

# THE INDUSTRIAL DISPUTES ACT, 1947 pdf

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*THE INDUSTRIAL DISPUTES ACT, ACT NO. 14 OF [11th March, ] An Act to make provision for the investigation and settlement of industrial disputes, and for.*

Definition, Forms and Types Article shared by: Definition, Forms and Types! Concept of industrial disputes: The above definition is too broad and includes differences even between groups of workmen and employers engaged in an industry. However, in practice, industrial disputes mainly relate to the difference between the workmen and the employers. Dispute differs from discipline and grievance. While discipline and grievance focus on individuals, dispute focuses on collectivity of individuals. In other words, the test of industrial dispute is that the interest of all or majority of workmen is involved in it. The following principles judge the nature of an industrial dispute: 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. The dispute must be taken up either by the industry union or by a substantial number of workmen. The grievance turns from individual complaint into a general complaint. There must be some nexus between the union and the dispute. According to Section 2A of the Industrial Disputes Act, , a workman 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 workman or any trade union of workman or any trade union of workmen raises it or is a party to the dispute. Forms of Industrial Disputes: The industrial disputes are manifested in the following forms: Strike is the most important form of industrial disputes. A strike is a spontaneous and concerted withdrawal of labour from production. Depending on the purpose, Mamoria et. 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. In this form of strike, the pressure is applied not against the employer with whom the workmen have a dispute, but against the third person who has good trade relations with the employer. However, these relations are severed and the employer incurs losses. This form of strike is popular in the 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 employer is concerned. General and political strikes and bandhs come under the category of other strikes: Lock-out is the counter-part of strikes. Lock-out is the weapon available to the employer to shut-down the place of work till the workers agree to resume work on the conditions laid down by the employer. Lock-out is common in educational institutions also like a University. Gherao means to surround. It is a physical blockade of managers by encirclement aimed at preventing the egress and ingress from and to a particular office or place. This can happen outside the organisational premises too. Sometimes, the blockade or confinements are cruel and inhuman like confinement in a small place without light or fans and for long periods without food and water. Workmen found guilty of wrongfully restraining any person or wrongfully confining him during a gherao are guilty under Section or of the Indian 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. Gherao is a common feature even in educational institutions. Here is one such real case of gherao. Gherao of the vice chancellor: They shut down the entrance gate of the administrative building at 3. The Vice Chancellor was kept confined in his office chamber. This scene lasted for 18 hours and was over only by 5 a. F jawans with local police came from the city which is about 20 kms. They broke the entrance gate of administrative building, rescued the Vice Chancellor and arrested employees confining the Vice Chancellor under Section of the Indian Penal Code and kept them behind bars for a day. On 1st November, the Vice Chancellor handed over the charge of his office to the senior most Professor of the University at his residence in the city. In the wee hours on 2nd November, he left for where he came from. The aftermath of gherao created a tuneful atmosphere in the University Campus for about two weeks. In picketing, workers through display signs, banners and play-cards drew 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, on the other hand, aims at disrupting the normal functioning of the organisation. The striking workers appeal to others for voluntary withdrawal of co-operation with the employer. Types of Industrial Disputes: Grievance or Right Disputes. They are discussed one by one: Such types of disputes arise out of terms and conditions of employment either out of the claims made by the employees or offers given by the employers. Such demands or offers are generally made with a view to arrive at a collective agreement. Examples of interest disputes are lay-offs, claims for wages and bonus, job security, fringe benefits, etc. Grievance or Right Disputes: They relate either to individual worker or a group of workers in the same group. Payment of wages and other fringe benefits, working time, over-time, seniority, promotion, demotion, dismissal, discipline, transfer, etc. If these grievances are not settled as per the procedure laid down for this purpose, these then result in embitterment of the working relationship and a climate for industrial strife and unrest. Besides, Labour Courts or Tribunals also adjudicate over grievance or interest disputes. But, sometimes industrial disputes are beneficial as well. It is the dispute mainly which opens up the minds of employers who then provide better working conditions and emoluments to the workers. At times, disputes bring out the causes to the knowledge of the public where their opinion helps resolve them.

### 2: Right to strike under Industrial Dispute Act, - iPleaders

*An Act to make provision for the investigation and settlement of industrial disputes, and for certain other purposes WHEREAS it is expedient to make provision for the investigation and settlement of industrial disputes, and for certain other purposes hereinafter appearing.*

The Industrial Disputes Act defines "Industrial dispute" as a dispute or difference between workmen and employers or between workmen and workmen, which is connected with employment or non-employment or the terms of employment or with the conditions of labour. Dismissal of an individual workman is deemed to be an industrial dispute. The ID Act provides for the constitution of the Works Committee, consisting of employers and workmen, to promote measures for securing and preserving amity and good relations between the employer and the workmen and, to that end, endeavours to resolve any material difference of opinion in respect of such matters. Another method recognised for settlement of disputes is through arbitration. The Industrial disputes Act provides a legalistic way of settling disputes. The goal of preventive machinery as provided under the Act is to create an environment where the disputes do not arise at all. It also provides for penalties for illegal strikes and lockouts and unfair labour practices and provisions regarding lay off and retrenchment as well as compensation payable thereof. The ID Act provides that an employer who intends to close down an industrial establishment shall obtain prior permission at least ninety days before the date on which he intends to close down the industrial establishment, giving the reasons thereof. Further, the Trade Unions Act also in certain respects defines the law relating to registered Trade Unions like mode of registration, application for registration, provisions to be contained in the rules of a Trade Union, minimum requirement for membership of a Trade Union, rights and liabilities of registered Trade Unions, etc. In terms of the provisions of the Minimum Wages Act, an employee means i any person who is employed for hire or reward to do any work, skilled or unskilled manual or clerical, in a scheduled employment in respect of which minimum rates of wages have been fixed; ii an outworker, to whom any articles or materials are given out by another person to be made up, cleaned, washed, altered, ornamented, finished, repaired, adapted or otherwise processed for sale for the purposes of the trade or business of that other person; and iii an employee declared to be an employee by the appropriate Government. The term "wages" has been defined to mean all remuneration capable of being expressed in terms of money which would, if the terms of the contract of employment express or implied were fulfilled, be payable to a person employed in respect of his employment or work done in such an employment and includes house rent allowance but does not include: Any house accommodation or supply of light, water and medical attendance; or Any other amenity or any service excluded by general or special order of the appropriate Government; Any contribution paid by the employer to any personal fund or provident fund or under any scheme of social insurance; Any travelling allowance or the value of any travelling concession; Any sum paid to the person employed to defray special expenses entailed on him by the nature of his employment; or Any gratuity payable on discharge. Further, the Minimum Wages Act requires the employer to pay to every employee engaged in schedule employment wages at a rate not less than minimum rates of wages as fixed by a notification without any deduction other than prescribed deductions, if any. The Payment of Wages Act seeks to ensure that the employers make a timely payment of wages to the employees working in the establishments and to prevent unauthorized deductions from the wages. According to the Payment of Wages Act, all wages shall be in current coin or currency notes or in both. It is, however, provided that the employer may, after obtaining the written authorisation of the employed person, pay him the wages either by cheque or by crediting the wages in his bank account. Payment of Bonus Act, The Payment of Bonus Act, the "Bonus Act" provides for the payment of bonus to persons employed in certain establishments in India either on the basis of profits or on the basis of production or productivity and is applicable to every establishment in which 20 or more persons are employed and to all employees drawing a remuneration of less than Rs 10, Those employees who have worked for less than thirty days are not eligible to receive bonus under the Bonus Act. The Bonus Act provides for the payment of bonus between 8. However, for the calculation of bonus, a maximum salary of Rs 3, is considered. An establishment to which the EPF Act

applies shall continue to be governed by this Act, notwithstanding that the number of persons employed therein at any time falls below On account of Amendment to the said Act, The definition of "excluded employee" has been amended whereby the members drawing wages exceeding Rs 15, per month have been excluded from the provisions of the PF Scheme. Accordingly, the wage ceiling for an employee to be eligible for the PF Scheme has been increased from Rs 6, per month to Rs 15, per month. It further provides that every employee employed in or in connection with the work of a factory or other establishment is required to become a member of the Provident Fund. The Amendment further lays down the following changes: New members joining on or after 1 September drawing wages above Rs 15, per month shall not be eligible to voluntarily contribute to the Pension Scheme. The pensionable salary shall be calculated on the average monthly pay for the contribution period of the last 60 months earlier 12 months preceding the date of exit from the membership. The monthly pension for any existing or future member shall not be less than Rs 1, for the financial year The contribution payable under the Insurance Scheme shall also be calculated on a monthly pay of Rs 15, instead of Rs 6, The employee may voluntarily contribute a higher amount but the employer is not obliged to contribute more than the prescribed amount. Further, the EPF Act contains provisions for transfer of accumulations in case of change of employment. Clause vii a of Paragraph 3 provides that: The [Statutory] Auditor has to report, inter alia, on the following: If not paid regularly, the extent of the arrears of outstanding statutory dues as on the last day of the financial year concerned for a period of more than six months from the date they became payable, then it shall be indicated in the report. If such non-payment of dues is on account of any dispute, then the amount involved and for the forum where the dispute is pending should also be mentioned. The CARO is, however, not applicable to a banking company, an insurance company, s 8 company, one person company, small companies and certain class of private companies, as specified under the CARO. In terms of the provisions of the ESI Act, the eligible employees will receive medical relief, cash benefits, maternity benefits, pension to dependants of deceased workers and compensation for fatal or other injuries and diseases. It is applicable to establishments where 10 or more persons are employed. All employees, including casual, temporary or contract employees drawing wages less than Rs 15, per month, are covered under the ESI Act. This limit has been increased from Rs 10, to Rs 15, w. The employer is required to contribute at the rate of 4. The employees are also required to contribute at the rate of 1. Labour Welfare Fund Act of respective States The [State] Labour Welfare Fund Act provides for the constitution of the Labour Welfare Fund to promote and carry out various activities conducive to the welfare of labour in the State so as to ensure full and appropriate utilisation of the Fund. Payment of Gratuity Act, The Payment of Gratuity Act, the Gratuity Act applies to i every factory, mine, oilfield, plantation, port and railway company; ii every shop or establishment within the meaning of any law, for the time being in force, in relation to shops and establishments in a State, in which 10 or more persons are employed or were employed on any day of the preceding twelve months; and iii such other establishments or classes of establishments, in which 10 or more persons are employed or were employed on any day of the preceding twelve months, as the Central Government may, by notification, specify in this behalf. The Gratuity Act provides for a scheme for the payment of gratuity to employees engaged in factories, mines, oilfields, plantations, ports, railway companies, shops or other establishments. The Gratuity Act enforces the payment of "gratuity", a reward for long service, as a statutory retiral benefit. Every employee, who has completed continuous service of five years or more, irrespective of his wages, is entitled to receive gratuity upon termination of his employment, on account of i superannuation; or ii retirement; or iii death or disablement due to accident or disease. However, the completion of continuous service of five years shall not be necessary where the termination of employment of any employee is due to death or disablement. The gratuity is payable even to an employee who resigns after completing at least five years of service. The gratuity is payable at the rate of fifteen days wages for every year of completed service, subject to an aggregate amount of Rupees ten lacs only. However, if an employee has the right to receive higher gratuity under a contract or under an award, then the employee is entitled to get higher gratuity. It contains provisions for working hours of adults, employment of young persons, leaves, overtime, etc. It applies to all factories employing more than 10 people and working with the aid of power, or employing 20 people and working without the aid of power. It covers all workers employed in the factory

premises or precincts directly or through an agency including a contractor, involved in any manufacture. Some provisions of the Act may vary according to the nature of work of the establishment. Some Major provisions of the Factories Act are explained below: Section 11 of the Act provides that every factory shall be kept clean and free from effluvia arising from any drain, privy or other nuisance. Section 13 of the Act focuses on ventilation and temperature maintenance at workplace. Every factory should work on proper arrangements for adequate ventilation and circulation of fresh air. Section 18 of the Act specifies regarding arrangements for sufficient and pure drinking water for the workers. Section 19 further mentions that in every factory there should be sufficient accommodation for urinals which should be provided at conveniently situated place. It should be kept clean and maintained. Section 21 of the Act provides for proper fencing of machinery. And that any moving part of the machinery or machinery that is dangerous in kind should be properly fenced. Further s 45 of the said Act specifies that every factory should have a properly maintained and well equipped first aid box or cupboard with the prescribed contents. For every workers employed at one time, there shall not be less than 1 first aid box in the factory. Also in case where there are more than workers there should be well maintained ambulance room of prescribed size and containing proper facility. The Act further specifies that every employer is required to submit to the Certifying Officer five draft copies of the standing orders which he intends to adopt for his establishment. Further, the IESO Act requires display of standing orders in a prominent place for the knowledge of workers. Shops and Commercial Establishments Act of respective States The Shops and Commercial Establishments Act s of the respective States generally contain provisions relating to registration of an establishment, working hours, overtime, leave, privilege leave, notice pay, working conditions for women employees, etc. The provisions of the Shops and Commercial Establishments Act apply to both white collar and blue-collar employees. IT and IT-enabled services have been given relaxations by various State Governments in respect of the observance of certain provisions of their respective Shops and Commercial Establishments Act. The Act defines a "worker" as a workman who shall be deemed to be employed as "contract labour" in or in connection with the work of an establishment when he is hired in or in connection with such work by or through a contractor, with or without the knowledge of the principal employer. The Contract Labour Act regulates the employment of contract labour in certain establishments and provides for its abolition in certain circumstances. The Government may, however, by notification in the Official Gazette, make the provisions of the Contract Labour Act applicable to establishments or contractor employing less than 20 workmen. The Contract Labour Act is not applicable to establishments in which work only of an intermittent or casual nature is performed. The Contract Labour Act prohibits the employment of contract labour on jobs that are perennial in nature. For such jobs, permanent employees need to be employed. The Contract Labour Act provides that no contractor shall undertake any work through contract labour, except under and in accordance with a licence issued in that behalf by the licensing officer. In terms of s 7 of the Contract Labour Act, the principal employer has to make an application in the prescribed form accompanied by the prescribed fee payable to the registering officer for registration. This Act applies to factories, mines, docks, construction establishments, plantations, oilfields and other establishments listed in Schedules II and III of the said Act, but excludes establishments covered by the ESI Act. The Act provides for payment of compensation by the employer to the employees covered under this Act for injury caused by accident. Generally, companies take insurance policies to cover their liability under the EC Act. The ISMW Act applies to i any establishment in which five or more inter-state migrant workmen are employed or who were employed on any day of the preceding twelve months; and ii every contractor who employs or who employed five or more inter-state migrant workmen on any day of the preceding twelve months. For the purpose of the ISMW Act, an inter-state migrant workman means any person who is recruited by or through a contractor in one state under an agreement or other arrangement for employment in an establishment in another state, whether with or without the knowledge of the principal employer in relation to such an establishment. Weekly Holiday Act, The Weekly Holiday Act, provides for the grant of weekly holidays to persons employed in shops, restaurants and theatres. The Act provides that every shop shall remain entirely closed on one day of the week, which day shall be specified by the shop-keeper in a notice permanently exhibited in a conspicuous place in the shop. Further the state government may require in respect of shops or any specified class of shops that they shall be

closed at such hour in the afternoon of one week-day in every week in addition to weekly day off. This Act empowers the State Governments to take all feasible steps to improve the lot of the plantation workers. The passing of PLA has helped in creating conditions for organising the workers and the rise of trade unions. The Act defines an employer as, the person who has the ultimate control over the affairs of the plantation and where the affairs of the plantation are entrusted to any other person, such other person shall be the employer in relation to that plantation. Any plantation to which this Act applies and includes offices, hospitals, dispensaries, schools and any other premises used for any purposes connected with such plantation. The Act makes it mandatory for every employer to get their plantation registered within 60 days of its coming into existence. The Mines Act provides that persons working in the mine should not be less than 18 years of age. The Mines Act lays down provisions for appointment of one chief inspector who would be regulating all the territories in which mining is done and an inspector for every mine who would be subordinate to the chief inspector. Moreover, the District Magistrate is also empowered to perform the duties of an inspector subject to the orders of the Central Government. The chief inspector or any of the inspectors may make such inquiry, at any time whether day or night, in order to check whether the law is being abided in the mines or not. This Act applies to virtually every kind of establishment. Maternity Benefit Act, The Maternity Benefit Act, Maternity Benefit Act regulates the employment of women in certain establishments for a certain period before and after childbirth and provides for maternity benefits and certain other benefits including maternity leave, wages, bonus, nursing breaks, etc, to women employees. The Maternity Benefit Act, applies to a a factory, mine or plantation including any such establishment belonging to Government and to every establishment wherein persons are employed for the exhibition of equestrian, acrobatic and other performances; b every shops or establishments within the meaning of any law for the time being in force in relation to shops and establishments in a State, in which ten or more persons are employed, or were employed on any day of the preceding 12 months.

## 3: Industrial Disputes Act

*Prior to the year , industrial disputes were being settled under the provisions of the Trade Disputes Act, Experience of the working of the Act revealed various defects which.*

Grievance Management Thus from the legal point of view, industrial dispute does not merely refer to difference between labour and capital as is generally thought, but it refers to differences that affect groups of workmen and employers engaged in an industry. Essentially, therefore, the differences of opinions between employers and workmen in regard to employment, non-employment, terms of employment or the conditions of labour where the contesting parties are directly and substantially interested in maintaining their respective contentious constitute the subject-matter of an industrial dispute. They develop employee relations policies and ensure consistent application of company policies and procedures. In addition, they are responsible for employee dispute resolution procedures, performing internal audits, and taking appropriate action to correct any employee relations issues. Causes of Industrial Disputes Causes of industrial disputes can be broadly classified into two categories: The economic causes will include issues relating to compensation like wages, bonus, allowances, and conditions for work, working hours, leave and holidays without pay, unjust layoffs and retrenchments. The non economic factors will include victimization of workers, ill treatment by staff members, sympathetic strikes, political factors, indiscipline etc. The Industrial Disputes Act, governs rules for the settlement of disputes between the management of industrial establishments and workmen. Since the cost of living index is increasing, workers generally bargain for higher wages to meet the rising cost of living index and to increase their standards of living. This percentage was In , wages and allowances accounted for During the year , disputes caused by personnel were In , a similar trend could be seen, wherein In year , only 9. From the given table, it is evident that the number of disputes caused by indiscipline has shown an increasing trend. Similarly in and , During the year , indiscipline accounted for the highest percentage A similar trend was observed in where indiscipline accounted for The sequence of events began in the morning with a worker beating up a supervisor on the shop floor. Workers union alleges that this incident was caused due to the supervisor made objectionable remark against a permanent worker, who belongs to the Scheduled Caste category. When we opposed it, they misbehaved with us and suspended the worker that led to violence. Finally management declared to temporary close down the car Manufacturing plant produces about units per day. In terms of value the per day loss is about Rs. Cars waiting for delivery to its customers were more than one lakh units that may take more than five months to begin delivery due to lockout. Bonus has always been an important factor in industrial disputes. Leave and working hours: Leaves and working hours have not been so important causes of industrial disputes. During , only 0.

### 4: Industrial Disputes Act, - Wikipedia

*The Industrial Disputes Act extends to the whole of India and regulates Indian labour law so far as that concerns trade unions as well as individual workman employed in any industry within the territory of Indian mainland.*

A brief description of each of these follows: The Industrial Disputes Act, 1947, under its Section 4, provides for the appropriate government to appoint such number of persons as it thinks fit to be conciliation officers. Here, the appropriate government means one in whose jurisdiction the disputes fall. The conciliation officer enjoys the powers of a civil court. He is expected to give judgment within 14 days of the commencement of the conciliation proceedings. The judgement given by him is binding on the parties to the dispute. In case the conciliation officer fails to resolve the dispute between the disputants, under Section 5 of the Industrial Disputes Act, 1947, the appropriate government can appoint a Board of Conciliation. Thus, the Board of Conciliation is not a permanent institution like conciliation officer. It is an adhoc body consisting of a chairman and two or four other members nominated in equal numbers by the parties to the dispute. The Board enjoys the powers of civil court. The Board admits disputes only referred to it by the government. It follows the same conciliation proceedings as is followed by the conciliation officer. The Board is expected to give its judgment within two months of the date on which the dispute was referred to it. In India, appointment of the Board of Conciliation is rare for the settlement of disputes. In practice, settling disputes through a conciliation officer is more common and flexible. Arbitration differs from conciliation in the sense that in arbitration the arbitrator gives his judgment on a dispute while in conciliation, the conciliator disputing parties to reach at a decision. The arbitrator does not enjoy any judicial powers. The arbitrator listens to the view points of the conflicting parties and then gives his decision which is binding on all the parties. The judgment on the dispute is sent to the government. The government publishes the judgment within 30 days of its submission and the same becomes enforceable after 30 days of its publication. In India, there are two types of arbitration: In voluntary arbitration both the conflicting parties appoint a neutral third party as arbitrator. With a view to promote voluntary arbitration, the Government of India has constituted a tripartite National Arbitration Promotion Board in July 1987, consisting of representatives of employees trade employers and the Government. However, the voluntary arbitration could not be successful because the judgments given by it are not binding on the disputants. Yes, moral binding is exception to it. In compulsory arbitration, the government can force the disputing parties to go for compulsory arbitration. In other form, both the disputing parties can request the government to refer their dispute for arbitration. The judgment given by the arbitrator is binding on the parties of dispute. The government can refer the dispute to adjudication with or without the consent of the disputing parties.

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*The objective of the Industrial Disputes Act is to secure industrial peace and harmony by providing machinery and procedure for the investigation and settlement of industrial disputes by negotiations.*

Notice of change No, employer, who proposes to effect any change in the conditions of service applicable to any workman in respect of any matter specified in the Fourth Schedule, shall effect such change, " a Without giving to the workmen likely to be affected by such change a notice in the prescribed manner of the nature of the change proposed to be effected; or b Within twenty-one days of giving such notice Provided that no notice shall be required for effecting any such change. Power of Government to exempt Where the appropriate Government is of opinion that the application of the provisions of section 9. A to any class of industrial establishments or to any class of workmen employed in any industrial establishment affect the employers in relation thereto so prejudicially that such application may cause serious repercussion on the industry concerned and that public interest so requires, the appropriate Government may, by notification in the Official Gazette, direct that the provisions of the said section shall not apply or shall apply, subject to such conditions as may be specified in the notification, to that class of industrial establishments or to that class of workmen employed in any industrial establishment. On the enforcement of section 7 of Act 46 of , a new chapter IIB shall stand inserted as directed in section 7 of that Act. For the Text of section 7 of that Act, see Appendix. Setting up of Grievance Redressal Machinery. Provided that there shall be, as far as practicable, one woman member if the Grievance Redressal Committee has two members and in case the number of members are more than two, the number of women members may be increased proportionately. Reference of dispute to Boards, Courts or Tribunals 1 [Where the appropriate Government is of opinion that any industrial dispute exists or is apprehended, it may at any time], by order in writing- a Refer the dispute to a Board for promoting a settlement thereof; or b Refer any matter appearing to be connected with or relevant to the dispute to a Court for inquiry; or 2[ c Refer the dispute or any matter appearing to be connected with, or relevant to, the dispute, if it relates to any matter specified in the Second Schedule, to a Labour Court for adjudication; or d Refer the dispute or any matter appearing to be connected with, or relevant to, the dispute, whether it relates to any matter specified in the Second Schedule or the Third Schedule, to a Tribunal for adjudication: Provided that where the dispute relates to any matter specified in the Third Schedule and is not likely to affect more than one hundred workmen, the appropriate Government may, if it so thinks fit, make the reference to a Labour Court under clause c: Provided that where such industrial dispute is connected with an individual workman, no such period shall exceed three months: Provided further that where the parties to an industrial dispute apply in the prescribed manner, whether jointly or separately, to the Labour Court, Tribunal or National Tribunal for extension of such period or for any other reason, and the presiding officer of such Labour Court, Tribunal or National Tribunal considers it necessary or expedient to extend such period, he may for reasons to be recorded in writing, extend such period by such further period as he may think fit: Provided also that in computing any period specified in this sub-section, the period, if any, for which the proceedings before the Labour Court, Tribunal or National Tribunal had been stayed by any injunction or order of a Civil Court shall be excluded: Provided also that no proceedings before a Labour Court, Tribunal or National Tribunal shall lapse merely on the ground that any period specified under this sub-section had expired without such proceedings being completed. Short title and commencement. Amendment of section 2. In section 2 of the Industrial Disputes Act, 14 of hereinafter referred to as the principal Act , - c for clause j the following clause shall be substituted, namely: Insertion of new Chapter IIB. Setting up of Grievance Settlement Authorities and reference of certain individual disputes to such authorities. Amendment of section In sub-section 2 of section 38 of the principal Act, after clause aaa , the following clause shall be inserted, namely: Voluntary reference of disputes to arbitration 1[10A. Voluntary reference of disputes to arbitration. Procedure and power of conciliation officers, Boards, Courts and Tribunals 1[ 1 Subject to any rules that may be made in this behalf, an arbitrator, a Board, Court, Labour Court, Tribunal or National Tribunal shall follow such procedure as the arbitrator or other authority concerned may think fit. Powers of Labour Court, Tribunals

and National Tribunals to give appropriate relief in case of discharge or dismissal of workmen 1[11A. Powers of Labour Court, Tribunals and National Tribunals to give appropriate relief in case of discharge or dismissal of workmen. Where an industrial dispute relating to the discharge or dismissal of a workman has been referred to a Labour Court, Tribunal or National Tribunal for adjudication and, in the course of the adjudication proceedings, the Labour Court, Tribunal or National Tribunal, as the case may be, is satisfied that the order of discharge or dismissal was not justified, it may, by its award, set aside the order of discharge or dismissal and direct re-instatement of the workman on such terms and conditions, if any, as it thinks fit, or give such other relief to the workman including the award of any lesser punishment in lieu of discharge or dismissal as the circumstances of the case may require: Provided that in any proceeding under this section the Labour Court, Tribunal or National Tribunal, as the case may be, shall rely only on the materials on record and shall not take any fresh evidence in relation to the matter. Duties of conciliation officers 1 Where any industrial dispute exists or is apprehended, the conciliation officer may, or where the dispute relates to a public utility service and a notice under section 22 has been given, shall, hold conciliation proceedings in the prescribed manner. Where the appropriate Government does not make such a reference it shall record and communicate to the parties concerned its reasons therefor. Duties of Board 1 Where a dispute has been referred to a Board under this Act, it shall be the duty of the Board to endeavour to bring about a settlement of the same and for this purpose the Board shall, in such manner as it thinks fit and without delay, investigate the dispute and all matters affecting the merit and the right settlement thereof and may do all such things as it thinks fit for the purpose of inducing the parties to come to a fair and amicable settlement of the dispute. Provided that the appropriate Government may from time to time extend the time for the submission of the report by such further periods not exceeding two months in the aggregate: Provided further that the time for the submission of the report may be extended by such period as may be agreed on in writing by all the parties to the dispute. Duties of Courts A Court shall inquire into the matters referred to it and report thereon to the appropriate Government ordinarily within a period of six months from the commencement of its inquiry. Where an industrial dispute has been referred to a Labour Court, Tribunal or National Tribunal for adjudication, it shall hold its proceedings expeditiously and shall, 2[within the period specified in the order referring such industrial dispute or the further period extended under the second proviso to sub-section 2A of section 10], submit its award to the appropriate Government. Form of report or award 1 The report of a Board or Court shall be in writing and shall be signed by all the members of the Board or Court, as the case may be: Provided that nothing in this section shall be deemed to prevent any member of the Board or Court from recording any minute of dissent from a report or from any recommendation made therein. Publication of reports and awards 1 Every report of a Board or Court together with any minute of dissent recorded therewith, every arbitration award and every award of a Labour Court, Tribunal or National Tribunal shall, within a period of thirty days from the date of its receipt by the appropriate Government, be published in such manner as the appropriate Government thinks fit. Commencement of the award 1 An award including an arbitration award shall become enforceable on the expiry of thirty days from the date of its publication under section Provided that- a If the appropriate Government is of opinion, in any case where the award has been given by a Labour Court or Tribunal in relation to an industrial dispute to which it is a party; or b If the Central Government is of opinion, in any case where the award has been given by a National Tribunal, That it will be inexpedient on public grounds affecting national economy or social justice to give effect to the whole or any part of the award, the appropriate Government, or as the case may be, the Central Government may, by notification in the Official Gazette, declare that the award shall not become enforceable on the expiry of the said period of thirty days.

## 6: Industrial Disputes: Definition, Forms and Types

*Industrial Disputes Act, an institution enacted to make provisions for the investigation and settlement of industrial disputes. This paper tries to identify some of the determinants of.*

Industrial Disputes Act, 1 Applicability In case of appointment on job contract basis, reference under I. Act is not maintainable. Gopalji Jha Shastri v. All organized activity possessing the triple elements, although not trade or business, may still be industry provided the nature of the activity, viz. The consequences are i professions, ii clubs, iii educational institutions, iv co-operatives, v research institutes, vi charitable projects, and vii other kindred adventures, if they fulfil the above triple tests, cannot be exempted from the scope of Section 2 j. Real estate company is an industry. Chief Engineer, Hydel Project v. Ravinder Nath, 2 SCC An industrial dispute must be supported by a number of workmen or sponsored or espoused by the Union. There is no particular form prescribed to effect such espousal. Proof of support by the union may also be available aliunde. Indian Express P Ltd. On the other hand, non-employment being negative of the expression employment would ordinarily mean a dispute when the workman is out of service. When non-employment is referable to an employment which at one point of time was existing would be a matter required to be dealt with differently than a situation where non-employment would mean a contemplated employment. Workmen of Nilgiri Coop. Bongaigaon Refinery Petrochemicals Ltd. Monthly Rated Workmen v. Indian Hume Pipe Co. If a rigid view is taken that in case of a lockout there is only closure of the place of business whereas in case of a closure there is a closure of the business itself permanent and irrevocable the if an employer who has resorted to closure, bona fide wants to reopen, revive and re-start the industrial activity he cannot do so on the pain that the closure would be adjudged a device or pretence. Onus of proving that the workman had worked for days in 12 calendar months is on the workman, not the employer. Sowaran Singh, AIR SC 56 Termination of service of contract workers for specific period on completion of contract period is not retrenchment. Punjab State Electricity Board v. Sudesh Kumar Puri, AIR Supp When a workman is terminated after 89 days on a regular basis and re-appointed after a gap of one or two days, it is unfair labour practice and in such cases provision of S. Haryana State Electronics Devpt Corpn v. Executive Engineer ZP Engg. Digambara Rao, AIR SC Retrenchment means the termination by the employer of the service of a workman for any reason whatsoever except those expressly excluded in the section. Section 2 oo bb should be harmoniously construed with Sections F, G and H. Punjab Land Development and Reclamation Corpn. Presiding Officer, 3 SCC The bipartite agreement authorized the Bank to stop the stagnation increment of the employee who is reverted on his own request after one year of his promotion. Thus when the employee requested for his reversion after one year of promotion, it was held that the Bank was right in stopping stagnation increment. However, it was held that the Bank could not stop the employees promotion for all times to come because of his request reversion. Murphy India Employees Union, AIR SC 6 When employment was given to widow of a worker dying in harness on contract basis but at the instance of the Union, it was held that the contract was not a settlement. Indian Drugs and Pharmaceuticals Ltd. No oral agreement or pleading can vary, modify or supersede a written settlement. Labour Commissioner, AIR SC Settlement in course of conciliation proceeding is binding on all parties to industrial dispute, i. Settlement by agreement between employer and workmen otherwise than in course of conciliation proceeding is not binding on workmen not parties to it. Punjab National Bank Ltd. Being in the category of management staff Gr. II, his conditions of service were different than those provided for the workers of the Company. Leave given to him were not applicable under the settlement. He was covered under the Pension Scheme which did not apply under the settlement with employees. It was held therefore that he was not a workman. Such employees are professionals and cannot be termed as workman under any law. Muir Mills Unit of N. Professionals cannot be workmen. Its employees cannot be treated to be workmen as defined in S. State Electricity Board v. National Thermal Power Corporation v. Government cannot decide the issue and refuse to make a reference. Indian Banks Association v. Such employees are not workmen of the R. Employees in relation to the Management of Reserve Bank of India v. He is not a workman though either incidentally he is required to do some clerical work or is not vested with power to appoint or discharge

employees under him. National Engineering Industries Ltd. Kishen Bhageria, AIR SC Maintenance Engineer having power to grant leave, initiate disciplinary proceedings and make temporary appointments is not a workman. Vimal Kumar Jain v. Though school is industry, teacher employed in school is not workman. Arkal Govind Raj Rao v. Ciba Geigy of India Ltd. Industrial Tribunal II, U. Burma Shell Management Staff Asscn. Chemicals and Fibres of India Ltd. Bangalore Metropolitan Transport Corporation v. When the matter was sought to be raised seeking reference after seven years, it was held to be stale because at that time there was no industrial dispute. However when a matter can be said to be stale or delayed depends on the facts of the case, but a matter which has attained finality cannot be reopened. Haryana Land Reclamation and Development Corpn. Gopinath Sharma, AIR SC Although the only dispute was with regard to the regularization of the services of the contractual employees, it was open to the Industrial Tribunal to determine the nature of the employment as to whether the employees were employees of the contractor or the principal employer. Contractual Workers Union, AIR SC Supp When the principal question under reference was as to whether the termination of services of the seasonal worker was justified the Labour Court could not go into the question as to whether the Company was bound to take the services of the worker in all subsequent seasons or not. Bank extended benefit under settlement to employees who were not members of Association on accepting the settlement in writing. Federation disputed the clause in settlement giving benefit only to members of the Association and action of Bank extending benefit to other employees on giving individual acceptance of the settlement. Such dispute was not industrial dispute. Reference of dispute by Govt. Government order making reference can be challenged in writ petition if futility of the reference can be shown. Reference can be made only if a employer-employee relationship exists. Steel Authority of India Ltd. Union of India, AIR SC Dispute with respect to bonus payable or with respect to application of Bonus Act in public sector, is deemed to be an industrial dispute. Reference can be made for adjudication. Tribunal cannot decide disputes relating to non-workmen. Range Forest Officer v. Therefore it cannot go into the question on validity of the reference. When a reference is made under Section 10 of the Act, all incidental questions arising thereto can be determined by the Tribunal. State Bank of India v. Ram Chandra Dubey, 1 SCC 73 Labour Court can consider the evidence already considered by the domestic tribunal and arrive at a conclusion different from the one arrived at by the domestic tribunal. Balmadies Estates, 4 SCC Tribunal is duty-bound to consider whether back wages have to be awarded and if so, to what extent. Therefore the Industrial Tribunal is not bound to grant some relief only because it will be lawful to do so. Manager, Reserve Bank of India v. Mani, 5 SCC The Tribunal must attempt to strike a balance between the claim of the worker and situation of the employer. Laxmi Rattan Cotton Mills Ltd. If it is found that the industry is not in a position to bear the financial burden, an appropriate award, as a result whereof the equities between the parties can be adjusted, should be passed. Credit and Service Society Ltd. Sushil Kumar, 9 SCC It is not proper for the Tribunal to make an award as if appointing an incumbent to the post. Entitlement to a post can be determined only on the touchstone of relevant rules or on the basis that he is discharging such functions. When the findings are not clear as if the employee was functioning in the post to which claim is made, no relief could have been given. Hydro-Electric Employees Union, 10 SCC The Tribunal while deciding the issue of termination of the workers can go into the cause thereof to find out whether there was a closure and whether such closure was bona fide. The Industrial Tribunal cannot act as an Appellate Tribunal. Publication of award beyond fixed time does not invalidate the award. Remington Rand of India Ltd. The Workmen, AIR SC A Tribunal ordinarily makes its award operative from the date of reference but, in exceptional circumstances it gives retroactive operation to some of its proposals. However Rule 28 31? It is only a clerical mistake or error which can be corrected, and the clerical mistake or error must arise from an accidental slip or omission in the award.

## 7: Labor Laws In India - (Indian) Industrial Disputes Act, - Employment and HR - India

*Industrial disputes act, 1. INDUSTRIAL DISPUTES ACT, 2. INDUSTRIAL DISPUTES ACT, As per section 2 (k) of Industrial Disputes Act, Industrial Dispute is defined as any dispute or difference 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 employment or with the.*

The Courts have interpreted this definition and have identified various determining factors to know whether a person is "workman" or not. The factors which should be considered are a whether there is a Master-Servant relationship;1 b when a person is performing various functions which overlap in their characteristics, the nature of main function for which the claimant is employed should be considered;2 c work is either manual, skilled, unskilled, technical operational, clerical or supervisory in nature, the mere fact that it does not fall within the exception would not render a person to be workman; and d that the exceptions are not applicable. This note discusses some of the important components of section 2 s and their interpretation by the courts below. Supervisory and Managerial work 1. However, when a person performs multifarious functions, the nature of the main function performed by the person has to be considered to determine if the person is a "workman. Even if a person is designated as supervisor, the employer has to prove that his work and his duties were in nature of a supervisor. The emphasis really is to exclude those persons who are performing mainly managerial work and are employed in supervisory capacity i. A managerial work includes powers and duties related to hiring and firing of new employees, grant of leave to employees and actual participation in the policy of the business. The managerial functions may not be performed as a consequence of a written contract but may be implied from the powers vested in a person or the nature of his duties. A mere leader of a team who makes checks and forwards it to seniors for consideration cannot be said to be covered within the exception. Skilled and Unskilled manual and operational work 2. It is mostly associated with physical labour. By way of exception, the courts have excluded such works which need imaginative or creative quotient. A work that requires training would imply that the work is of special nature and requires a distinct application of mind. However, in a few cases the courts have deviated from strict interpretation and excluded ancillary creative works while considering the definition of "workman. However, a person carrying out such ideas by distributing pamphlets or engaging in door-to-door publicity will be covered as a "workman" under the ID Act. Part Time and Full Time workman The number of working hours is not considered while determining whether a person qualifies as "workman" or not. However, there must exist a master-servant relationship between the employee and his employer. An independent contractor cannot be termed as a workman. The ID Act does not differentiate between part-time, full time, casual, daily wage,9 regular or permanent workman. All such individuals are subject to ID Act if they fulfill the ingredients as provided in section 2 s. The emphasis is laid on the nature of duties and powers conferred on an employee rather than the designation. John Joseph Khokar v. Staff Association and Ors. Dinesh Sharma and Ors. State of Bihar and Ors. Specialist advice should be sought about your specific circumstances.

## 8: 3 Methods for Settlement of Industrial Disputes

3. Before the industrial disputes act was implemented in the year , which act took care of the industrial disputes? a. Trade Disputes Act,

Article 19 1 the Constitution of India guarantees the protection of certain freedoms as fundamental rights. All citizens shall have the right To freedom of speech and expression; To assemble peaceably and without arms; To form associations or unions; To move freely throughout the territory of India; To reside and settle in any part of the territory of India; and To practise any profession, or to carry on any occupation, trade or business However, strike is not expressly recognized in the Constitution of India. The State of Bihar on 7 July by stating that strike is not a fundamental right. Government employees have no legal or moral rights to go on strikes. Industrial Disputes Act, India recognized strike as statutory right under Industrial Disputes Act, which came into force on April 1, Prior to Industrial Disputes Act, , India had enacted its first industrial disputes legislation i. Trade Disputes Act, had brought in a special provision of strikes, however, such legislation could not establish peace in the industries due to strike problems and disputes kept on continuing. After the Second World War Industrial Disputes Act, came into the picture to sort out the disputes in industries. Its applicability is extended to the whole of India. It is applicable to existing industry and not on dead industries. General Meaning A strike is a powerful weapon used by trade unions or other associations or workers to put across their demands or grievances by employers or management of industries. Types of Strikes Based on the phenomena of strikes around the world, strikes can be categorised into economic strike, sympathy strike, general strike, sit down strike, slow down strike, hunger strike and wildcat strike have been experienced. Economic Strike “ Such strike happens due to economic demands like increment of wages and allowances like house rent allowance, transport allowances, bonus etc. Sympathy Strike “ In such strike union or workers of one industry join the strikes already hailed by other union or workers. General strike “ This strike intended to increase the political pressure in the ruling party by all unions or members in a region or state. The employees of Kingfisher airlines went on hunger strikes for salary dues of several months. Wildcat strike “ Such strike happens by the workers without the consent of union and authority. In , advocates went on wildcat strike at civil courts in Bangalore to protest the remarks allegedly made by an assistant commissioner against them. However, if we see the history of strikes, it is found that strikes mostly occur due to issues related to wages by the employers to the workers. All the well-known hospitals like Apollo, Fortis, Max etc. In January , Kingfisher employees went on hunger strike due to non-payment of salary for 17 months. In September , tens of millions of Indian workers of public sector had gone on strike demanding higher wages. Banks, power stations were kept shut and public transportation systems froze in some of the states. Later the government considered their demands and increased the wages. Role of Industrial Disputes Act Industrial Disputes Act, plays a vital role to sort out the above dispute by conciliation or award. It is designed in a way to settle the disputes amicably between employees with the management of industries. The objective of the act is to investigate and settle industrial disputes in an expeditious and amicable manner. The apex court has refused to entertain fresh cases of industrial disputes as the act empowers the Industrial Disputes Tribunals to address the same. Section 22 of Chapter V of Industrial Disputes Act clarifies the Prohibitions on right to strike It states that no person employed in a public utility service shall go on strike in breach of contract “ without giving to the employer notice of strike, as hereinafter provided, within six weeks before striking; or within fourteen days of giving such notice; or before the expiry of the date of strike specified in any such notice as aforesaid; or during the pendency of any conciliation proceedings before a conciliation officer and seven days after the conclusion of such proceedings. Significance of section 22 are as follows It must be noted that above regulations for strike are applicable for employees who work for public utility service in Industry. It is mandatory to give employer notice with or without strike date. In case date of strike is not mentioned in the notice, then such notice will be valid for six weeks only from the date of notice. In case the date of strike is mentioned in the notice then employees cannot go on strike before the expiry of 14 days from the date of the notice. Employee cannot go on strike during the pendency of any conciliation

proceedings before a conciliation officer and seven days after the conclusion of such proceedings Points a and b of section 22 clarify that employee who works in public utility service can go on strike at least after 14 days. It is important to note that generally, 14 days is the consideration period in which employer can consider their employee demands. Section 23 – General prohibition of strikes and lock-outs Section 23 deals with General prohibitions of strikes it is applicable for public utility services and non-public utility services. It gives the general guidelines for prohibitions of strike however section 22 deals only with services related to public utility. No workman who is employed in any industrial establishment shall go on strike in breach of contract and no employer of any such workman shall declare a lock-out – a during the pendency of conciliation proceedings before a Board and seven days after the conclusion of such proceedings; b during the pendency of proceedings before a Labour Court, Tribunal or National Tribunal and two months after the conclusion of such proceedings; bb during the pendency of arbitration proceedings before an arbitrator and two months after the conclusion of such proceedings, where a notification has been issued under sub-section 3A of section 10A; or c during any period in which a settlement or award is in operation, in respect of any of the matters covered by the settlement or award. Illegal strikes and lockouts 1 A strike or a lock-out shall be illegal if – i It is commenced or declared in contravention of section 22 or section 23; or ii It is continued in contravention of an order made under sub-section 3 of section 10 or sub-section 4A of section 10A. However, illegal strikes will not be in conformity with sections 22 or 23. Penalty for Illegal strikes and lockouts This section prescribes penalties for conducting an illegal strike. As per the act any workmen who were involved or interested in strikes which were illegal, will get punishment as well imprisonment for a term and same will be extended to one month, or they have to pay with fine up to fifty rupees, or both. Its main aim is to establish the balancing situation among industries, workers or unions. Common Reasons for Strike Strikes generally occur in industries due to disputes between employees and employers, employees and employees or among employers and employers mostly due to the following issues:

*The Industrial Disputes Act, makes provision for the investigation and settlement of industrial disputes and for certain other purposes. It ensures progress of.*

Rationalization, retrenchment and closure of establishment. Reference of the Dispute: When any dispute arises in respect of the issues as mentioned above, the same may be brought to the notice of the appropriate Government who could be central or state Governments in their respective jurisdiction. Once the matter relating to the dispute is brought to the notice of the appropriate Government, and the said Government, on considering the merit and acuteness of the issue on the basis of loss involved to either of the parties associated with the dispute, shall decide on question of its settlement by referring it to the authorities under this Act. Authorities under the Act: It shall consist of equal number of representatives of workmen and the employer. It shall be duty of the Works Committee to promote measures for securing and preserving amity and good relations between the employer and the workmen. The appropriate Government shall appoint conciliation officers for specified areas or industries who shall be charged with the duty of mediating in and promoting the settlement of industrial disputes. It shall consist of a chairman. It shall also consist of two or four members in equal representation of the concerned parties on their respective recommendation. The Board shall endeavour to bring about a settlement of the dispute by inducing the parties to come to a fair and amicable settlement of the dispute. It shall then send its report to the appropriate Government within two months of the reference of the dispute. The period of its proceeding may be extended. On occasions, the appropriate Government shall constitute a Court of Inquiry for inquiring into any matter appearing to be connected with or relevant to an industrial dispute. This court may consist of one or more independent persons, one of whom shall be the chairman. It shall send its report to the appropriate Government ordinarily within a period of six months from the commencement of its inquiry. For the adjudication of industrial disputes relating to some specific issues and for performing some other relevant functions, the appropriate Government may constitute one or more Labour courts which shall consist of only one member to be appointed as its presiding officer. The presiding officer of a labour court is required to be a person having perfect knowledge of Indian jurisprudence. The presiding officer is required to be a person having perfect knowledge in the field of judiciary. It may also appoint two persons as assessors to advise the tribunal in the proceedings. The presiding officer is required to be a person of perfect knowledge of judiciary. The Central Government may also appoint two persons as assessors to advise the National Tribunal. The Labour courts, Tribunals and the National Tribunals shall, on reference of any industrial dispute to be inquired into, hold its proceedings expeditiously and submit its award to the appropriate Government. The award shall be published in the manner as deemed fit by the appropriate Government and it shall be final and shall not be called in question by any court in any manner. In face of industrial disputes and unrest, the employees as well as the employers often resort to strikes or lock-out, as the case may. Therefore in the Act certain provisions have been made for the validity of strikes and lockouts. It provides that striking of work by employees or locking up of the establishment by the employer shall stand invalid if the same has been resorted to:

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