an Industrial Dispute, the following conditions are to be satisfied:

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<sup>9</sup> 2004 (102) FLR 916,

1. A body of workmen (trade Union ) or a considerable number of workmen, are found to have made common cause with the individual workman;
2. That the dispute (individual dispute) was taken up or sponsored by the workmen as a body (trade union) or by a considerable Section of them before the date of reference.

**Bombay Union of Journalists vs. The Hindu:**<sup>10</sup> A person working in ‘The Hindu, Madras’ was terminated for claiming as a full time employee. The Bombay Union of Journalist raised the dispute. It was found that, there were ten employees, of which seven in administrative side and only three in journalism side. Of these three, only two were the members of the union. Therefore, the Supreme Court held that the Bombay Union of Journalists is not competent to raise this dispute. Even if it had raised, it could not have become an industrial dispute.

**Workmen of Indian Express Newspapers Ltd. vs. Management Indian Express Newspapers**<sup>11</sup>: A dispute relating to two workmen of the Indian Express Newspapers Ltd was espoused by the Delhi Union of Journalists which was an outside union. About 25 percent of the working journalists of the Indian Express were members of that union. But there was no union of the journalists of the Indian Express. It was held that the Delhi Union of Journalists could be said to have a representative character. The working journalists employed Indian Express and the dispute was thus transformed into an industrial dispute.

Thus, an individual dispute to fall within the definition of industrial dispute, it must be sponsored by the Trade Union of the workmen or if there is no trade union, it must be sponsored by the majority of the workmen or it must comply with the requirements of Section 2-A of the Industrial Disputes Act, 1947.

#### **Authorities under the Act:-**

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<sup>10</sup>1963 AIR., SC. 318

<sup>11</sup>1978 AIR S.C. 1137

There are various authorities under the act such as the works committee, conciliation officer, conciliation board, courts of inquiry, labour court, tribunal, national tribunal.

### **Works Committee<sup>12</sup>:-**

This has been defined under section 3 of the act which says that this has been defined under section 3 of the act which says that each industrial establishment should have a works committee and the works committee will have equal representations from both the employer and the employee. It is to try to settle the dispute in the first instance through the process of mediation in the initial stage of the dispute. The works committee also time to time comments upon the matters in dispute.

(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 Officers<sup>13</sup>** (1) The appropriate Government may, by notification in the Official Gazette, appoint such number of persons as it thinks fit to be conciliation officers, charged with the duty of mediating in and promoting the settlement of Industrial disputes. (2) 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.

**Board of Conciliation<sup>14</sup>** The board of conciliation is constituted under section 5 by the appropriate government. (1) 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.

(2) A Board shall consist of a chairman and two or four other members, as the appropriate Government thinks fit.

(3) 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 and any person appointed to represent a party shall be appointed on the recommendation of that party:

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<sup>12</sup> Section, 3

<sup>13</sup> Section,4

<sup>14</sup> Section,5

Provided that, if any party fails to make a recommendation as aforesaid within the prescribed time, the appropriate Government shall appoint such persons as it thinks fit to represent that party.

under the board the chairman is the independent person and the other persons appointed in equal numbers which represents the parties in disputes and the person who represents the party shall be appointed by the party .The party needs to appoint such representatives within the time prescribed and if the party fails to appoint the representatives within the time, then the appropriate government can appoint the person to be the representative of the party. A board needs to work according to the quorum prescribed, but if the chairman or the other member as the case may be ceased to be available the board shall not act until a new chairman or member as the case may be has been appointed.

**Courts of Enquiry**<sup>15</sup> the section 6 of the act further talks about the constitution of the court of inquiry in order to conduct inquiry upon the matter in dispute. The court of inquiry to be run by the independent person or persons as the appropriate government thinks fit. Where the court consists of two or more persons, then any one of them shall be appointed to be chairman.

(1) The appropriate Government may as occasion arises by notification in the Official Gazette, constitute a Court of Inquiry for enquiring into any 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.

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<sup>15</sup> Section,6



**Labour Courts**<sup>16</sup> section 7 of the act talks about the constitution of the labour court by the appropriate government. 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.

**(3) A person shall not be qualified for appointment as the Presiding Officer of a Labour Court, unless**

- a) he is or has been a judge of the high court
- b) he has for a period of not less than 3 years being a district judge or an additional district judge
- c) has held judicial office for not less than 7 years
- d) he has been the presiding officer of a Labour Court constituted under any Provincial Act or State Act for not less than five years.
- e) he is or has been a Deputy Chief Labor Commissioner (Central) or Joint Commissioner of the State Labor Department, having a degree in law and at least seven years' experience in the labor department including three years of experience as Conciliation Officer.
- f) he is an officer of Indian Legal Service in Grade I with years' experience in the grade .

**Tribunals**<sup>17</sup> Section 7A deals with the provision of the constitution of the one or more tribunal for the adjudication of a dispute relating to the aspects as mentioned in schedule second or third.

(1) 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, whether specified in the Second Schedule or the Third Schedule and for performing such other functions as may be assigned to them under this act. Tribunal to consist of one person who shall be appointed by the appropriate government.

**National Tribunals**<sup>18</sup>

(1) section 7B deals with the national tribunal which is appointed by the central government constitute one or more national tribunal for the adjudication of industrial disputes which in the opinion of the central government involves questions of national importance or are of such a

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<sup>16</sup> Section,7

<sup>17</sup> Section, 7A

<sup>18</sup> Section,7B

nature that industrial establishments situated in more than one state are likely to be interested in or affected by such disputes. The national tribunal shall be consisted of one person only to be appointed by the central government. in order to be appointed as the presiding officer of a national tribunal he should be or has been a judge of a high court. the central government can also appoint two persons as assessors to advise the national tribunal in the proceeding before it.

### **Disqualifications for the presiding officers of Labour Courts, Tribunals and National Tribunals.**

No person shall be appointed to, or continue in, the office of the Presiding Officer of a Labour Court, Tribunal or National Tribunal, if-

**(a) he is not an independent person; or**

**(b) he has attained the age of sixty-five years**

## **PROCEDURE, POWERS AND DUTIES OF AUTHORITIES<sup>19</sup>**

### **Procedure and power of conciliation officers, Boards, Courts and Tribunals –**

(1) Subject to any rules that may be made in this behalf, an arbitrator, a Board, Court, Labour 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 Board, or court or the presiding officer of a Labour Court, Tribunal or 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, Labour Court, Tribunal and 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, Labour Court, Tribunal or National Tribunal shall be

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<sup>19</sup> Section,11

deemed to be a judicial proceeding within the meaning of sections 193 and 228 of the Indian Penal Code (45 of 1860).

(6) All conciliation officers, members of a Board or Court and the presiding officers of a Labour 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).

### **The duties of the authorities**

**Duties of conciliation officers<sup>20</sup>**:- (1) Where any industrial dispute exists or is apprehended, the conciliation officer may, or where the dispute relates to a public utility service and a notice under Section 22 has been given, shall, hold conciliation proceedings in the prescribed manner.

(2) The Conciliation Officer shall, for the purpose of bringing about a settlement of the dispute, without delay, investigate the dispute and all matters affecting the merits and the right settlement thereof, and may do all such things as he thinks fit for the purpose of inducing the parties to come to a fair and amicable settlement of the dispute.

(3) If a settlement of the dispute or of any of the matters in dispute is arrived at in the course of the conciliation proceedings the conciliation officer shall send a report thereof to the appropriate Government [or an officer authorised in this behalf by the appropriate Government] together with a memorandum of the settlement signed by the parties to the dispute.

(4) If no such settlement is arrived at, the conciliation officer shall, as soon as practicable after the close of the investigation, send to the appropriate Government a full report setting forth the steps taken by him for ascertaining the facts and circumstances relating to the dispute and for bringing about settlement thereof, together with a full statement of such facts and circumstances, and the reasons on account of which, in his opinion, a settlement could not be arrived at.

(5) If, on a consideration of the report referred to in sub-section (4), the appropriate government is satisfied that there is a case for reference to a Board, [ Labor Court , Tribunal or National Tribunal], it may make such reference. Where the appropriate government does not make such a reference it shall record and communicate to the parties concerned its reasons therefor.

(6) A report under this section shall be submitted within fourteen days of the commencement of the conciliation proceedings or within such shorter period as may be fixed by the appropriate Government:.

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<sup>20</sup> Section,12

**Duties of Board**<sup>21</sup>:- (1) Where a dispute has been referred to a Board under this Act, it shall be the duty of the Board to endeavour to bring about a settlement of the same and for this purpose the Board shall, in such manner as it thinks fit and without delay, investigate the dispute and all matters affecting the merits and the right settlement thereof and may 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.

(2) If a settlement of the dispute or of any of the matters in dispute is arrived at in the course of the conciliation proceedings, the Board shall send a report thereof to the appropriate Government together with a memorandum of the settlement signed by the parties to the dispute.

(3) If no such settlement is arrived at, the Board shall, as soon as practicable after the close of the investigation, send to the appropriate Government a full report setting forth the proceedings and steps taken by the Board for ascertaining the facts and circumstances relating to the dispute and for bringing about a settlement thereof, together with a full statement of such facts and circumstances, its finding thereon, the reasons on account of which, in its opinion, a settlement could not be arrived at and its recommendations for the determination of the dispute.

(4) If, on the receipt of a report under sub-section (3) in respect of a dispute relating to public utility service, the appropriate Government does not make a reference to a 4[Labour Court, Tribunal or National Tribunal] under Section 10, it shall record and communicate to the parties concerned its reasons therefore.

(5) The Board shall submit its report under this section within two months of the date [on which the dispute was referred to it] or within such shorter period as may be fixed by the appropriate Government:

**Duties of Courts**<sup>22</sup> A Court shall inquire into the matters referred to it and report thereon to the appropriate Government ordinarily within a period of six months from the commencement of its inquiry.

**15. Duties of Labour Courts, Tribunals and National Tribunals**<sup>23</sup> Where an industrial dispute has been referred to a Labour Court, Tribunal or National Tribunal for adjudication, it shall hold its proceedings expeditiously and shall, 2[within the period specified in the order referring such

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<sup>21</sup> Section,13

<sup>22</sup> Section, 14

<sup>23</sup> Section,15

industrial dispute or the further period extended under the second proviso to sub-section (2-A) of Section 10], submit its award to the appropriate Government.

The Industrial disputes, Act provides for the constitution of the various authorities such as the works committee, conciliation officer, conciliation board, courts of inquiry, labour court, tribunal, national tribunal to promote measures for securing and preserving amity and good relations between the employer and the workmen and, to that end, endeavours to resolve any material difference of opinion in respect of such matters. Another method recognized for settlement of disputes is through arbitration. The Industrial disputes Act provides a legalistic way of settling disputes. The goal of preventive machinery as provided under the Act is to create an environment where the disputes do not arise at all.

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