

* Ch. 17. Industrial Dispute Act, 1947 *

* Meaning of Industry According to Industrial Dispute Amendment, Act, 1982.

Date of effect is yet to be notified

As per section 2 (j) industry means any systematic activity carried on by cooperation between employer & his workmen for production, or distribution of goods and services with the view to satisfy human wants whether or not any capital has been invested &

It includes -

- 1) Activity of dock labour board.
- 2) Activity of relating to promotion or sales.

It does not include -

- 1) Hospital & dispensary
- 2) Educational, scientific research to training institutions.
- 3) Institutions engaged in charitable service.
- 4) Khadi village industries.
- 5) Sovereign functions of government.
- 6) Domestic Service.
- 7) Activity done by professional less than 10
- 8) Activity performed by cooperative society/club in numbers are less than 10.

* Meaning of Industry (old)

As per Industrial Dispute Act 1947, Industry means any basic trade, undertaking, manufacturer or calling of employees & includes any calling service & employment, handicraft or industrial occupation or avocation of workmen.

* Tests for determination of industry :-

- Supreme court carried in depth study for determination of industry in case of "Bangalore water supply and sewerage board and Vs. A. Rajappa" :-

- Supreme court laid following tests for determination of industry, it is also known as triple test

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- 1) Systematic Activity
- 2) Organised by cooperation of employer and employees
- 3) for the production or distribution of goods or services calculated to satisfy human wants and wishes

following points ^{were} ~~for~~ also observed -

1) It does not include spiritual or ~~regi~~ religious services like making prasad on large scale.

2) Profit motive is irrelevant

3) If organisation is of trade OR business it will be industry, even if they are doing philanthropic activities. (charitable)

- Supreme Court observed that professionals clubs educational institutions cooperatives research institutes and charitable projects if they fulfill the triple test cannot be exempted from Industry.

* Meaning of Industrial Dispute.

Section 2(A) : Industrial dispute means any dispute or difference between employers and employees, between any employers & workmen or between workmen & workmen connected with employment or non-employment or terms of employment or with condition of labour.

* Strikes & Lockouts

Section 2(e) : Strike means cessation of work by body of person employed in an industry or refusal under common understanding by person employed to continue to work or to accept employment.

Mere stoppage of work does not come under meaning of strike, unless there is an industrial demand.

Strike is weapon of collective bargaining in amount of workers.

following points to be noted -

- 1) Time or duration of strike is immaterial.
- 2) Going on mass casual leave under common understanding amounts to strike.
- 3) Refusal to work which employer has no right to ask for does not constitute strike.

- 4) If on a sudden death of fellow worker, workmen refuse to resume work, it amounts to strike.
- 5) Striking worker must be employed in industry which has not been closed down.
- 6) Even when workers cease to work, relationship of employer and employee is deemed to be continue.

* Types of Strike

Presence in striking crowd would not amount to strike unless it is shown that there was cessation of work.

* Types of strike :-

1) Stay in, sit down, pen down or tool down strike :-

- In these cases workmen after taking their seats refuse to do work even when ask to leave they refuse to do so.

- In Punjab National bank Ltd / Vs All India Punjab National bank Employees Federation, supreme court observed that, when employees enter premises of bank & refuse to take their pens in their hand that would no doubt be a strike.

2) Go slow :-

- Go slow does not amount to strike but it is a serious case of misconduct.

- In "Bharat Sugar Mills Vs. Jaysingh", Supreme court explained the legality of go slow
 - Go slow is delaying of production by workmen if they pretend to be engaged in factory.
 - It reduces the output.
 - It is much more harmful than total Cessation of work.
 - During go slow machinery is kept at a reduced speed which can damage the machinery part.

3) Sympathetic strike :-

- Cessation of work in support of demand of workmen belonging to other employer is called Sympathetic strike

- In Ramlingam Vs. Indian metallurgical Corpn Corporation Madras, it was held that a such as cessation of work will not amount to strike as there is no intention to use strike against management.

4) Hunger strike

- Some work may resort to fast on or near place of work or residence of employer. If it is peaceful & does not result in cessation of work, it will not constitute a strike

5) Work to rule

- Since there is not cessation of work it does not

Constitute strike

* Legality of strike :-

- In *Matchless Electricals of India Vs. Chief Commissioner, Punjab and Haryana High Court* held that justification of strike has to be viewed from point of fairness & reasonableness of demand.

- In *Gujrat Steel Tubes Ltd Vs. Gujrat Steel Tube Majdoor Sabha*, justifiability of strike is a question of fact held supreme court. So, if strike is in support of fair demand and in a peaceful manner then strike is justified.

- In "*Charakulam Tea State Vs. Their workmen*", Supreme Court held that if strike is legal and justified workmen will be entitled to full wages for the strike period.

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- In "*Indian Marine Service Pvt. Ltd Vs. Their workmen*", Court evolved doctrine of apportionment of blame to solve the problem.

- According to this rule when workmen and management are equally to be blamed court normally awards half of the wages.

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Rules for Lockout same, just replace 'strike' with 'lockout'

* Rules for strike

No person employed in public utility service shall go on strike in breach of contract

1) From date of notice to period strike periods of 6 weeks should not have elapsed.

2) Period of 14 days must have elapsed from date of notice

3) Date specified in notice must have expired

4) Strike cannot be done during pendency of conciliation proceeding & within 7 days after such proceedings.

* LAY - OFFS

It is a with grammatical variation & cognate expressions. It means the failure or refusal or inability of employer to give employment to the workmans whose name is in muster-rolls of establishment & who has not been reduced, in due to following reasons -

- 1) Shortage of coal, power & raw materials,
- 2) or, accumulation of stock,
- 3) or break-down of machinery
- 4) or natural calamities
- 5) or for any other reason.

* Difference between lay-off & lock-out

i] Lay-off: Employer refuses to give employment to workmans for specific reasons / due to specific reasons.

Lock-out: It is intentional closure of business & employer locks out workers not due to some reasons

ii] Lay-off: In this case the business continues

Lock-out: Place of business is closed for time being.

iii] Lay-off: It is the result of trade reasons.

Lock-out: It is the weapon of collective bargaining.

iv] Lay-off: In case of lay off there is not any restrictions & penalties.

Lock-out: Lock-out is subject to some restrictions and penalties.

v] Lay-off: Employer is need to pay wages to workmen.

Lock-out: There is no question of any wages or compensation unless lock-out is held to be unjustified.

Note :- Both lock-out & lay off are of temporary in nature. In both cases the contract of employment is not terminated but it remains suspended.

* Retrenchment

• It means termination of service of workmen by the employer for any what ever some reasons, otherwise as a punishment suffered by way of disciplinary action.

But it does not include -

- i) Voluntary retirement of workmen
- ii) or retirement of workmen for reaching the age of superannuation if contract contains stipulation
- iii) or termination of service of workmen as a result of non-renewal of contract & workmen concerned its expiry.
- iv) termination of service of workmen on ground of continued ill-health.

• Requirements for Retrenchment -

- 1) There should be termination of service of workman
- 2) Termination should be by employer
- 3) Termination shall not be result of any punishment caused by way of disciplinary action.
- 4) It excludes termination of service on specified grounds.

* **Award** :- It is a final determination of any industrial dispute and any question related to it by any Labour Court, Industrial Tribunal or National Industrial Tribunal.

* **Average Pay** :- It is a average of wages payable to workmen

Monthly Paid



in 3 complete calendar months

Weekly Paid



in 4 complete weeks

Daily Paid



in 12 full working days preceding date on which average pay becomes payable. Average pay should be calculated as average of wages payable during period he worked.

* **Closure** :- It permanently closing down the place of employment or part of it.

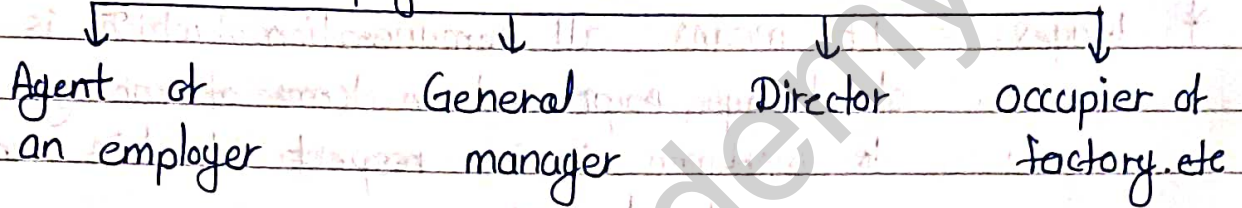
* **Controlled Industry** :- It means any industry in which control of Union has been declared to be advantageous in public interest by any Central Act.

* **Employer** :-

• In case of industry carried \longrightarrow Authority as prescribed on by Central or state Govt.

- No authority prescribed → head of department.
- In case of industry carried on by local authority → CEO of that authority.

Employer Includes



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Public Utility Services

It means any -

- 1) any railway service or transport service for carriage of passengers or goods.
- 2) any industrial establishment working for safety of workman employed or establishment.
- 3) any postal, telegraph or telephone service.
- 4) industries that supplies power, light or water.
- 5) any system of public conservancy or sanitation.
- 6) Any specified industry in 1st schedule which the appropriate government declare to be public utility service by notification in official gazette.

*

Settlement - It means settlement arrived at course of conciliation & it includes written agreement between employer & workmen and such agreement should be signed by parties in manner as may be prescribed. A copy of it shall be sent to officer authorised by appropriate Govt, or conciliation officer.

* Trade Union :- It means trade union registered under Trade Unions Act, 1926.

* Unfair Labour Practice :- It means any practice specified in 5th schedule.

* Wages :- It means all remuneration which is capable or being expressed in terms of money, payable to workmen in respect of his employment or work done.

It includes



- such allowance which is workmen is entitled (ex. dearness allowance)

- value of house accommodation or supply of light, water, medical attendance and other amenity,

- any travelling concession

It doesn't includes



- Any bonus.

- Any contribution paid to in P.F or pension fund

- Any gratuity payable

- Any commission payable on promotion of sales & business.

* AUTHORITIES UNDER THE ACT & THEIR DUTIES.

Act provides following authorities for investigation & settlement of industrial dispute -

1] Works Committee

Section 3 - Appropriate Govt. may require employer to constitute a "Works Committee", where 100 or more workers are employed on any working day in preceding 12 months. The Committee shall be made up of representatives of employers & workmen engaged in establishment.

2] Conciliation Officers

Appropriate Govt. may appoint "Conciliation Officers" to mediate in & promoting settlement of industrial dispute by notification in official gazette. Conciliation officer can be appointed for specified area or industry or for one & more specified industries. Officer can be appointed either permanently or for limited period.

Duties - To create congenial and pleasant atmosphere in establishment where workers & employers can reconcile on their disputes.

- Officers should help in promoting settlement of disputes.

3] Boards of Conciliation

- To promote settlement of industrial dispute appropriate Govt. may appoint Boards of Conciliation by notification in official gazette.
- The Boards of conciliation should consist of a chairman & 2 or 4 members as prescribed by appropriate Govt.

4] Court of Inquiry.

Section 6 - Appropriate Govt. may constitute a 'Court of Inquiry' by notification in official gazette.

- Court shall be consists of number of independant persons. It should be consists of 2 or 4 members & one of them shall be appointed as chairman.

- It is duty of court to inquire into matters referred to it & submit its report to Govt within 6 months from starting of inquiry. The period of submitting report is not mandatory.

5] Labour Court

Section 7 - Appropriate Govt is empowered to constitute one or more labour courts for resolving the industrial disputes related to any manner specified in 2nd schedule.

- Labour Court shall be consists of persons appointed by appropriate Govt only.

- A person shall not be qualified as preceding officer of Labour Court unless,
1) he is / has been judge of high court.

2) he has been a district Judge or Additional District Judge for minimum period of 3 years.

3) he has held judicial office in India for minimum 7 years.

4) he has been preceding officer of Labour Court for not less than 5 years.

6] Industrial Tribunals

- Appropriate Govt. may constitute one or more 'Industrial Tribunals' for adjudicating the industrial disputes related to any manner specified in 2nd & 3rd schedule.

- Tribunal shall be consists of person only to be appointed by appropriate Govt.

- Person shall not be qualified as preceding officer of Tribunal unless — he is/ has been Judge of high Court.
— he has been District Judge or Additional District Judge for a period not less than 3 years.

- The appropriate government may appoint two persons as assessors to advise Tribunal.

7] National Tribunal

- Central Govt. has empowered to constitute one or more national courts for adjudication of industrial disputes which involves question of national importance or are of

such nature that industrial establishments situated in more than one state likely to be interested by such disputes.

- National Tribunal shall be consists of only those persons appointed by Central Govt.
- A person shall not be qualified for appointment as preceding officer unless - he is / has been Judge of H.C
 - Central Govt may appoint two persons as assessors to advise National Tribunal
 - Preceding officer should be independent person & shall not have attained age of 65 years

4th July

* After winding up of section 8 company, if there is any surplus of asset then it shall be transferred to another sec. 8 company having similar objects.

- If company make default in complying any of requirements shall be punishable with fine not less than 10 lakh which may extend to 1 crore rupees and every officer who is in default shall be punishable with fine which shall not be less than 25,000 which may extend to 25 lakh rupees.

* Producer Company

OBJECT :- 1) Production, harvesting, procurement, grading, pooling, handling, marketing, selling, export of primary produce of members or import of goods & services for their benefit.

2)

3) Processing produce of its members

4) Manufacture sale or supply of machinery to its members

5) Providing education to members

6) Rendering technical services, training research for promotion of interest of its members

Ex :- Aarambh

7) Insurance of primary produce

producer Ltd

8) Promoting techniques of mutuality.

9) Providing welfare measures to its members

10) Giving financial services to its members.

* Reference of Disputes

1] Reference of Disputes to various authorities

If appropriate Govt. opinion is that industrial dispute exists then govt. may at any time by order in writing can make it to various authorities.

i) Dispute can be referred to conciliation board to promote settlement of dispute. Duty of board is not to adjudicate the dispute. If there is failure to report of Board then appropriate Govt. will make up its mind as whether the dispute should be referred for compulsory adjudication.

ii) Any matter connected with or relevant to dispute may refer to Court of inquiry.

iii) Any matter connected with or relevant to dispute may refer to Labour Court if it is related to any matter specified in schedule II. However, if appropriate Govt. thinks that dispute does not affect more than 100 workmen then matters related to third schedule can also be referred to Labour Court.

iv) Appropriate Govt. may any matter connected with or relevant to the dispute specified in 3rd or 2nd schedule may refer it to Industrial Tribunal for adjudication.

2] Reference of dispute to National Tribunal

- If Central Govt. thinks that existing industrial dispute involves question of national importance or it affect or likely to interested one industrial establishments situated in one or more state then that dispute should be adjudicated by National Tribunal.

- If any matter pending in Labour Court or Tribunal shall be referred to National Tribunal

- But If any matter referred to National Tribunal cannot be referred back to Labour Court or Tribunal.

3] Reference on application of parties

When parties to industrial dispute apply for reference whether jointly or separately to Board, Court, Labour Court, Tribunal or National Tribunal then persons applying represent majority of each party shall make reference & shall specify the time limit shall not exceed 3 months to submit the award and such time can be extended.

It is compulsory for appropriate Govt to make reference if application effect has been made by parties to dispute

If applicant represent majority then Govt. cannot go into question of whether any industrial dispute exists before making reference.

4] Time limit for submission of awards

A order referred to an industrial dispute to Labour Court, Tribunal or National Tribunal should specify the period within such award shall be submit to such Labour Court, Tribunal or National Tribunal on such dispute to appropriate Govt.

5] Prohibition of strike or lock-out

When any industrial dispute has been referred to Board, Court, labour Court, Tribunal or National Tribunal then appropriate Govt. can by order prohibit continuance of any strike or lock-out which is in connection with dispute that may be existence on date of reference.

6] Subject - matter of adjudication.

When any order referring to industrial dispute to Labour Court, Tribunal or National Tribunal, the appropriate Govt. has specified points of disputes for adjudication then labour Court, Tribunal or national court shall confine adjudication on those points which government has given on matters to disputes.

7] Powers of Govt. to add parties.

When dispute concerning establishment has been referred to Labour Court, Tribunal / National Tribunal

whether the application made it to on this behalf or otherwise dispute includes any other establishment, group or class of establishment similar in nature are likely to be interested in then such govt. can include those group or class of establishment.

* VOLUNTARY REFERENCE OF DISPUTES TO ARBITRATION

- When a ~~in existing~~ existing industrial dispute has not been referred to any Labour Court, Tribunal or National Court yet, for adjudication then employer may refer it to arbitration. The presiding officer of Labour Court, Tribunal or National Court can be named as arbitrator.

- An Arbitration agreement must be signed by parties thereto, in prescribed manner.

- A Copy of arbitration agreement should be forwarded to appropriate Govt. and conciliation officer within 1 month from date of receipt of copy.

- The arbitrator should investigate dispute & submit it to appropriate Govt. and the award must be signed by arbitrator.

- Any industrial dispute referred to arbitrator then appropriate Govt. may prohibit continuance of any strike or lock-out.

* STRIKES & LOCK-OUTS

i] General prohibitional of strikes & lock-outs

No workmen employed in establishment shall go on strike and declare lock-out:

- during awaiting of Conciliation proceedings before Board & 7 days conclusion of such proceedings.

- during proceeding of Labour Court, Tribunal or National Tribunal & 2 Months after conclusion of such proceedings.

- during pendency of arbitration proceedings then after 2 months.

- during any period in which settlement or award is in operation then after such settlement or award.

ii] Prohibition of strikes & lock-outs in public utility service [all points of Rules of strike] (Sec. 22)

• No person employed in public utility or service shall go on strike in breach of contract.

• From date of notice to date of strike period of 6 weeks should not have elapsed.

• Period of 14 days must have elapsed from date of notice.

- Date specified in notice must have expired.
- Strike cannot be done during pendency of conciliation proceedings & within 7 days after such proceedings.
- The notice of lock-out or strike under this section shall not be necessary where there is already in existence a strike or lock-out.
- If on any day employer receives from any workmen such notices he shall within 5 days of such notice report to appropriate Government.

iii] Illegal strikes & lock-outs

- A strike / lock-out shall be illegal if it is commenced or declared in contravention of sec. 22 or Sec. 23.
- If a strike or lock-out in pursuance of industrial dispute has already commenced to Board, arbitrator, labour court, Tribunal, National Tribunal, then continuance of such strike or lock-out shall not be deemed to be illegal.
- A lock-out declared in consequence of illegal strike or a strike declared in consequence of illegal lock-out shall not be deemed to be illegal.

* Penalties

1) Penalty for illegal strike

Any workmen commences a strike which is illegal under this act shall be punishable with imprisonment of 1 month or fine upto 50 rupees or both.

2) Penalty of illegal lock-outs

Any workmen commences or declares lock-out which is illegal under this Act shall be punishable with imprisonment upto 1 month or fine upto 1000 rupees or both.

3) Penalty for instigation

Any person who incites others to take part in any strike or lock-out which is illegal under this act, shall be punishable with imprisonment upto 6 months or fine upto ₹1000/- or both.

4) Penalty for giving financial aid to illegal strikes or lock-outs

Any person who knowingly applies money in support of strike / lock-out shall be punishable with imprisonment upto 6 months or fine upto ₹1000/- or both.

5) Penalty of breach of settlement or award

Any person who commits breach of settlement or award under this Act shall be punishable with imprisonment upto 6 months or fine or both.

If breach is continuing one then fine upto ₹200/- for everyday.

5) Penalty for disclosing confidential information.

Any person who intentionally discloses any confidential information of trade union or individual business shall be punishable with imprisonment upto 6 months or fine upto ₹1000/- or both.

7) Penalty for closure without notice.

If employer closes down any undertaking without complying with provisions of sec. 25 shall be punishable with imprisonment upto 6 months or fine upto ₹5,000/- or both.

8) Penalty for other offences.

Any employer who contravenes provision of sec. 33 shall be punishable with imprisonment upto 6 months or fine upto ₹1000/- or both.

Anyone who contravenes provisions & rules of this act and there is no penalty provided under this Act for such contravention shall be punishable with fine upto ₹100/-

9) offences by Companies

If a Company, commits any offence under this Act then every person concerned with management of company shall be liable unless he proves himself that offence was committed without his knowledge.