CHAPTER – III

LAW RELATING TO SETTLEMENT OF INDUSTRIAL DISPUTES

3.1 Origin and History of Industrial Dispute Act, 1947

The origin and history of Industrial Disputes Act, 1947, preamble to the Industrial Disputes Act, 1947, definition of 'industrial dispute' and 'workmen', settlement machinery of industrial dispute, procedure for settlement of industrial dispute and collective bargaining as a method of settlement of industrial disputes, recommendations of first and second National Commission on Labour are discussed in this chapter.

The legislative history of industrial disputes can be traced from the year 1890. The earliest legislation in India was Bengal Regulation VII of 1819. Under this legislation the breach of contract treated as criminal offence and this was also followed by Merchant Shipping Act (I of 1859) and the Workmen's Breach of Contract Act, 1860. However, the development and growth of central legislative measures to govern industrial legislation in India can be examined and studied from employers and Workmen's Disputes Act, 1860 to the present Industrial Dispute Act, 1947 which is being followed now. There were violent disturbances and conflicts

and death of one of the contractors took place in the year 1859 consequent to disputes or differences between European Railway Contractors and their workmen in Bombay Presidency relating to the failure and delay in payment of wages. In this connection on the request of the Bombay Government, the Government of India enacted the Employers and Workmen's (Disputes) Act, 1860. According to this Act certain summery procedures were prescribed relating to wages pertaining to the workers engaged in the construction of Railways, Canals and other public works. For the extension of this Act to their territories the Local Governments were given the powers. This step was considered the first legislative venture for governing industrial disputes with a limited objective.

In course of time the Indian Trade Unions Act, 1926 guaranteed the workers, the right to organize and gave them a legal status and immunized them from civil and criminal liability. The Act had been amended several times to suit the changing circumstances.

The Trade Disputes Act, 1929 was codified for five years as an experimental measure. The main object of the Act was to make provisions for establishment of Courts of Inquiry and Boards of Conciliation with a view to investigate and settle trade disputes. The Act prohibited strikes or

lock-outs without notice in public utility services; it also made any strike or lock-out illegal which had any object other than the furtherance of a trade dispute within the trade or industry in which the strikers or the employers locking out were engaged, and was designed or calculated to inflict severe, general and prolonged hardship upon the community and thereby compel Government to take or abstain from taking any particular course of action. The Act was amended in 1932 and was made permanent by the Trade Disputes (Extending) Act, 1934.

Since 1937 the scope of trade disputes legislation was considerably extended both at the Centre and in a number of provinces, and substantial progress was made building up a permanent machinery for the speedy and amicable settlement of industrial disputes. The Trade Disputes Amendment Act of 1938 provided for the appointment of conciliation officers charged with the duty of mediating in or promoting the settlement of trade disputes. Besides extending the term “trade disputes” to cover differences between the employers and employers or between workmen and workmen. The Act also included water transport and tramways under Public Utility Services and made the provisions concerning illegal strikes and lock-outs less restrictive.

The Second World War brought about rapid changes in the whole economic structure and also in the field of industrial relations. The necessity of keeping production at the highest level without interruption and the clamour of the workers to have their share in the abnormal war profits, led the Government to introduce the Defence of India Rules in January 1942. The Rules have laid the historical foundation of compulsory adjudication in India. The Defence of India Rules in effect empowered the Government to make general or, to suit local requirements, special orders to prohibit strike or lock-outs, to refer any dispute for conciliation or adjudication, to require employers to observe such terms and conditions of employment as might be specified and to enforce the decisions of adjudicators.

In May, 1942 another notification was issued, vesting much the same powers in the Provincial Governments, and in August Essential Services Maintenance Ordinance was promulgated prohibiting strikes and lock-outs without 14 days' previous notice. Strikes and lock-outs were also prohibited when a trade dispute was referred to a statutory enquiry or for conciliation or adjudication during the entire period of the proceedings and for two months thereafter.[1]

[1] V.G. Goswami, *"Labour and Industrial Law"*, 2004, p.462

3.2 The preamble to the industrial disputes act, 1947

The preamble to the Industrial Disputes Act, 1947 mentions that this Act makes provision for the investigation and settlement of Industrial Disputes and certain other purposes. The words “for certain purposes” essentially refer and include prevention of Industrial Disputes also as is clear from the Statement Objects and Reasons. Thus two institutions prescribed for the prevention and settlement of Industrial Disputes, provided for in the Bill are the Works Committees consisting of representative of employers and workmen and Industrial Tribunals.

The objects of the Industrial Disputes Act, 1947 are given below:

- To provide for prevention of industrial disputes through works committees;
- To provide for investigating the industrial disputes through Court of Inquiry;
- To provide for the settlement of industrial disputes through a three tier system of Labour Courts, Industrial Tribunals and National Tribunals;
- To impose prohibition on commencement or continuation of strike and lock out during specified period;

- To provide for payment of compensation in case of lay – off, Retrenchment and Closure;
- To define and prohibit the unfair labour practices.

In the Industrial Disputes Act, 1947, the preliminary chapter defines various terms used in the Act. There was a controversy in the circles of labour management about the correct interpretation of some of those terms like ‘industry’, ‘Industrial Dispute’ and workmen because it is on the current interpretation of these terms that the applicability of the provisions depend as a matter of fact, some of the terms are so inter dependent that it could be difficult to interpret and applying any one in isolation. The reason is very simple. One cannot call a ‘Dispute’, and ‘Industrial Dispute’ unless the establishment or the undertaking in which that the dispute arisen is an ‘industry’ and the employers of the establishment ‘workmen’ within the meaning of the Act.

3.3 Definition of industry

Section 2(j) of the Industrial Disputes Act, 1947 defines the term ‘industry’, as any business, trade, undertaking, manufacture, calling of employers, and includes any calling, service, employment, handicraft, industrial occupation or avocation of workmen.

It is to be mentioned here that according to the phraseology of this definition one can easily brand any business activity or trade as an industry in order to attract the provisions of the Industrial Disputes Act, 1947. Normally speaking by industry it is meant production of goods, and wealth and with the cooperation of labour and capital, but it is not so under this Act.

The Courts have given different meaning to this concept at different times, and actually, the interpretation has always depended on predictions of individual Judges[2].

For the first time such a situation arose in the case of *Budge Municipality Vs P.R. Mukerjee*[3] when Mr. Justice Chandra Shekara Iyer of the Supreme Court was asked to decide whether the Municipality is an industry within the meaning of the Industrial Disputes Act, 1947.

The fact of this case was that two employees of the Municipality who were the members of Municipality Workers Union were suspended by the Chairman on the charges of the negligence, insubordination and indiscipline. The workers were dismissed from the service saying that their explanations were unsatisfactory. The union questioned the dismissal and

[2] Agarwal S.L: "*labour Management Relations"*, Indian Law Institute, 1978, P – 94.
[3] 1953, I. LLJ 195.

the matter was referred by the Government of West Bengal to the Industrial Tribunal for adjudication. The Tribunal directed the workers reinstatement in their respective offices by making an award saying that suspension of two employees was of victimization. The Municipality under Article 226 of the Indian Constitution took the matter to the High Court. The petition was dismissed and leave was granted under Article 132(1) of the Indian Constitution to make an appeal to the Supreme Court.

The Supreme Court analyzed this situation in the light of the Australian Judgment given in *Federated Municipal* and *Shire Council Employees Union of Australia Vs Melbourne Corporation*[4] and observed that through every activity in which the relationship of employer and employee existed commonly understood at an industry, but still a wider and more comprehensive interpretation has to be given to such words to meet the rapid industrial progress and to bring about industrial peace, and economy and a fair.

The definition of industry is in two parts. The first part says that 'industry' means any business, trade, undertaking, manufacture or calling of employers and the second part of the definition of 'industry' says that it

[4] 23. CLR 508

includes any calling, service, employment, handicraft, or industrial occupation or avocation of workmen.

In the case of *Madras Gymkhana Club, Employees Union* Vs *Management of Madras Gymkhana Club*[5], it was observed that "if the activity can be described as an industry with reference to the occupation of the employers, the ambit of the industry, under the force of the second part takes in the different kinds of activity of employees mentioned in the second part. But the second standing alone cannot define industry. By the inclusive part of the definition the labour force employed in any industry is made an integral part of the industry for the purpose of industrial disputes although industry is ordinarily something which employers create or undertake".

In the case of workmen of *I. S. Institution* Vs *I. S. Institution*[6] it was held that the "industry is ordinarily something which employers create or undertake". which is gradually yielding place to the modern concept which regards industry as a joint venture undertaken by employers, and workmen, an enterprise which equally belongs to both. Here it is not necessary to

[5] AIR, 1968 SC 554.
[6] AIR, 1976 SC 145.

view definition of industry under section 2(j) of the Industrial Dispute Act in two parts.

The definition gives the meaning as a collective enterprise in which employers and employees working together are associated with the industry. It is to be mentioned here that the 'industry' does not consist of either employers alone or by employees alone[7]. Similarly in the *Sufdarjang Hospital*, case the Supreme Court observed that "an industry exists only when there is relationship between employers and employees, the former engage in business, trade, undertaking, manufacture or calling of employers and latter engaged in any calling, service employment, handicraft or industrial occupation or avocation. There must be an enterprise in which the employers will follow their avocations as detailed in the definition and employ workmen. Therefore the basic requirement of 'industry' is that the "employers must be carrying on any business, trade, undertaking, manufacture or calling of employers".

The term "undertaking" which has been used in the definitions of industry is explained in the case of workmen of *I.S. Institution Vs I.S*

[7] Management of Sufdarjang Hospital, Delhi Vs Kuldip Singh, AIR 1970 SC 1407.

Institution[8] that "anything undertaken, any business, work or project which one engages in or attempts, or an enterprise.

All decisions of the Supreme Court agreed that an undertaking to be within the definition in section 2(j) must be read subject to a limitation, namely, that it must be analogous to trade or business. The Supreme Court in many cases evolved certain working principles to provide guidance in determining attributes and characteristics which would specify that an undertaking is analogous to trade or business.

The first of such principles was mentioned in the case of *State of Bombay Vs. Hospital Mazdoor Sabha* The Supreme Court of India held "hospital" to be industry within the scope of Section 2 (j) and relied upon the "inclusive part" of the definition and also the definition of employer under Sec. 2 (g) which includes an industry carried on by or under the authority of any department of the Central Government or a State Government. Further, in *Bangalore Water Supply Vs A. Rajappa*,[9] a seven Judges Bench of the Supreme Court exhaustively examined and considered the scope of 'industry' and prescribed the Triple test which has practically reiterated the test projected in Hospital Mazdoor Sabha case.

[8] AIR, 1976 SC 145.
[9] AIR, 1978 SC 548.

The Triple test laid down in the Bangalore Water Supply case are that where there is

a) systematic activity,
b) organized by co-operation between employer and employee (the direct and substantial element is chimerical),
c) for the production and/or distribution of goods and services calculated to satisfy human wants and wishes, *prima facie*, there is an "industry".
    i. Absence of profit motive or gainful objective is irrelevant, be the venture in public, joint, private or other sectors.
    ii. The true focus is functional and the decision test is the nature of the activity with special emphasis on the employer and employee relations.
d) If the organization is a trade or business, it does not cease to be one because of philanthropy animating the undertaking.

In view of the above points and the consequences of the decision given in the Bangalore Water Supply case activities that such as professions, clubs, educational institutions, cooperatives, Research institutes, charitable projects and other kindered adventures if they fulfill

the above Triple test, cannot be exempted from the scope of section 2(j) of the Industrial Disputes Act, 1947.

There is a dominant test made in the Bangalore Water Supply case that "where a complex of activities, some of which qualify for exemption, others not involved employees on the total undertaking, some of whom are not workmen or some departments are not productive of goods and services, if isolated, even then the pre–dominant nature of the services and integrated nature of the departments will be true tests, the whole undertaking will be 'industry' although those who are not workmen by definition may not benefit by statutes[10].

In the same case of the Supreme Court of India held that the sovereign function strictly understood, alone qualify for exemption, not the welfare activities or economic adventures, undertaken by the Government or statutory bodies. Even in departments discharging sovereign functions, if there are units which are industries and they are substantially severable, then they can be considered to come within the section 2(j) of the Industrial Disputes Act, 1947.

[10] Bangalore Water Supply Vs A. Rajappa AIR 1978 SC 548.

It is very important to mention that the Supreme Court examined the concept of 'industry' very critically and overruled many decisions earlier decided by the Supreme Court.

The decisions are Management of *Sufdarjang Hospitals, Delhi Vs Kuldip Singh*, *N. N. U. C. Employees Vs Industrial Tribunal*[11], *University of Delhi Vs Ramnath*[12], *Dhanrajgiri Hospital Vs Workmen*[13] and such other rulings whose ration runs counter evolved in Bangalore Water Supply case have been over ruled.

It is very important to mention that has already been stated above the Supreme Court in Bangalore Water Supply case defined the term 'industry' with a view to provide the whole concept of the definition of industry which is given below:

a) Any capital that has been invested for the purpose of carrying on such activity: or
b) Such activity is carried on with a motive to make any game or profit, and includes.

[11] AIR, 1962 SC 1080.
[12] AIR, 1963 SC 1873.
[13] AIR, 1975 SC 2032.

- Any activity of the Dock Labour Board established under Section 5(a) of the Dock Workers (Regulation of Employment) Act, 1948:
- Any activity relating to the promotion of sales or business or both carried on by an establishment.

But does not include –

a) Any agriculture operation except where such “agriculture operation” is carried on in an integrated manner with any other activity (being any such activity is referring to in the foregoing provisions of this clause) and such other activity is the predominant one.

b) Explanation–For the purpose of the sub–clause “agriculture operation” does not include any activity carried on in a plantation as defined in clause (f) of Section 2 of the Plantation Labour Act, 1951; or

c) Hospitals or dispensaries; or

d) Educational, scientific, research or training institutions; or

e) Institutions owned or managed by organization wholly or substantially engaged in any charitable, social or philanthropic service; or

f) Khadi or village industries; or

g) Any activity of the Government relatable to the sovereign functions of the Government including all the activities carried on by the department of the Central Government dealing with Defense Research, Atomic Energy and Space; or

h) Any domestic service; or

i) Any activity, being a profession practised by an individual or body of individual, if the number of persons employed by the individual or body of individual in relation to such profession is less than ten; or

j) Any activity, being an activity carried on by a cooperative society or a club or any other like body of individuals, if the number of persons employed by the cooperative society, club or other like body of individuals also in relation to such activity is less than ten.

The Industrial Disputes (Amendment) Act, 1982 enacts altogether a new definition of industry. This amended definition has not been enforced till now. It nullifies the effect of many judicial decisions and attempts to clarify the conflicting views arising out of different interpretation of the word, 'industry' adopted by the Supreme Court in various cases. On account of conflicting judicial decisions it becomes difficult to understand the meaning of the word industry. The amended definition to a great extent

incorporates the views of the Supreme Court expressed in Bangalore Water Supply case.

The Constitution Bench of five judges in *State of U.P. Vs. Jai Bir Singh*[14] after considering the rival contentions and closer examination of the decision in Bangalore Water Supply, held that a reference to a larger bench for reconsideration of the decision was required for the following amongst other, reasons:

a) The judges delivered different opinions in the case of Bangalore Water Supply at different times and in some cases without going through, or having had an opportunity of going through, the opinion of some of the judges on the Bench. They have themselves recognized that the definition clause in the Act is so wide and vague that it is not susceptible to a very definite and precise meaning.

b) In the opinion of all of them it would be better that the legislature intervenes and clarifies the legal position by simply amending the definition of 'industry'. The legislature did respond by amending the definition of 'industry', but unfortunately 23 years were not enough for the legislature to provide Alternative Dispute

[14] 2005,5, SCC.1

Resolution Forums to the employees of specified categories of industries excluded from the amended definition.

c) The legal position thus continues to be unclear and to a large extent uncovered by the decision of the Bangalore Water Supply case.

In its opinion the larger Bench will have to necessarily go into legal questions in all dimensions and depth, keeping in view all these aspects. Further, the Court in *Jaibir Singh case* expected the larger Bench which would review Bangalore Water Supply to look at the statute under consideration not only from the angle of protecting workers' interests but also of other stake holders in the industry- the employer and the society at large[15].

The Court also stressed the need to reconsider where the line should be drawn and what limitation can and should be reasonably implied in interpreting the wide words used in section 2 (j). It stated that no doubt it is rather a difficult problem to resolve more so when both the legislative and the executive branches are silent and have kept an important amended provision of law dormant on the statue book. It observed that pressing

[15] Bushan Tilak Kaul; 'Industry', 'Industrial Disputes', and 'workmen'; conceptual frame work and judicial activism, I.L.I. Vol. 50.1 Jan-Mar 2008.

demands of the competing sectors of employers and employees and the helplessness of the legislative and the executive branches in bringing into force the Amendment Act compelled it to make the present reference for constituting of a suitable bench for reconsidering Bangalore Water Supply's case.

3.4 Industrial dispute section 2(k)

The important objective of the Industrial Disputes Act, 1947 as pointed out in the preamble is "to make provision for the investigation and settlement of industrial disputes". Therefore the definition of "industrial dispute" has got special significance.

The following are the important elements to constitute an industrial dispute

1. A dispute or difference between
    a) employers and employers, or
    b) employers and workmen, or
    c) workmen and workmen;
2. The dispute or difference should be connected with
    (a) employment or non – employment, or

(b) terms of employment, or

(c) conditions of labour of any person;

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

The expression "of any person" appearing in the last line of section 2(k) means that he may not be a workman but he may be someone in whose employment, terms of employment or conditions of labour the workman as a class have a true and substantial interest.[16]

Industrial dispute is not restricted to dispute between employer and recognized majority union it also means difference between employer and workmen including a minority union[17].

The terms 'employment' and 'non–employment' include retrenchment as well as refusal to reinstate[18].

[16] Workmen of Dimakuchi Tea Estate Vs Management of Dimakuchi Tea Estate, AIR, 1958 SC 353.
[17] Tata Chemicals Vs Workmen, Tata Chemicals AIR, 1978 SC 828.
[18] Fedders Lloyd Corporation Ltd. Vs Lt. Governor, Delhi AIR, 1970 Delhi, 60.

The use of the word “non – employment raised a question whether an employee who had been dismissed, removed, discharged, retrenched can be reinstated by an order of a Industrial Tribunal.

Dispute relating to workmen employed by the contractor.

In some cases, the workman may not be the direct employee of an organization but a workman employed to perform certain works or duties under a contractor. In this regard certain cases are mentioned. A few of them are given below.

The leading case on this point is the Standard Vacuum Refinery Company of India Vs Their workmen and another[19].

In this case the workmen under he contractor as said by the employers, contractor’s men were not entitled to any privilege and there was no security of employment by which the workmen disputed raising an industrial dispute demanding the abolition of contract system. The Supreme Court held in this case that the dispute to be an industrial dispute because there was a real and substantial disputes between the workmen and the company on the question of contract labour for the work of the company.

[19] 1960 II LLJ 233.

In the case of *Indian Bank Vs Management of Indian Bank,*[20] it was observed that where privilege given to an office bearer of a trade union in the form of duty relief was withdrawn by the management which was granted to the privileged. It cannot be said that an industrial dispute as arisen there by and the legal status of the duty relief is only that of a concession and not a matter relating to conditions of service. In this case it was held that where the concession provided is withdrawn, the beneficiary cannot complain that a condition of service is affected and the management is not entitled to do so without raising an industrial dispute and having the matter adjudicated by the authority.

In the case of *Guest Keen William (Private) Ltd. Vs Sterling (P.J) and others,*[21] it was held by the Supreme Court that the delay in raising industrial dispute does not serve as a bar to the reference of a dispute. If the dispute is raised after considerable delay which is not reasonably explained, the Tribunal would definitely take that account while dealing of the merit of the dispute.

[20] 1985 I LLJ 6 (Mad.).
[21] AIR 1959 SC 1279.

Individual Dispute when becomes industrial dispute:

The Supreme Court of India examined this concept in different cases and observed in the case of *News Papers Limited Vs State Industrial U.P., and others*[22].

Whether a single man who is aggrieved by an action can raise industrial dispute.

The Section 2(k) of the Industrial Disputes Act, 1947 provides that a dispute between employer and workmen i.e. plural form has been used, the Supreme Court of India specifically observed that "before insertion of section 2(A) of the Act an individual dispute could not per say be an industrial dispute, but it could become one if taken up by the trade union or a number of workmen. The provision of the Act leads to the conclusion that its applicability to an individual as oppose to dispute involving a group of workmen is excluded unless it acquires the general characteristic of an industrial dispute viz., the workmen as a body or a considerable section of them make common cause within the individual workmen".

[22] AIR 1957 SC 532.

Like industry this term also has been interpreted and analyzed differently in different case situations by the Courts. Some of the Principles to judge the nature of this terms were evolved by Courts such as *Kundan Textiles Vs Industrial Tribunal*[23]. Here *the Court relied on Convey Vs Wade*[24]; *Jumburnna Coal Mines Vs Victorian Coal Mines Asson*[25]; *George Hudson Ltd., Vs Australian Timber Workers Union*[26]; *D.W. Banerji Vs P.R. Mukerji*[27]; *CPT Service Ltd. Vs R.G.Patwardhan*[28]; *Dimakuchi Tea Estate Vs the Management*[29]; *Bombay Union of Journalists Vs The Hindu*[30]; *Workmen Vs Dharampal Premchand*[31].

The following are some of the principles laid to examine the nature of the dispute by the above said Courts.

1. The dispute must affect large group of workmen or employers who have community of interest and the rights of these workmen must be affected as a class in the interest of common good. In other words, considerable section of employees should necessarily make common cause with the general lot.

[23] AIR 1951 Madras 616.
[24] 1909 A.C. 506.
[25] (1905) 6 CLR 309, 332
[26] 32 CLR 413, 441.
[27] AIR 1953 SC 58.
[28] 1957 I L.L.J. 27.
[29] AIR 1958 SC 353.
[30] 1961 II. L.L.J. 436.
[31] 1965 I L.L.J. 668.

2. The dispute should invariably be taken up by the industry union or by an appreciable number of workmen.
3. There must be a concentrated demand by the workers for redress and the grievance becomes such that if turns from individual complaint into the general complaint.
4. The parties to the dispute must have direct and substantial interest in the dispute, i.e., there must be some nexus between the union which espouses the cause of the workmen and the dispute. Moreover, the union must fairly claim a representative character.
5. If the dispute was in its inception an individual dispute and continued to be such till the date of its reference by the Government for adjudication, it could not be converted into an industrial dispute by support to the reference even of workmen interested in the dispute.

The whole controversy ended in the year 1965 and the situation was changed in cases of dismissals and retrenchments when the Parliament amended the Industrial Dispute Act, 1947 and added section 2 A, according to which, even the individual disputes relating to termination of service would now be called industrial disputes under the Act, notwithstanding

whether they have been taken up by any union or by a number of workmen. The section provides:

Where any employer discharges, retrenches or otherwise terminates the services of an individual workman, any dispute or difference between that workman and employer connected with, or arising out of, such discharge, dismissal, retrenchment or termination shall be deemed to be an industrial dispute notwithstanding that no other workman nor any union or workmen is a party to the dispute.

But in disputes concerning other matters, the situation still remain as was decided by the judiciary before this amendment. Now, certain issues still fall outside the scope of section 2 (A) and remain undecided. They are:

Whether a dispute, which by its nature seems to be a dispute involving only a few persons and is of no substantial significance to the industry as a whole, could be termed an industrial dispute simply because it has been taken up by union or by an appreciable number of workmen.

Whether an outside union is competent to espouse the cause of workmen working in a particular establishment. If it is, then what should be the qualifications of that union and under what circumstances could it

espouse the cause, it is enough that it possesses a representative character, notwithstanding other considerations, within the industry, for the maintenance of industrial peace and harmony.

It reasonably justified that the workmen of an industry who have a dispute with their employer become members of an outside union after the cause of action arose, simply to make that union qualified to espouse their cause.

In such issues Justice and fair play require that a dispute should be branded as an industrial dispute within the meaning of the Industrial Dispute Act, 1947 if only it affects the operations of the industry in any manner, irrespective of the persons involved. If it is likely to create a grave situation and if it shows impact adversely on production and industrial discipline, it has to be taken up as an industrial dispute, no matter whether the union takes it up or not. Espousal by outside unions should as far as possible be discouraged because that gives leverage to outside people to put unnecessary interference in an industry where they have no *'locus standi'* otherwise. It would be better if the Parliament defines the term 'industrial dispute', in a detailed manner so as to leave little scope for diverse interpretations.

3.5 Definition of workman

The Section 2(s) of the Industrial Dispute Act, 1947 defines the term 'Workman' which means any person(including an apprentice) employed in any industry skilled or unskilled, manual, supervisory, technical or clerical work or hire or reward, whether the terms of employment be expressed or implied, and for the purpose of any proceeding under this Act in relation to an industrial dispute, includes any such person who has dismissed, discharged or retrenched in connection with or as a consequence of that dispute are whose dismissal discharged or retrenchment as laid to that dispute, but does not include any such person.[32]

Who is subject to the Army Act, 1950; or the Air Force Act,1950 or the Navy Act,1934 or Who is employed in the Police Service; or as an officer or other employee of a prison or Who is employed mainly managerial or administrative capacity; or Who being employed in a supervisory capacity, draws wages exceeding five hundred rupees per mensem, or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature.

[32] Sec 2(s) of I.D. Act, 1947.

The definition of workmen again underwent an amendment by the Amendment Act, 46 of 1982 which came into effect on 21.08.1984 introducing the following changes in the nature of work

In the previous definition, the words ‘skilled or unskilled’, before the word ‘manual’, followed by a comma, appeared to be qualifying only ‘manual work’, but the present definition, by using the word ‘manual’ before the word ‘unskilled’ and ‘skilled’, has clarified its intension, that ‘manual’, ‘skilled’ or ‘unskilled’ are to be treated as separate categories of work. Another category of work that has been inserted is ‘operational’ work.

Sub-clause (i) has been recast, excluding a person ‘who is subject to the Air Force Act, 1950, or the Army Act, 1950, or the Navy Act, 1957’ from the definition. In clause (iv), previously, persons employed ‘in supervisory capacity, drawing wages exceeding Rs.500/- per month were excluded. But now the figure of Rs. 500/- has been raised to Rs. 1600/- in other words, the persons employed in a supervisory capacity, drawing wages up to Rs.1600/- per month, will not be excluded from the definition of ‘workmen’.

3.5.1 Analysis of the definition

The definition of ‘workmen’ in section 2(s) falls in three parts. The first part gives a statutory meaning of ‘workman’. This part determines a ‘workman’ by reference to a person (including an apprentice) employed in an ‘industry’ to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work, for the hire or reward. It determines what a ‘workman’ means. The second part is designed to include something more in what the term primarily denotes. This part gives an extended connotation to the expression ‘workman’. The third part specifically excludes the categories of persons specified in clauses (i) to (iv) of this sub–section. Even if a person satisfies the requirements of any of the first two parts, he shall be excluded from the definition of ‘workman’ if he fails in any of the four categories in the third part.

In the first part, the legal basis of the definition of ‘workman’ contained in section 2(s) the Industrial Disputes Act, 1947 as in other statutes, remains the contract of employment between the employer and the employee. Unless there is a contract of employment between the two of employer and or in other words, there is a relationship of employer and

employee between them, the definition of; workman; will not come into play.

Employment: Tests for determining contract of service and contract for service

The concept of employment involves three ingredients: (1) ‘employer’ (2) ‘employee’ and (3) the contract of employment. “Employer’, in relation to an employee, means the person by whom the employee is, or, where the employment has ceased, was, employed; ‘employed’ means an individual who has entered into, or works under, a contract of employment. The contract of employment brings in the contract of service between the ‘employer’ and the ‘employer’. Under the ‘contract of service’, the ‘employee’ agrees to serve the ‘employer’ subject to his control and supervision.

The employer and employee relationship implies that the contract between the two is of ‘contract of service’ and not ‘contract for service.’ The distinction between ‘contract of service’ and ‘contract for service’ is that in the case of former, the employer can order or require not only what is to be done, but also how it shall be done, but in the case of latter, the person can be asked what is to be done but not how it shall be done. The

control and supervision test used to be considered sufficient, especially in the case of the particular factors which may assist a Court or Tribunal in deciding the point. There is no single test for determining whether a person is an employee. The question whether the person was integrated into the business or remained apart from, and independent of, it has been suggested as an appropriate test, but is likewise only one of the relevant factors for the modern approach is to balance all those factors in deciding on the overall classification of the individual. This may sometimes produce a fine balance with strong factors for and against employed status.

The factors relevant in a particular case may include, in addition to control and integration, the following, namely, “method of payment; an obligation to work only for that employer; stipulation as to hours; overtime, holidays, etc., how the contract may be terminated; whether the individual may delegate the work; who provides tools and equipments; and who ultimately bears the risk of loss and the chance of profit. In some cases, the relationship of employment is established; its duration would not be material. Even a temporary or casual hand would fall within the ambit of part of the definition of ‘employee.’

3.6 Procedure for Settlement of Industrial Disputes

The Industrial Disputes Act, 1947 provides procedure for settlement of industrial disputes, which must be followed in all "public utility service", has been defined in section 2 (n) of the Act so as to include "any railway, postal, telegraph or telephone service that supplies power, water and light to the public, any system of public conservancy or sanitation, any section of an industrial establishment on the working of which the safety of the establishment or the workmen employed therein depend and any industry which keeping in view the public emergency has been declared as such by the appropriate Government". As laid down in the Act a dispute should first go through the process of conciliation before it could be referred to the appropriate authorities for adjudication[33]. 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 prescribed manner. Conciliation proceedings can be stated in case of dispute that actually exists or when there is reasonable ground to apprehend that an industrial dispute is likely to come into existence unless something is done to prevent or

[33] Ajay Kumar Samantaray ; Some reflections in Industrial Jurispedence ; the scope of section 10 (1) of I.D. Act 1947; when a reference of Industrial dispute could be treated as invalid. Lab IC – Jan 2007, p.7.

where both parties to dispute approach the Government separately for conciliation. Conciliation proceedings are deemed to have been started from the date on which a notice issued to the parties to appear before the conciliation officer who may meet them jointly or separately.

The Conciliation Officer must submit his report to the Government within fourteen days of the starting of conciliation proceedings. During this period he tries to bring about a fair and amicable settlement between the parties to dispute.

If a settlement arrived at, the Conciliation Officers will send a report to the Government along with a memorandum of settlement duly signed by both parties. This settlement come into force from the date agreed upon by the parties to dispute or in its absence the date on which it was signed by them and is binding for a period of six months unless agreed upon otherwise, and after the period afore said, until expiry of two months from the date on which a notice in waiting of the intention to terminate the settlement is given by one of the parties to the other party or parities to the settlement . Such a settlement is binding on all parties to the industrial dispute, to the employer, his heirs, successors or assignees and to the workmen employed in the establishment on the date of the dispute and all

the persons who subsequently become employed therein. If no settlement is reached by the parties, the conciliation officer will submit his report to the appropriate Government stating the reasons for which he thinks no settlement could be arrived at as well as the facts of the case.

Action by the Government:

On receipt of the report from the Conciliation Officer, the Government will come to a decision on whether the circumstances and the facts of the case as such to justify a further reference. The Government has to arrive at '*prima facie'* conclusion that the nature of the dispute justifies a further reference. If in the opinion of the Government, there is a scope of arriving at a settlement by further conciliation efforts, it may refer the case to the Board of Conciliation.

3.6.1. Collective Bargaining as a method of Settlement of Industrial Disputes

Collective bargaining as such is one of the most developed in Indian history since independence, and deserves the attention of all who are concerned with the preservation of industrial peace and implement of industrial productivity. In the '*laissez faire'* the employers enjoyed

unfettered rights to hire and fire. They had much superior bargaining power and were in a position to dominate over the workmen. There are some routine criticism of the adjudicatory system i.e., delay, expensive Governmental interference in referrals and uncertain out come. Therefore the parties to the industrial dispute are coming closure to the idea that 'direct negotiations provide better approach to resolving key deference over wages and other conditions of employment[34].

The system of collective bargaining as a method of settlement of industrial dispute has been adopted in industrially advanced countries. The common law emphasis to individual contract of employment is shafted to collective agreement negotiated by and with reprehensive groups.[35]

The application and interpretation of such agreements are also in collective manner. In United States of America the workers have the right to organize and bargain collectively. In Japan the right to collective bargaining is guaranteed under their Constitution. Collective bargaining in India is of late development and therefore in view of the above circumstances, the legislature in order to establish and maintain harmony and peace between labour and capital came out with a legislation named

[34] Sunil Yadav; collective bargaining : A mode for the settlement of Industrial disputes, LLJ. III, 2008, p.p. 23-25.
[35] Govt. of India Report of First National Commission on Labour, 1969, p. 327.

"The Industrial Disputes Act, 1947" which provides for the machinery for the settlement of industrial disputes[36].

This act has two main objects, first is the investigation and the second is the settlement of industrial disputes which exist or likely to exist for the amicable settlement of the industrial disputes, one of the method is collective bargaining.

3.6.2 Concept and Meaning of Collective Bargaining

The expression 'collective bargaining' has been defined by deferent persons in different manners. Sydney and Beatrice webb were the persons coined the expression 'Collective Bargaining'. First of all its analysis reveals that it is made up two words 'collective' implies group action through its unions of representatives and 'bargaining' implies haggling and or negotiating. Talking together or negotiations about a contract between the representatives of management and workers.[37]

The Encyclopedia of Social Sciences defines collective bargaining as a process of decision and negotiations between two parties, one or both of who is a group of persons acting in concert more significantly. It is the

[36] S.C. Srivatsava: Industrial Relations and Labour Law, 1996, p. 239.
[37] S.K. Bhatia: Collective Bargaining Theory and Practice of Effective Industrial Relations, 1985.

procedure by which an employer or employers and a group of employees agree upon the conditions of work.[38]

The International Labour Organization has defined "collective bargaining" as;

Negotiations about working conditions and terms of employment between an employer, a group of employers or one or more employers, organization, on the one hand, and one or more representative workers, organizations or the other, with a view to reaching agreement.[39]

According to Ludwing Teller "Collective Bargaining" is "an agreement between a single employer or an association of employers on the one hand and labour union on the other hand which regulate the terms and conditions of employment".[40]

The Supreme Court has also laid down that 'collective bargaining' is a technique by which dispute between labour and capital are resolved amicably by agreement rather than by question.[41]

[38] Encyclopedia Social Sciences Vol. No. 3 P.628.
[39] ILO, Collective Bargaining A Workers Education manual Geneva, 1960, p.3
[40] Ludwing Teller: Labour Disputes and Collective Bargaining, Vol. 1, p.476.
[41] Karnal Leather karam Chary Vs Liberty Footwear Company, 1990, LIC 301.

3.6.3. Parties to Collective Bargaining

Two parties namely management and workers are required for collective bargaining. Management may represent itself alone or may be represented through employers association or federation of employers. Workers will be represented either through a union or workers federation. The above two parties are directly involved in the process of collective bargaining. However it is relevant and essential to mention here that a representative of public should also involve in collective bargaining to represent and safeguard the interest of the public at large.[42]

3.6.4 Subject matter of Collective Bargaining

The International Labour Organization has divided the subject matter of collective bargaining into two categories.

That, which set out standards of employment, which are directly applicable to relations between an individual employer and worker.

[42] Bartram F Will Cox, a Sketch of the Federal Law of Labour in the United States, Aligar Law Journal, 1965, p. 39.

That, which regulate the relation between the parties to the agreement themselves and have no bearing on individual relations between employers and workers.[43]

The first category includes subjects like wages, working hours, overtime, holidays with pay and period of notice for termination of contract.

The second category includes provisions for enforcement of collective bargaining, method of settling individual disputes, reference to conciliation and arbitration, reorganization of union as bargaining agent for the workers, undertakings not to resort to strike or lockout during the period and procedure for negotiations of new agreements. However in India the parties are free to decide the subject matter subject to the limitation imposed by the laws. For instance, the contracts must be in conformity with Factories Act, 1948, Minimum Wages Act, 1948, Payment of Wages Act, 1936 etc. These acts prescribe safety precautions, health measures, amenities, conditions of employment, minimum wages, payment of wages etc.[44]

[43] ILO, Collective Bargaining (A worker Education manual), Geneva, 1960, p.46.

[44] K.M.Pillai, Labour and Industrial Law, 2005, p.48.

3.6.5 Objectives of Collective Bargaining

There are certain objective which are required to be achieved by collective bargaining contracts. International Confederation of Free Trade Union has enumerated the following objectives in this regard:

To establish and build up union recognition as an authority in the work place;

1. To raise workers standard of living and win a better share in companies profit;
2. To express in practical terms the workers desire to be treated with due respect and to achieve domestic participation in decision affecting their working conditions;
3. To establish orderly practices for sharing in these decision and to settle disputes which may arise in day to day life of the company.
4. To achieve broad general objectives such as defending and promoting the workers interest through out the country.[45]

[45] Marysur, Collective Bargaining, 1965, p.4.

The main objective collative bargaining is to settle down the disputes or deference between the parties in respect of employment, non-employment and conditions of services of the members of the union.

Collective bargaining is, that arrangement where by the wages and conditions of employment of workers are settled through their union or by some of them on behalf of all of them.[46]

3.6.6 Preparation for negotiation

It is necessary that the bargaining terms of the management and the labour should be selected with proper care and prudence. It is generally desired that negotiation must have sufficient knowledge for participating in bargaining process. Management should form the most popular and effective team of its own. It is also advisable to form a small team because the large members on both sides become unwieldy. It is the duty of the chief negotiator to evolve a strategy of action and the tactics to be adopted during the negotiations. Each member of the team must know the role to be played by him. Negotiations may commence at the instance of either party i.e, management and labour. For having effective participation in the negotiations with the management the union of workers is required to have

[46] S.K.Puri: *An Introduction to labour and Industrial Laws*, 1992, p. 526.

full information regarding the financial situation of the company, the attitude of management towards various issues, as resolved in past negotiations and the attitudes and desires of the workers. Before the actual negations begin, the parties should hold separate meetings of their own sides to decide their attitudes on various issues, to draft the terms of their demands and to limit concessions they are prepared to make.[47]

The negotiations between the management and union are the second stage of collective barging. This stage is excessively a complicated one. It requires a protracted and complex interchange of ideas combining argument, horse-trading, bluff, cajolery and threats.[48] The representatives of management listen care fully and observe the reactions of the other members of union during the presentation of the case by the union. Act of listing and registering what is being said across the table as well as remembering the context in which the key words and phrases have been employed can mean the deference of success and failure.[49]

All the points raised by the union are subsequently to be met by the management in a crucial, peaceful and effective manner.

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[47] Indian Law Institute, *Labour Law and Labour Relations*, 1968, p. 30.
[48] Van D. Kennedy, Union, *Employees and Government* (1966) p.115
[49] Mahesh Chandra, *Industrial Jurisprudence*, 1976, p- 3

Negotiations also play important role during the course of bargaining process. They keep on bargaining as long as the other party continues to do so in good faith and there appears to be a change of settlement. It there is an agreement between the management and the union, the union members must accept or reject the agreement by majority vote. In case the agreement is rejected by the union, negotiating terms return to the bargaining table to negotiate. Again if there is no agreement between the parties, negotiations are said to have broken down.

3.6.7 Drafting of Agreement

The Third Stage of Collective Bargaining process is the drafting of an agreement. The importance of drafting of agreement cannot be under estimated as it involves great deal of skill and prudence. Drafting of agreement must be in such a manner as to respect the real intention of the parties. The provisions mentioned in the agreements are supposed to be clear and definite and should explicitly cover the subject matter in accordance with the intent of the agreement.

Vagueness and ambiguity should be avoided. The language of the agreement should be simple and comprehensive so as to reflect the real intent of agreement and to avoid legal ambiguity. Lastly the agreement is

finalized for signature by the parties, the duration of the agreement vary from agreement to agreement.

3.6.8 Implementation of the Agreement

A collective agreement is useless unless it is implemented in its true letter and spirits. In the United Kingdom these agreements are considered "gentlemen's agreements" without legal force. In India collective bargaining agreement can be enforced under Section 18 of Industrial Disputes Act, 1947, as a settlement arrived between the workers and the employers. Under Section 18 (1) of ID Act, 1947, a settlement arrived at by an agreement between the employer and workmen otherwise than in the course of conciliation proceedings is binding only on the parties to the agreement. Therefore it is evident that a settlement enforceable under ID Act, 1947, does not automatically extend to workers employed in the industrial establishment concerned who are not a party to the settlement. It is not necessary that each individual worker should know the implications of the settlement since a recognized union, which is expected to protect the legitimate interest of labour and enters into a settlement in the best interest of the labour. This would be normal rule; there may be exceptional cases where there may allegations of malafides, fraud or even corruption or other

inducement. But in the absence of such allegations such settlement in the course of collective bargaining is entitled to due weight and consideration.

After analyzing the concept of collective bargaining comprehensively, it can be concluded that it is the technique that has been adopted by unions and management for comprising their conflicting interests. Industrial harmony and improving labour management relations are the ultimate objective of collective bargaining. It helps in removing and settlement of many minor and major disputes or differences. Therefore, its role in conflict resolutions is significant and remarkable. It does not involve bitterness between the parties and unnecessary expenditure.

It differs from arbitration where the solution is based on a decision of a third party, while arrangements resulting from collective bargaining usually represent the choice or compromise of the parties themselves. It is also relevant and pertinent to highlight here that collective bargaining is a quick and efficient method of settlement of industrial disputes and avoids delay and unnecessary litigation.

Mr. V. V. Giri, the former President of India and a strong champion of collective bargaining had the courage to say that adjudication was enemy number one of the industry and working class.

During the process of collective bargaining the union leaders are expected to play a constructive role by adopting a rational approach to the socio-economic effects and the consequences of their extreme demands. The teams representing both the parties must be strong, balanced and should be small. They should be the persons of open hearts and should try their best to come to the solution which is acceptable to all.

Every system has its advantages and disadvantages and collective bargaining is not an exception to it. Trade Union as well as employers are concentrating their attention on this method of solution for industrial disputes, because through this mode the dispute is solved amicably by a mutual discussion between the parties. Therefore, it can be said that this system helps in establishing harmonious relationship between the labour and capital and is considered a step towards industrial democracy.

3.7. Settlement Machinery of Industrial Disputes:

The Industrial Disputes Act, 1947,[50] reflects this very concern of the State and thus justifying a strong need for the intervention of the State in modern industrial disputes. State intervention in industrial relations is essentially a modern development. With the emergence of the concept of welfare state, new ideas of social philosophy, national economy and social justice sprang up with result that industrial relation no longer remains the concern of labour and management alone.[51] The concern of state in matters relating to labour is a product of its obligations to protect the interest of industrial community, while at the same time fostering economic growth in almost all countries.[52] The state has assumed powers to regulate labour relations in some degree or the other. In some, it has taken the form of laying down bare rules or observance by employers and workers; in others, the rules cover a wider area of the rules. So far as our country is concerned, State intervention in labour matters can be traced back to the enactment of the Employers and Workmen's Disputes Act 1860 which provided for the speedy disposal of the dispute relating to the wages of workmen engaged in railways, canals and other public works by Magistrates.[53]

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[50] I.D. Act, 1947 (Act 14 of 1947)
[51] Hindustan Antibiotics Vs. its workmen A.I.R. (1967) SC. p.948
[52] Workmen of Dimakachi Tea Estate Vs. Dimakachi Tea Estate, AIR 1958, SC p.353
[53] *Aditya Swaroop : Grievance settlement authorities; emerging trends, LLJ, II, 2008 p.17.*

In 1947, the Government of India passed the Industrial Disputes Act under which machinery for the preventions and settlement of the disputes was outlined. The Act as amended in 1956 has set up machinery for settlement of disputes. The present system of establishing industrial peace and to settle industrial disputes is as under:

3.7.1 The Works Committee

In the case of any industrial establishment in which one hundred or more workmen are employed or have been employed on any day in the preceding twelve months, the appropriate Government may by general or special order require the employer to constitute in the prescribed manner a Works Committee consisting of representatives of employers and workmen engaged in the establishment so however, that the number of representatives of workmen on the Committee shall not be less than the number of representatives of the employer. The representatives of the workmen shall be chosen in the prescribed manner from among the workmen engaged in the establishment and in consultation with their trade union, if any, registered under the Indian Trade Unions Act, 1926 (XVI of 1926).

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.

There are Joint Committees of employers and employees for the purpose of promoting good relations between the parties. The Committees attempt to remove causes of friction between employers and workers in the day-to-day working of the factory. They provide a forum for negotiations between employers and workers at the factory level. The Government may direct industrial establishments with 100 or more workers to constitute such works committees.

In *Kemp & Company Ltd., Vs. their Workmen'*[54] that "The Works Committees are normally concerned with problems arising in the day to day working of the concern and the functions of the Works Committees are to ascertain the grievances of the employees and when occasion arises to arrive at some agreement also. But the function and the responsibility of the Works Committees as their very nomenclature indicates cannot go beyond recommendation and as such they are more or less bodies who in the first

[54] (1995) I LLJ, 48, p.53

instances endeavour to compose the differences and the final decision rests with the union as a whole".

Short comings:

The scope of the Works Committee as in Sec. 3 (ii) of the Industrial Disputes Act, 1947 is vague. Besides health, safety, welfare and human relations, the committees advise on a number of technical matters and are kept posted with the undertaking position of trade, sale and account sheets. This gives a great recognition and satisfaction to members, and they are also enabled to formulate, their opinion more objectively. In India the scope and functions of the works committees are so limited.

3.7.2 Conciliation Officer

This is the second agency or authority created by proceedings[55].The appropriate Government has been authorized to appoint one or more Conciliation Officers for mediating and promoting the settlement of industrial disputes. A Conciliation Officer can be appointed either for a specified area or for a specified industry or industries. In order to bring about a right settlement of a dispute, a Conciliation Officer is given wide desecration. Whereas, it is obligatory on the parties involved in the dispute

[55] Industrial Disputes Act 1947, Section 4 & 12 read along with the Central rules 7, 8 and 9.

to appear before him, is summoned, but they are not bound to accept his point of view.

Duties of Conciliation Officers:

A Conciliation Officer may take appropriate steps for inducing the parties to a fair and amicable settlement of the dispute. If a settlement is arrived at during conciliation proceedings, he must send a copy of the report and the memorandum of the settlement signed by the parties to appropriate Government or an officer authorized by it. In case no settlement is arrived at, he is required to send to appropriate Government, full report of the steps taken by him to resolve the dispute, and the reasons on account of which a settlement could not be arrived at.

The Conciliation Officer is required to submit his report within fourteen days of the commencement of the conciliation proceedings, but the time for the submission of the report may be extended further on the written request of the parties to the dispute. Where a settlement is not reached, the appropriate Government, after considering the report of the conciliation officer, may refer the dispute to a Board of Conciliation or Labour Court or Industrial Tribunal or National Tribunal as the case may be.

3.7.3 Board of Conciliation

Section 5 of the Industrial Disputes Act, 1947 provides for creation of Board of Conciliation which is simply an extension of conciliation officers work.[56] Unlike a Conciliation Officer, the board may not be a permanent body and can be set up as the occasion arises. It comprises of two or four members representing parties to the dispute in equal numbers and a chairman who has to be an "independent person". The Board has the status of a Civil Court and can issue summons and administer oaths.

The members representing the parties are to be appointed on the recommendations of the parties concerned, but in case of their failure to make such recommendations, the appropriate Government must appoint on its own, persons representing the parties.

3.7.4 References of Disputes to Board of Conciliation

Where the appropriate Government is of the opinion that any industrial dispute exist or is apprehended, it may at any time, by order in writing, refer the dispute to a Board of Conciliation for promoting settlement. In case the parties to an industrial dispute make an application in the prescribed manner whether jointly or separately, for a reference of

[56] Industrial Disputes Act, 1947, Sec-13

the dispute to a Board of Conciliation, the appropriate Government is required. On being satisfied that the persons making such an application represent the majority of each party to make the reference accordingly. Where the dispute is referred to the Board, the appropriate Government may prohibit the continuance of any strike or lock-out in connection with such dispute which may be in existence on the date of reference.

3.7.5 Duties and Powers of the Board

When a dispute has been referred to the Board of Conciliation, it may take suitable steps to induce the parties to come to a fair and amicable settlement. If settlement is arrived at, the board is required to send a report and a memorandum of the settlement signed by the parties to the disputes to the appropriate Government.

If no such settlement is arrived at, the Board is required 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 disputes and bringing about a settlement and the reasons on account of which a settlement could not be arrived at, and also its recommendations for the determination of the dispute.

The board is required to submit report within two months of the date of the reference of the dispute or within shorter period as determined by the appropriate Government. The appropriate Government may extend the time of the submission of the report to a period of not exceeding two months in the aggregate. The date of the submission of the report may also be extend to such date as may be agreed on in writing by all parties to the dispute.

The report of the Board of Conciliation writing and is to be signed by all members of the board but any member may record any minute of dissent from a report or from any of its recommendation. Every report together with any minute of dissent has to be published by the appropriate Government with in a period of 30 days from the date of its receipt.

Period of Operation:

A settlement comes into operation on the date agreed upon by the parties to the dispute and in case no date is agreed upon, the date on which the memorandum of the settlement is signed by the parties to the depute, a settlement is binding for such period as is agreed upon, for a period of six months from the date which the memorandum of settlement is signed by the parties to the dispute.

Settlement is Binding:

A settlement arrived at in course of conciliation proceedings is binding on

i. all parties to the industrial disputes.
ii. all other parties summoned to appear in the proceedings as parties to the dispute.
iii. where such parties is employer ,his heirs and successors of the establishment to which the dispute relates.
iv. where such parties composed of workmen all persons who were employed in the establishment or part of the establishment, as the case may be to which the dispute relates.

3.7.6 Court of Inquiry

The appropriate Government is empowered to constitute a “Court of inquiry” as occasion arises, for the purpose of ‘inquiry in to any matter appearing to connect with or relevant to an industrial dispute”. Generally Court of Inquiry is constituted when no settlement is arrived at as a result of efforts made by the Conciliation Board. A Court of Inquiry is required to enquiry into the matter referred to it and report appropriate Government

ordinarily within a period of six months from the commencement of its inquiry. The report of inquiry is to be in writing and sign by the all members but any of its members is free to record any minute of dissent from any office recommendations. The idea of Court Inquiry is new in this Act and has been borrowed from the British Industrial Court Act, 1919. Under the British Act, the Minister-in-charge can constitute a Court of inquiry to enquire into and report on the causes and circumstances of any trade dispute together with its own recommendations. The report should be given vide publicity to rouse public interest in the matter in order to prevent any irrational step on the part of the parties for fear of public condemnation.

Setting of a Court of Inquiry is at the discretion of an appropriate Government. The Government can refer any single or more matter connected or relevant to the dispute or can refer whole to the Court which can be set up irrespective of consent of parties to dispute. Usually, the Courts of Inquiry comprise one person. In case it has more than one member one of them will be nominated as Chairmen usually. The Court of Inquiry has to submit its report with in six months. After receiving the report of the Court of Inquiry, the Government may refer the dispute to one of the adjudication authorities or Labour Courts or Industrial Tribunal or National Tribunals as the case may be.

3.7.7 Labour Court

Labour Court is one of the adjudication authorities set up under the Industrial Disputes Act, 1947 it was introduced by amending Act in 1956. Setting up of a Labour Court is at the discretion of the Government. It is the one man Court presided over by a person who has held either a judicial position in India for not less than seven years or who has been a presiding officer of Labour Court constituted under any state act for not less than five years. The function of labour Court is to adjudicate on matters referred to it are listed in the schedule II appended to the Act, which includes;

- The propriety or legality of an order passed by an employer under the standing orders;
- Discharge or dismissal of workmen including re- instatement of or grant of relief to workmen wrongfully dismissed;
- Withdrawal of customary concession or privilege.
- Illegality or otherwise of a strike or a lock – out.
- All matters other than those provided in the Third Schedule appended to the Act.

3.7.8 Tribunals or Industrial Tribunals

An Industrial Tribunal may be set up by the appropriate Government on a temporary or permanent basis for a specified dispute for industry. As a whole the Tribunal comprises of one person only. The qualifications for appointment as Presiding Officer of an Industrial Tribunal are that the candidate should have been or is judge of a High Court or has held the post of Chairman or Labour Appellate Tribunal for not less than two years or he is or has been judge or Additional District judge for a period not less than three years.

Generally, industrial disputes of major importance or industrial disputes which are important to the industry as a whole are referred to the industrial tribunals.

Thus appropriate Government may constitute one or more Industrial Tribunals for the adjudication of industrial disputes relating to any matter as specified either in second schedule mentioned above or in the third schedule appended to the Industrial Disputes Act, 1947 which includes ;

a. Wages, including the period and mode of payment.
b. Contribution paid or payable by the employer to a any provident or pension fund or for the benefit of the workmen under any law for the time being in force;

c. Compensatory and other allowances.

d. Hours of work and intervals.

e. Leave with wages and holidays.

f. Starting alteration or discontinuance.

g. Classification by grades;

h. Withdrawal of any customary concession or change usage;

i. Introduction of new rules of discipline or alteration of existing rules, except in so far as they are provided in standing orders;

j. Rationalization, standardization or improvement of plant or techniques which is likely to lead retrenchment of workmen.

k. Any increase or reduction in the number of persons employed or to be employed in any occupation or department or shift not occasioned by circumstances over which the employer has no control;

3.7.9. National Tribunals

Labour Courts and Industrial Tribunals are to be constituted by the appropriate Government, which may either the State Government, or the Union Government depending upon their respective jurisdiction over various industries. National Tribunals can be set up by the Central Government. They are to be constituted for the adjudication of the

industrial disputes, which in 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. The Central Governments can made a reference to the National Tribunal.

Where any reference is made to made National Tribunal, then notwithstanding any thing contained in the Act, no Labour Court or Tribunal has jurisdiction to adjudicate upon any matter which is under adjudication before it. If the mater under adjudication of National Tribunal is pending before a Court or Tribunal the proceedings relating to that matter which are pending before them will be deemed to have been quashed. State Governments are debarred from referring the matter under adjudication of National Tribunal to any Labour Court or Industrial Tribunal.

The National Tribunal consists of one person only to be appointed by the Central Government. A person who is qualified for appointment as the Presiding Officer of a National Industrial Tribunal. He is or has been a judge of a High Court. He has held the office of the chairman or any other member of the Labour Appellate Tribunal constituted under the Industrial Disputes Act, 1947 for a period of not less than two years.

The Central Government may also appoint two assessors to advise the National Tribunal.

The Presiding Officers of Labour Courts, Tribunals or National Tribunals should be independent persons, below the age of 65 years and with no interest in the industry whose dispute be heard.

Reference of disputes to adjudication authorities:

The appropriate Government may refer the dispute to a Labour Court Tribunal or National Tribunal for adjudication. The Labour Court is empowered to adjudicate upon matter specified in Second Schedule and an Industrial Tribunal on those specified in Second or Third Schedule. Thus, any matter which is important for the industry as a whole and is listed in schedule ii or schedule iii maybe referred for adjudication to a Tribunal or Industrial.

However, where a dispute relates to a matter specified in the third schedule, and is not likely to affect more than one hundred workmen, the appropriate Government may refer it to a Labour Court.

In case a dispute involves any question of national importance or is of such nature that industrial establishment situated in more than one state or likely to be interested in or affected by the dispute, the Central Government may at any time refer the dispute or any relevant matter related to the dispute to the National Tribunal.

If the parties to an industrial dispute make a request in the prescribed manner to refer the dispute to a Labour Court, Tribunal or National Tribunal the appropriate Government is required to make such reference, but it may refuse to do so, if it is satisfied that the persons applying for the reference do not represent the majority of the party.

3.8 Recommendations of first and second national commission on labour

3.8.1 Recommendations of First National Commission on Labour

The first National Commission on Labour (1966-69) with Dr. Gajendra Gadkar, the former Chief Justice of India as its Chairman made comprehensive investigation in almost all the problems relating to labour. It had made a series of recommendations to promote industrial peace.

The National Commission on Labour recommends to constitute the Industrial Relation Commission for the settlement of industrial disputes, besides the setting of labour Court which would be entrusted with the judicial functions of interpretation and enforcement of all labour laws, awards and agreements.

Structure of Industrial Relation Commission:

(i) There should be a National Industrial Relation Commission appointed by the Central Government for industries for which that Government is the appropriate authority. The National Industrial Commission would deal with such disputes which would deal with questions of national importance or which are likely to affect or interest establishments situated in more than one state. i.e. disputes which are at present dealt with by National Tribunal.

(ii) There should be an Industrial Relation Commission in each state for the settlement of disputes which the state Government is the appropriate authority.

(iii) National/State Industrial Relation Commission will have three main functions.

(a) Adjudication in industrial disputes

(b) Conciliation and

(c) Certification of unions as representative unions.

(iv) The Commission should be constituted with a person having prescribed judicial qualifications and experience as its President and equal members, the non-judicial posts, but should be otherwise eminent in the field of industry, labour or management.

(v) The functions relating to certification of unions, the representative unions will vest with a separate wing of the National/ State industrial Relation Commission.

The procedure for the settlement of dispute:

(i) After negotiations have failed and before notice of strike or lock-out served, the parties may agree to voluntary arbitration and the commission will help the parties in choosing an arbitrator mutually concept able to them.

(ii) In case of essential industrial services when collective bargaining fails and when the parties to the dispute do not agree to arbitration, either party shall notify the Industrial Relations Commission with a copy to the appropriate Government of the failure of negotiation where upon the Industrial Relations

Commission should adjudicate upon the disputes and its award shall be final and finding upon the parties.

(iii) In the case of non-essential industries services, following the failure of negotiations and refusal by the parties to avail of voluntary arbitration, the Industrial Relations Commission after the receipt of notice of direct action (but during the notice period) may offer the parties its good offices for settlement. After the expiry of notice period, if no settlement is reached, the parties will be free to resort to direct action. If direct action continues for 30 days it will be incumbent on the IRC to intervene and arrange for settlement of the dispute.

(iv) When a strike or lock-out commences, the appropriate Government may move the commission to call for the termination of the strike or lock-out on the ground that its continuance may affect the security of the state, national economy or public order and it after hearing the Government and the parties concerned the commission is so satisfied. It may for reasons to be recorded call on the parties terminate the strike lock-out and the file their statements before it. There upon, the commission shall adjudicate on the dispute.

(v) It would be possible to arrange transfer of cases from the National IRC to the State IRC and vice versa under certain conditions.

(vi) The commission will have powers to pay or withhold payments for strike or lockout under certain circumstances.

(vii) All collective agreements should be registered with Industrial Relation Commission.

(viii) An award made by the Industrial Relation Commission in respect of dispute raised by the recognized union should be binding on all workers in the establishments and the employers.

Labour Courts may be appointed in each state to deal with interpretation and implementations of award, claims arising out of rights and obligations under the labour laws and such other matters as may be assigned to these Courts.

Collective Bargaining:

The National Commission on Labour made a several recommendations relating to the problems of the labour and made a series of recommendations to promote collective bargaining. Though one can not be convinced that collective bargaining is antithetical to consumer's

interests even in a sheltered market one envisages that in a democratic system pressure on Government to intervene or not to intervene in dispute may be powerful. It may be hardly be able to resist such pressure and the best way to meet them will be to evolve a regulatory procedure in which the state can be seen in the public eye to absolve itself of possible charges of political intervention. The requirements of National Policy make it imperative that state regulation will have to co-exist with collective bargaining.

At the same time there are dangers in maintaining status-quo. There is a case for shift will have to be in the direction of on increasing greater scope for, on reliance on, collective bargaining. But, any sudden change replacing adjudication by a system of collective bargaining would neither be called for nor practicable. The process has to be gradual and beginning has to be made in the move towards collective bargaining by declaring that it will acquire primary in the procedure for setting Industrial Disputes.

Therefore, the Commission has suggested a shift from the adjudicatory process to a collective bargaining process in a phased manner.[57]

3.8.2 Recommendations of Second National Commission on Labour

On 15, October 1999, the Government of India set up the Second National Commission on Labour Mr. Ravindra Varma as the Chair person. The main purpose of this Commission was:

a) To suggest rationalization of existing laws relating to labour in organized sector, and

b) To suggest an "umbrella" legislation for ensuring a minimum level of protection to the workers in the unorganized sector.

The Commission recommends that it is necessary to provide a minimum level of protection to managerial and other employers too, against unfair dismissals or removals. This has to be brought adjudication by Labour Court or Labour Relation Commission or Arbitration.

[57] Reports of National Commission on Labour (2002, 1991-1967) Academic Foundation, New Delhi pp.265-269.

Central Laws relating to Labour Relations are currently the Industrial Disputes Act, 1947, the Trade Union Act, 1926, and the Industrial Employment Act, 1946. In addition, there is Sales Promotion Employees Act, 1976 and some other Acts for particular trades or employments. The National Commission on Labour recommends that all these laws are judicially constituted into a single law called the Labour Management Relations.

The Commission is of the view that changes in the labour laws be accompanied by a well-defined social security package that will benefit all workers, be they in the organized or unorganized sector and should also cover those in administrative managerial and other categories which have been excluded from the purview of the term ‘worker’. The Commission recommends that in case of socially essential service like water supply, medical service, sanitation, electricity and transport, when a dispute not settled through mutual negotiations there may be a strike ballot as shows that 51 percentage of workers are infavour of a strike, it should be taken that strike has taken place, and dispute must forthwith be referred to compulsory arbitration.

Between arbitration and adjudication, the better of the two and would like, the system of arbitration to become the accepted mode of determining dispute which is not settled by parties themselves. The Commission envisages a system of Labour Courts, Lok - Adalaths and Labour Relation Commission is the integral adjudicatory system in labour matters. The system will not only deal with matters arising out of employments relations but also trade disputes in matters such as wages, social security, safety and health, welfare and working conditions and so on. Labour Relations Commissions should be established at the state, central and national level to settle disputes. System of Lok Adalaths has been recommended by the commission to be pursued to settle disputes speedily.