

Industrial Disputes Act

The object of the Act is to make provisions for investigation and settlement of industrial disputes. However, it makes other provisions in respect of lay off, retrenchment, closure etc. The purpose is to bring the conflicts between employer and employees to an amicable settlement. [*The Act is achieving exactly opposite*]. The Act provides machinery for settlement of disputes, if dispute cannot be solved through collective bargaining.

'Industry' under Industrial Disputes Act - The definition of 'industry' is as follows - '

Industry means any business, trade, undertaking, manufacture or calling of employers and includes any calling, service, employment, handicraft or industrial occupation or avocation of workmen. [section 2(j)].

Thus, the definition is very wide. - - The scope is much wider than what is generally understood by the term 'industry'.

In Bangalore Water Supply & Sewerage Board v. Rajappa (1978) 2 SCC 213 = 36 FLR 266 = 1978(2) SCR 213 = 1978(1) LLJ 349 = AIR 1978 SC 548 (SC 7 member bench 5 v 2 judgment), a very wide interpretation to the term 'industry' was given. It was held that profit motive or a desire to generate income is not necessary. Any systematic activity organized by cooperation between employer and employees for the production and/or distribution of goods and services calculated to satisfy human wants and wishes is 'industry'.

Thus, many hospitals, educational institutions, universities, charitable institutions and welfare organisations have got covered under the Act. Professions, clubs, cooperatives, research institutes etc. are also covered.

INDUSTRIAL DISPUTE - Industrial dispute means

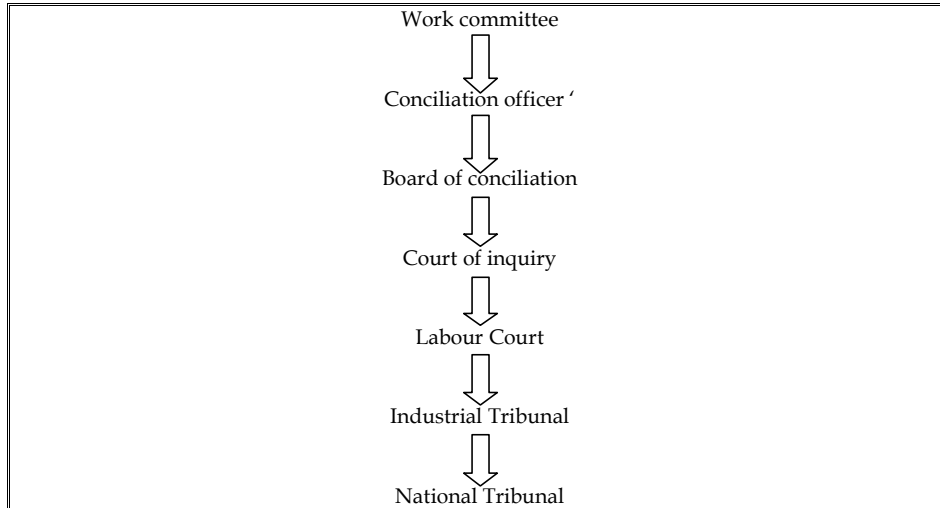
<u>any dispute or difference</u> • between employers and employers, or • between employers and workmen, or • between workmen and workmen,	which is connected with the	• employment or non-employment or • the terms and conditions of employment or • with the conditions of labour, of any person. [section 2(k)]. - -
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WORKMAN - 'Workman' means any person (including apprentice) employed in any industry to do any manual, clerical or supervisory work for hire or reward. It includes dismissed, discharged or retrenched person also. However, it does not include

- (i) Armed Forces i.e. those subject to Air Force Act, Army Act or Navy Act
- (ii) (Police or employees of prison (commonly jail)
- (iii) Employed in mainly managerial or administrative capacity or
- (iv) person in supervisory capacity drawing wages exceeding Rs 1,600 per month or functions are is mainly of managerial nature. [section 2(x)].

Adjudication of disputes –



- The Act provides for 'Works Committee' in factories employing 100 or more workers. [section 3].
- The committee will consist of *equal number of representatives of employer and employees*.
- Representatives of employees will be selected in consultation with Registered Trade Union.

- ✱ The Works Committee will first try to settle disputes.
- ✱ If dispute is not solved, it will be referred to 'Conciliation Officer'. He is appointed by Government. [section 4].
- ✱ The matter *may also be* referred to 'Board of Conciliation'. [section 4]. He will try to arrive at fair and amicable settlement acceptable to both parties.
- ✱ If he is unable to do so, he will send report to appropriate Government. [section 12(4)].
- ✱ The Government may then refer the industrial dispute to Board of conciliation, Labour Court or Industrial Tribunal. [section 12(5)].

Employer and employees can voluntarily refer the matter to arbitration. [section 10A]. [This provision is very rarely used by employer and workmen. Generally, they prefer the Court route].

If no settlement is arrived at, there is three tier system of adjudication –

1. Labour Court,
2. Industrial Tribunal and
3. National Tribunal.

The order made by them is 'award'.

Comment [m1]: 'Award' means

- an interim or
 - final determination
- of any industrial dispute or of any question relating thereto by any Labour Court, Industrial Tribunal or National Tribunal. It also includes arbitration award. [section 2(b)].
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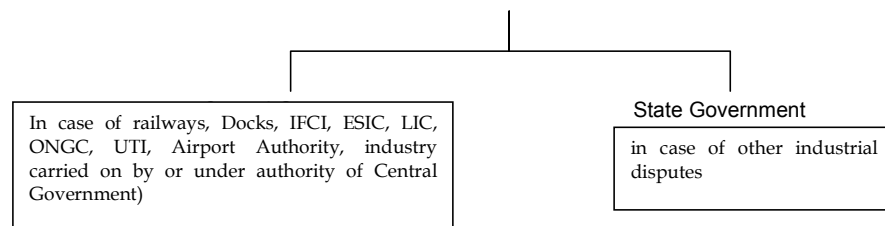
- The 'award' is required to be published by State/Central Government within 30 days. [section 17].
- The award becomes effective 30 days after its publication. [section 17A].

LABOUR COURT	INDUSTRIAL TRIBUNAL	NATIONAL TRIBUNAL
Section 7	Section 7A	section 7B
constituted by State Governments	constituted by State Government	constituted by Central Government
will be presided over by 'Presiding Officer'.	presided over by 'Presiding Officer'	
<u>Powers in respect of</u> • Interpretation of Standing Orders • Violation of Standing Orders * Discharge or dismissal of a workman • Withdrawal of any customary concession or privilege • Illegality or otherwise of a strike or lock-out • Other matters which are not under Industrial Tribunal. [Second Schedule to the Act]	<u>powers in respect of</u> • Wages, including period and mode of payment • Compensatory and other allowances • Hours of work and rest intervals • Leave with wages and holidays • Bonus, profit sharing, provident fund and gratuity • Shift working changes • Classification by grades • Rules of discipline • Ratinlanisation and retrenchment of workmen. [Third Schedule to Act].	National Tribunal is formed by Central Government for adjudication of industrial disputes of national importance or where industrial establishments situated in more than one States are involved.

REFERENCE OF DISPUTE – Appropriate Government can refer any dispute to [BCLI]

to Board of Conciliation	Court of Enquiry	Labour Court	or Industrial Tribunal
section 10(1).			

Appropriate Government means [section 2(a)]

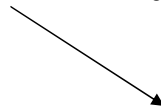


Court/tribunal can reduce punishment and order reinstatement - as per section 11A

The Labour Court and Tribunal have wide powers.

- They can reappraise (see new evidence) evidence.

- They can also see whether the punishment is disproportionate to the gravity of the misconduct proved.



If the Court or Tribunal is of the view that the punishment is disproportionate, it can

- impose lesser punishment or
- even set aside the termination and order reinstatement. - -
 - If Court orders reinstatement and employer files appeal in Higher Court, the employer is required to pay full wages to the employee during the period of pendency of proceedings with High Court or Supreme Court. *However*, if the workman was gainfully employed elsewhere, Court can order that payment of such wages is not to be made. [section 17B].

SETTLEMENT - 'Settlement' means a settlement arrived at in the *course of conciliation proceedings*. It includes a written agreement between employer and workmen arrived at otherwise than in course of conciliation proceedings (i.e. outside the conciliation proceedings). - - The difference is that settlement arrived at in course of conciliation or an arbitration award or award of labour court or Tribunal binds all parties to industrial dispute including present and future workmen and all parties who were summoned to appear in the proceedings. [section 18(3)].

If settlement is arrived at by mutual agreement, it binds only those who were actually party to agreement. [section 18(1)]. - -

The settlement is binding during the period it is in force. Even after that period is over, it continues to be binding, unless a 2 month notice of termination is given by one party to another. [section 19(2)]. - -

If no period has been specified, settlement is valid for 6 months and an award is valid for one year.

JURISDICTION OF CIVIL COURT QUA INDUSTRIAL DISPUTE – Termination of a workman constitutes an Industrial Dispute. Relief sought can be given by forum under Industrial Disputes Act and hence, jurisdiction of civil court is impliedly barred. – *Chandrakant Tukaram Nikam v. Municipal Corporation* 2002 AIR SCW 710 = 2002(2) SCALE 77 = 2002 LLR 498 = 100 FJR 519 (SC 3 member bench).

Lay off, retrenchment and closure

'Lay off' means failure, refusal or inability of employer on account of shortage of coal, power or raw materials or accumulation of stock or break down of machinery or natural calamity; to give employment to a workman on muster roll. - - 'Lay off' means not giving employment within two hours after reporting to work. - - Lay off can be for half day also. In such case, worker can be asked to come in second half of the shift. [section 2(kk)].

- A factory employing 50 or more but less than 100 employees on an average per working day can lay off the workmen, who have completed one year of service, by paying compensation equal to 50% of salary (basic plus DA) (section 25C of IDA). - -
- Employer can offer him alternate employment, if the alternate employment does not call for any special skill or previous experience, and lay off compensation will not be payable if employee refuses to accept the alternate employment (section 25E).

Above provisions of compensation for lay off do not apply to

- Industrial establishments employing less than 50 workmen
- seasonal industry
- Establishments employing 100 or more workmen, as in their case, prior approval of Appropriate Government is necessary u/s 25M(1).

Comment [m2]: Its appropriate Government
NOT Central Government

RETRENCHMENT – ‘Retrenchment’ means termination by the employer of service of a workman for any reason, other than as a punishment inflicted by a disciplinary action. However, ‘retrenchment’ does not include voluntary retirement or retirement on reaching age of superannuation or termination on account of non-renewal of contract or termination on account of continued ill-health of a workman. [section 2(oo)].

‘Retrenchment’ means discharge of surplus labour or staff by employer. It is not by way of punishment. The retrenchment should be on basis of ‘last in first out’ basis in respect of each category, i.e. junior-most employee in the category (where there is excess) should be retrenched first. [section 25G]. If employer wants to re-employ persons, first preference should be given to retrenched workmen. [section 25H].

A worker who has completed one year of service can be retrenched by giving

one month notice (or paying one month’s salary) *plus* retrenchment compensation, at the time of retirement, @ 15 days’ average wages for every completed year of service (section 25F).

In *Parry’s Employees Union v. Third Industrial Tribunal* 2001 LLR 462 (Cal HC), it was held that for purposes of retrenchment compensation under ID Act, the monthly salary should be divided by 30. [Under Gratuity Act, it has to be divided by 26].

If number of workmen are 100 or more, prior permission of Appropriate Government is necessary under section 25N(1).

MEANING OF ‘CONTINUOUS SERVICE’ –

- Provisions of compensation for lay off and retrenchment are applicable only to workman who is in ‘continuous service’ for one year.
- As per section 25B, ‘*continuous service*’ includes service interrupted by
 - ✓ sickness,
 - ✓ authorised leave,
 - ✓ accident or
 - ✓ strike which is not illegal, or
 - ✓ lock-out or
 - ✓ cessation of work which is not due to fault of workman.
- -- In *Workmen v. Management of American Express* AIR 1986 SC 548 = 1985(4) SCC 71, it was held that ‘actually worked’ cannot mean only those days where workman worked with hammer, sickle or pen, but must necessarily comprehend all those days during which he was in the employment of employer and for which has been paid wages either under express or implied contract of service or by compulsion of statute, standing orders etc.

CLOSURE – ‘Closure’ means **permanent closing down** of a place of employment or part thereof. [section 2(cc)]. - - Thus, closure can be of part of establishment also. - -

- ✓ 60 days notice should be given for closure to Government, if number of persons employed are 50 or more.
- ✓ 60 days notice is not necessary if number of persons employed are less than 50. [section 25FFA].
- Compensation has to be given as if the workman is retrenched. [section 25FFF(1)]. - -
- If number of workmen employed are 100 or more, prior permission of Government is necessary for closure u/s 25-O.

Provisions for large industries for lay off and closure - Large industries employing 100 or more workmen on an average for preceding 12 months cannot lay-off, retrench or close down the undertaking without permission from Government (sections 25M to 25-O of Industrial Disputes Act). Invariably, such permission is almost never given, whatever may be the merits of the case.

Notice of change in conditions of service – Section 9A provides that an employer cannot effect any change in the conditions of service applicable to any workman without giving **21 days notice**. Such notice is not required if there is settlement or award of Labour Court or Tribunal. As per fourth schedule to the Act, such 21 day notice **is required** if there is going to be change in

- ✚ wages,
- ✚ wage period,
- ✚ PF contribution,
- ✚ allowances,
- ✚ hours of work and rest intervals,
- ✚ shift timings,
- ✚ new rules of discipline,
- ✚ increase or decrease in number of persons employed in any department or shift.

Strike and lock-out – ‘Strike’ means a cessation of work by a body 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 to accept employment. [section 2(q)].

As per section 23, workman should not go on strike in

- ✓ during pendency of conciliation proceedings and 7 days thereafter
- ✓ during pendency of proceedings before Labour Court, Industrial Tribunal or National Tribunal
- ✓ During period of arbitration proceedings
- ✓ During period when settlement or award is in operation in respect of the matters covered by award or settlement.

Prohibition Of Strike And Lock Out In Public Utility Service

- In case of public utility, employees have to give at *least 14 days notice for strike*. The notice is valid only if strike commences within 6 weeks. Otherwise, fresh notice is required. - - Similarly, an employer cannot declare lock out without giving 14 days notice. [section 22]. If such notice is received, Government authority should be informed within five days. - - As per section 2(n), ‘Public Utility Service’ includes railways, major port and docks, section of industry on the working of which safety of establishment depends, postal/telegraph/ telephone services, industry supplying power/ light/ water; system of

public conservancy or sanitation. [section 2(n)]. In addition, Government can declare industry specified in Schedule I as 'Public Utility Services'. Such declaration can be made for 6 months at a time [section 2(n)(vi)]. [Industries in first schedule include banking, transport, cement, coal, defence establishments, security press, hospitals and dispensaries, oil fields, mining of certain specified ores, foodstuff, cotton textiles, iron and steel etc].

LOCK-OUT – 'Lock-out' means *temporary closing* or a place of employment or the suspension of work, or the refusal by an employer to continue to employ any number of persons employed by him. [section 2(l)]..

WORKERS GO ON STRIKE, WHILE 'LOCK-OUT' IS TO BE DECLARED BY EMPLOYER

- *Wages during strike period* - Wages during strike period are payable only if the strike is both legal and justified - *Syndicate Bank v. K Umesh Naik* (1994)
- In *HAL Employees Union v. Presiding Officer* 1996 LLR 673 (SC), it was held that when lockout by employer is legal and justified, workmen are not entitled to payment of wages for the period during which the lock-out continued.

No work no pay - Principle of 'No work no pay' has been accepted by Supreme Court. - *Bank of India v. T S Kelawala* 1989 The principle of 'no work no pay' is also applicable when a man was eligible for promotion but was not promoted and in fact did not work in the higher post. In such case, he is not eligible to get pay for higher scale - *Paluru Ramkrishnaiah v. UOI* - (1989) 2 SCR 92 - followed in *State of Haryana v. OP Gupta* - 1996(1) SCALE 602.

ILLEGAL STRIKE OR LOCK-OUT – Strike or lock out in violation of sections 22 or 23 and when it is continuing in violation of order issued by Government u/s 10(3) (when matter is referred to Conciliation Board or Tribunal) is illegal. [section 24].

Fine upto Rs 50 per day to workman and Rs 1,000 to employer can be imposed. In addition, he can be imprisoned upto one month. [section 26].

Restrictions on employer pending proceedings

If any conciliation proceedings or proceedings are pending before

- ✓ arbitrator,
- ✓ Labour court or I
- ✓ industrial Tribunal,

following restrictions are applicable to employer.

NO CHANGE IN CONDITIONS OF SERVICE IN MATTERS RELATED TO DISPUTE – Employer shall not make any change in condition of service connected to dispute without permission of authority before whom proceedings are pending. [section 33(1)(a)]. Change which is not related to dispute can be made in accordance with standing orders without any permission. [section 33(2)(a)]

NO REMOVAL OF WORKMAN IN MATTERS RELATED TO DISPUTE – Employer shall not discharge, dismiss or punish any workman in matter for any misconduct concerned to dispute, without permission of authority before whom proceedings are pending. [section 33(1)(b)]. Punishment which is not connected to dispute can be made in accordance with standing orders without any permission. However, dismissal or discharge of workman will require approval of the action. Application for approval should be made after action is taken. [section 33(2)(b)]. Prior permission is not necessary. Application for approval is required to be submitted after action is already taken. - In *Jaipur Zila Sahakari Bhoomi Vikas Bank v. Shri Ram Gopal* 2002 AIR SCW 249 = 2002 LLR 237 (SC 5 member constitution bench), it was held that if the approval is not granted u/s 33(2)(b) of Industrial Disputes Act, the order of dismissal becomes ineffective from the date it was passed and employee becomes entitled to wages from date of dismissal to date of disapproval of application.

PROTECTED WORKMAN - In every establishment, 1% of total workmen are recognised as 'Protected workman' u/s 33(3) (but minimum 5 and maximum 100). In case of such workmen, order for his dismissal, discharge or punishment cannot be passed without permission of authority before whom proceedings are pending, *whether the issue is related to dispute or not*. Such permission is required only during the period proceedings are pending and not after main reference is decided.

Unfair Labour Practices – Section 25T prohibits unfair labour practices by employer or workman or a trade union. If any person commits unfair labour practice, he is punishable with fine upto Rs 1,000 and imprisonment upto 6 months. [section 25U]. Fifth schedule to Act gives list of what are 'Unfair Labour Practices'. Then major are as follows –

In case of employer –	In case of workmen and trade unions –
▪ Interfering in Trade Union activities ▪ Threatening workmen to refrain them from trade union activities ▪ Establish employer sponsored Trade Union ▪ Discourage trade union activities by various means ▪ Discharge or dismiss by way of victimization or falsely implicating workman ▪ Abolish work of regular nature and to give that work to contractors ▪ <i>Mala fide</i> transfer of workman under guise of management policy ▪ Employ badli or casuals and continue them for years ▪ Recruitment workmen during strike which is not illegal ▪ Acts of force and violence ▪ Not implementing settlement or agreement or award ▪ Refuse collective bargaining ▪ Continue illegal lock-out	▪ support or instigate illegal strike ▪ coerce workmen to join or not to join a particular trade union ▪ threatening or intimidating workmen who do not join strike ▪ refuse collective bargaining in good faith ▪ coercive actions including 'go slow', 'gherao', 'squatting on work premises after working hours' etc. ▪ Wilful damage to employer's property ▪ Acts of force or violence or intimidation ▪