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INDUSTRIAL DISPUTE

DEFINITION:

According to Section 2(k) of the Industrial Dispute Act, 1947 the term 'Industrial Dispute' means "any dispute or difference between employers and employees or between employers and employees or between workmen and workmen, which is connected with the employment or non employment or the terms of employment and conditions of employment of any person"

The following principles judge the nature of an Industrial Dispute:

1. The dispute must affect a large number of workmen who have a community of interest and the rights of these workmen must be affected as a class.
2. The dispute must be taken up either by the Union or by a substantial number of workmen.
3. The grievance turns from Individual complaint into a general complaint.
4. There must be some nexus between the Union and the dispute.
5. According to the Section 2A of the ID Act, 1947 a workmen has a right to raise an Industrial Dispute with regard to termination, discharge, dismissal or retrenchment of his or her service, even though no other workmen or any trade union of workmen or any trade union of workmen raises it or is a party to the dispute.

FORMS OF INDUSTRIAL DISPUTE

Strike: The Industrial Dispute Act, 1947 defines a strike as "Suspension or cessation of work by a group of persons employed in any industry acting in combination or a concerted refusal or a refusal under a common understanding of any number of persons who are or have been so employed to continue to work or accept employment".

Primary Strike:

These strikes are generally aimed against the employers with whom the dispute exists. They may include the form of a stay away strike, stay -in, sit down, pen down or tools down, go slow and work to rule, token or protest strike , cat call strike, picketing or boycott.

Secondary Strike:

These strikes are also called "sympathy strike". In this form of strike , the pressure is applied not against the employers with whom the workmen have a dispute but against the third person who had good trade relation with the

employer. However these relations are severe and the employer incurs losses. This form of strike is popular in USA but not in India. The reason being in India the third person is not believed to have any locus standi so far the dispute between workers and employers is concerned.

General and political strikes and bands come under the category of other strikes

Lock-Out: The Industrial Dispute Act, 1947 defined Lock-out as " the temporary shutting down or closing of a place of business by the employer"

Gherao: It is a physical blockade of managers by encirclement aimed at preventing the egress and ingress from to a particular office or place.

The national Commission has refused to accept 'gherao' as a form of industrial protest on the ground that it tends to inflict physical duress (as against economic press) on the persons gheraoed and endangers not only industrial harmony but also creates problem of law and order. Workmen found guilty of wrongfully restraining any person or wrongfully confining him during a gherao are guilty under section 339 or 340 of the India penal Code of having committed a cognizable offence for which they would be liable to be arrested without warrant and punishable with simple imprisonment for a term which may be extended to one month or with a fine up to Rs. 500/- or with both.

Picketing and boycott:

Picketing is a method designed to request workers to withdraw cooperation to the employer. In picketing workers through display signs banners and placards draw the attention of the public that there is a dispute between workers and employer. Workers prevent their colleagues from entering the place of work and persuade them to join the strike for this some of the union workers are posted at the factory gate to persuade others not to enter the premises but to join the strike.

Boycott: It is on the other hand aims at disrupting the normal functioning of the organisation the striking workers appeal to others for voluntary withdrawal of cooperation with the employer instances of boycotting classes and examinations are seen in the universities also.

CAUSES OF INDUSTRIAL DISPUTE:

The causes of industrial dispute or unrest may be grouped in four broad categories:

- A) Industrial Factors: Grievances relating to employment, i.e work, wages, bonus, hours of work, privileges, conditions of employments and obligations of employees and other factors are:
1. Attitude of workers
 2. Increasing prices and demand for increase in dearness allowance.
 3. Indiscipline and violence among workers
 4. Worker's resistance to rationalisation, introduction of new machinery and change of place of factory.
- B) Management Attitudes towards the workers:
1. Disinterest of the management to discuss with the workers
 2. Management unwillingness to recognise a particular Trade Union
 3. Not involving the workers in decision making
 4. Inadequate communication
- C) Role of government Machinery:
1. Not successful in implementing labour laws
 2. Inability of conciliation machinery of the labour department to do its job and employees and managements loss of confidence in that
 3. Irrelevance of certain provisions of labour laws in the context of challenges of present industrial climate and imperatives of development due to competitive environment.
- D) Other causes:
1. Affiliation of Trade unions with political parties, political leadership, there by bringing pressures for accepting their demands.
 2. Political instability and poor centre state relations contribute to industrial conflicts
 3. Another factor is character crises in value of trade union leaders, trade union rivalry.
 4. Need for change in outlook and attitudes of the parties including management.

Hence there is an increasing tendency among the industrial workers to resort to strike and militancy. They forget that strike is their last resort in their armoury.

Causes and Settlement of Industrial Disputes

CAUSES OF INDUSTRIAL DISPUTES

The causes for industrial disputes or unrest may be grouped in four broad categories:

- (a) *Industrial Factors*: Grievances relating to employment, i.e. work, wages, bonus, hours of work, privileges, conditions of employment and obligations of employees and other factors are:
- Attitude of workers
 - Increasing prices and demand for increases in dearness allowance
 - Indiscipline and violence among the workers

- Worker's resistance to rationalisation, introduction of new machinery and change of place of factory

(b) *Managements Attitude towards the Workers:*

- Disinterest of the management to discuss with the workers
 - Management's unwillingness to recognise a particular trade union
 - Not involving the workers in decision-making
 - Inadequate communication

(c) *Role of Government Machinery:*

- Not successful in implementing Labour Laws
- Inability of conciliation machinery of the Labour department to do its job and employees and management's loss of confidence in that
- Irrelevance of certain provisions of Labour Laws in the context of challenges of present industrial climate and imperatives of development due to competitive environment

(d) *Other Causes:*

- Affiliation of trade unions with political parties, political leadership, thereby bringing pressures for accepting their demands
- Political instability and poor centre-state relations contribute to industrial conflicts
- Another factor is character crisis, in values of trade union leaders, trade union rivalry
- Need for change in outlook and attitudes of the parties including management.

Hence, there is an increasing tendency among the industrial workers to resort to strike and militancy. They forget that strike is the last resort in their armoury. Some important sources of Union-Management conflict can be summarised as under:

- (i) *Profit:* Both agree that organisations are set up to make profits, but the trade unions feel that they are not getting enough pay and benefits. Unions contest the distribution of profits.
- (ii) *Security of Jobs:* Earlier, the organisational goal was to provide jobs. It is now replaced by the organisations to provide security of job due to competitive environment.
- (iii) *Right to Manage:* Management would like to retain the decision-making authority and ward-off encroachments. However, trade unions seek to increase bargaining issues.
- (iv) *Seniority:* Unions plead for the seniority principle, while deciding promotion and giving other benefits etc., and disregard competence and ability as subjective criteria. However, managements resist seniority system in favour of productivity and merit.
- (v) *Productivity:* Productivity is a result of labour, capital, technology and other factors. The problem is in determining how much productivity is due to labour and how much due to other factors. Workers want more compensation for more productivity.

- (vi) *Inflation*: Workers want linking wages to cost of living index while managements would like allowances to be linked with productivity and performance.

MACHINERY FOR PREVENTION AND SETTLEMENT OF INDUSTRIAL DISPUTES

Machinery for prevention and settlement of industrial disputes comprises of:

- (a) Statutory Machinery, and
- (b) Voluntary Machinery

Statutory Machinery

Industrial disputes Act, 1947 provides the mechanics of dispute-resolution and set-up the necessary structure so as to create a congenial climate.

What is an 'Industrial Dispute'?

'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 terms and conditions of employment of any person.

Who can raise a Dispute?

A dispute is said to have arisen when some demand is made by workmen and it is rejected by management or vice versa and the demand is related to employment. A workman can raise a dispute. However, it is pertinent to note that a dispute between an employer and single workman does not fall within the definition of industrial dispute, but if the workmen as a body or a considerable section of them make a common cause with the individual workman then such a dispute would be an industrial dispute.

However, certain individual disputes relating to dismissal, discharge, retrenchment or termination of services of a workman, are also covered. The Act applies even to industrial establishments employing a single workman. But dispute in relation to a person who is not a workman' within the meaning of the Act is not an industrial dispute under Section 2(k).

The Industrial Disputes Act, 1947, provides for creation of different authorities to preserve industrial harmony, prevention and settlement of industrial disputes. These are:

- 1. Work Committees:** In establishments where hundred or more workers are employed;
 - (a) The appropriate government may require the employer to set-up works committee.
 - (b) It is composed of equal number of representatives of workmen and management who are chosen with consultation of the trade union.
 - (c) Its functions are to preserve amity and establish cordial relations and to resolve differences of opinion on matters of common interest.
- 2. Conciliation Officer:** The conciliation officer may be appointed by the Government for a specified area or specified industries.

The duty of a conciliation officer is to mediate in and promote the settlement of industrial disputes.

Wherever industrial dispute exists or is apprehended and relates to public utility, the conciliation officer shall hold conciliation proceedings and it is mandatory. In such cases, the conciliation officer will investigate the dispute and induce the parties to come to an amicable settlement. However, he cannot take the decision himself.

He has to send a report of the settlement to the Government. If no settlement is reached then also he has to report to the Government giving reasons on account of which the settlement could not be reached. The conciliation officers do normally submit the report within 14 days of commencement of conciliation proceedings. The duty of the conciliation officer is administrative and not judicial in nature.

If an agreement is reached by the parties, it is binding on both the parties.

3. **Board of Conciliation:** The Government may notify the constitution of the conciliation board for promoting settlement of an industrial dispute. Its role is also consultative, like the conciliation officer.
4. **Court of Enquiry:** The Government may constitute a court of enquiry to enquire into any matter connected with an industrial dispute. In the case of board of conciliation, the object is to promote settlement of an industrial dispute. But, in the case of a court of enquiry, the object is to enquire into and reveal the causes of an industrial dispute.
5. **Voluntary Arbitration:** It is a voluntary method of resolving individual disputes if the dispute is not settled by the negotiating parties. Here, both parties are willing to go to an arbitrator of their choice and submit to his decision. Arbitrators are named by the parties in the written agreement. The number of arbitrators can be one or even more than one. Legal sanctity to this mode of settlement of industrial disputes was given in 1956 when Section IOA was introduced in the Industrial Disputes Act.
6. **Adjudication:** The Industrial disputes Act provides for a three-tier system of adjudication of industrial disputes. The cases may be either referred by the Government to court after the receipt of failure report from conciliation officer or directly by any party. Labour courts and industrial tribunal may be constituted by the State Government while the national tribunal is constituted by the Central Government.

(i) Labour Courts: Functions of labour courts relate to matters as under:

- (a) Legality of an order passed by an employer under the standing orders,
- (b) Application and interpretation of standing orders,
- (c) Discharge or dismissal of workman/workmen,
- (d) Withdrawal of any customary concession or privilege,
- (e) Illegality or otherwise of a strike or lock-out, and
- (f) All matters (not specified for industrial court).

(ii) Industrial Tribunals: The functions:

- (a) All matters within the jurisdiction of labour courts,
- (b) Wages,

- (c) Compensatory and other allowances,
- (d) Hours of work and rest intervals
- (e) Leave with wages and holidays,
- (f) Bonus, Provident Fund and Gratuity,
- (g) Shift Working,
- (h) Classification of Grades,
- (i) Rules of Disciplines, and
- (j) Retrenchment and Closure of Establishment.

(iii) National Tribunal: The national tribunal shall be constituted by the Central government (only) when the undertakings in more than one stage are affected by such industrial dispute and are of 'national importance' and matters relate to functioning of labour and industrial courts.

7. *Grievance Settlement Authority:* It is applicable to enterprises, where 50 or more workers are employed. This is for settling of individual grievances of employees. Individual disputes are to be referred to the courts when not settled at grievance settlement authority level.
8. *Welfare Officer:* Another preventive measure is under the Factories Act, 1948, i.e., the appointment of a welfare officer in the organization, if workers are 500 or more.
9. *Standing Orders:* Another preventive measure is certification of standing orders by enterprises under the Industrial Employment Standing Orders Act, 1946. These standing orders require enterprises to lay down uniform terms and conditions for the employment of workers.
10. *Central and State Industrial Relations Machinery:* Central Industrial Relations Machinery consists of the Chief Labour Commissioner and Regional Labour Commissioner together with Labour Enforcement Officers. The machinery has regional offices. Their main functions are:
 - (i) prevention, investigation and settlement of industrial disputes in industries, or enforcement of labour laws and awards,
 - (ii) verification of union membership,
 - (iii) fixation of minimum wages, etc., and
 - (iv) Central implementation and evaluation machinery ensure implementation of code of discipline, labour laws, awards and settlements, take preventive action by settling disputes, evaluate major strikes and lock-outs, labour laws and policy decision and suggest measures to improve them.
11. *Other Preventive Measures:* Some other provisions laid down in the Industrial disputes Act, 1947 which discourage disputes are as under:
 - (a) According to Sec. 9A of Industrial Disputes Act, an employer cannot make any change in conditions of service without giving to the workers a 21-day notice and follow the prescribed procedure for changing them.
 - (b) Defining of unfair labour practices on part of the employees/unions and employers which have deterrent affect as penalties are provided under [Section 2(ra)] of Industrial Disputes Act, 1947.

(c) Provisions of laws relating to lay-off, retrenchment and closure and also regarding lock-outs and strikes which impose restrictions on the employers and employees.

In a nutshell, statutory preventive and settlement machinery can be summarised as under:

1. Works Committee (for consultation)
2. Conciliation Officer (for conciliation)
3. Board of Conciliation
4. Court of Enquiry (for enquiry)
5. Voluntary Arbitration
6. (a) Labour Courts
(b) Industrial Tribunals
(c) National Tribunal
7. Grievance Settlement
8. Welfare Officers
9. Standing Orders
9. Centre and State Industrial Relations Machinery
11. Other Preventive Measures

(b) Voluntary Machinery

Voluntary machinery for settlement of industrial disputes is based on Code of Discipline

announced in 1958. The code was approved by all central organisations of workers and employers in 16th Indian Labour Conference at the initiative of the then Labour Minister, Shri G.L. Nanda.

1. *Code of Discipline*, 1958: The code reflects the policy of the government to build up an industrial democracy on voluntary basis and is the sheet anchor of Mahatma Gandhi's philosophy of industrial relations. It aims at preserving industrial peace with the help of employers and employees. It represents a voluntary moral commitment and is not a legal document. The code, which aims at providing an alternative to conflict for the resolution of disputes, worked very well for some time after its adoption.

The issue of discipline in industry was discussed in the Indian Labour Conference and the code of discipline was framed and introduced by this tripartite body in 1958. Discipline in the relationship between workers and employers can better be enforced if both the parties accept their responsibilities and show a willingness to discharge them. In the absence of any statutory provision at the all-India level for the recognition of trade union, the provision in this regard has been incorporated in the Code of Discipline.

The main elements of the code are:

- (i) The two parties agree to utilise the existing machinery for the settlement of industrial disputes.
- (ii) The parties shall not resort to strikes and lock-outs without first exploring all avenues of settlement.
- (iii) The parties accept, that the disputes not settled mutually shall be referred to voluntary arbitration.

- (iv) The code specifies the criteria for the recognition of trade union and creates an obligation on employers to recognise the majority union in an establishment or industry.
- (v) The two parties shall not resort to the unfair labour practices detailed in the code.
- (vi) Managements and trade unions agree to establish grievance procedures on a mutually agreed basis.

Initially, by the end of March, 1962, the code was accepted voluntarily by about 901 independent employers and trade unions. The number increased to around 3000 by the end of 1967. Over the years, however, the willingness and enthusiasm of the parties to observe the code has declined, and they have developed an attitude of indifference to the code. It has proved to be difficult for them to abide by self-imposed discipline in terms of obligations backed only by moral sanctions.

Industrial Truce Resolution, 1962. With the Chinese attack in October 1962, an emergency was declared in the country, and it was realised that production should not be jeopardised in any way. Employers' and workers' representatives, in a joint meeting of their organisations held on November 3, 1962 at New Delhi, passed a resolution, saying that:

"No effort shall be spared to achieve maximum production, and management and workers will strive to collaborate in all possible ways to promote the defence efforts of the country."

As a result of the acceptance of this Resolution, there was a sharp decline in the number of disputes and in the number of man-days lost. Workers not only worked for extra hours but also contributed to the National Defence Fund. Emergency Production Committees were set-up, both at the Centre and in the States to improve production and productivity. But the Resolution lost its importance when prices rose sharply and disputes erupted once again.

Code of Conduct: The other code adopted in May 1958 was the code of conduct. The representatives of the four central trade union organisations - the INTUC, AITUC, HMS and UTUC - agreed to observe certain principles with a view to maintain harmonious inter-union relations. Inter-union and intra-union rivalries emerge out of certain weakness of Indian trade unions such as fragmentation and multiplicity. The code was formulated

to curb these evils. But it has remained mainly on paper, for trade unions seem to have forgotten that it exists.

2. *Tripartite Bodies:*
3. (a) Indian Labour Conference,
(b) Standing Labour Committee,
(c) Industrial Committees, and
(d) Tripartite Committee on International Labour Organisation Conventions, 1954.
3. Formation of Joint Consultative Machinery for Central Government Employees (GCM): This is also a three-tier machinery.
4. Collective Bargaining to be encouraged.
5. Workers' Participation in Management Scheme to be introduced through Formation of Shop Councils and Plant Council.