

Concepts

Resolving Disputes Legal and voluntary methods for resolving disputes, Conciliation, Arbitration and Adjudication- Collective Bargaining : Meaning, scope & issues, subject matter and parties, methods and tactics, administration of collective bargaining agreements, regulation of strike, lockout, layoff & retrenchment, Machinery under the Act for settlement of disputes, Bi-Partite & Tri-partite machinery –centre and state; codes of discipline Joint Consultative Machinery.

THE INDUSTRIAL DISPUTE ACT 1947

Meaning:

According to sec.2 (k) of the industrial disputes act 1947, an industrial dispute means any dispute or difference between;

- employers & employers or
- between employers & workmen or between
- workmen & workmen,

Which is connected with the employment or non-employment or with the conditions of labour of ant persons.

Distinction between a Grievance& a Dispute:

-Grievance is the earlier stage of a dispute. If ignored by the mgt and allowed to grow, it later on turns into a dispute.

-grievance can be even unexpressed. But a dispute can be never unexpressed.

-there does not exist any statutory machines for settling grievances. But there is the ID act which lays down elaborate machinery for settlement of dispute.

-grievance is generally small in dimension. Disputes are generally in dimensions. As they do form collective action of a large no of individuals

Causes of Disputes:

1. Economics causes:

- Demand for higher wages
- Dissatisfaction with the method of job evaluation
- Wrongful deductions from the wages
- `Faulty incentive schemes
- Lack of fringe benefits
- Lack of promotional avenues, etc

2. Psychological causes:

- Lack of opportunity for advancement growth
- Non-recognition for seniority
- Faulty transfer policy
- Authoritarian administration
- Poor relations with peers & superiors

3. Organizational causes:

- Non-recognition of unions
- Unfair practices
- Violation of collective agreements
- Standing orders and labour laws
- Duality of command and supervision
- Faulty superiors

4. Physical causes:

- Poor working condition
- Worn-out plant
- Complex technology
- Poor layout
- Inadequate maintenance

Forms of disputes:**Strike**

According to sec.1 (Q) of the ID act, 1947, "strike means a cessation of work by a body of persons employed in any way industry acting in combination or a concerted refusal under a common understanding of any know of persons who are or have been so employed to continue to work to accept employment".

Ingredients of strike:

- these should be in industry within the meaning of sec.2 (j) of the ID act, 1947 in which the striking persons should be employed.
- there should be stoppage of work in pursuance of to a concerted plan in combination.
- there should be contract of employment between the striking workmen and the industry.

Forms of Strikes:

- a. stay-in-strike, sit-down strike, pen-down strike
- b. go-slow strike
- c. Hunger strike
- d. lightening or wild-cat strike
- e. Work to Rule.

Lock out:

According to sec 2(1) of the ID act,1947 defines 'lockout as temporary or the suspension of work , or the refusal by an employees to continue to employ any persons employed by him.

Essentials of a Lock Out:

- a. There is a temporary closing of the place of employment or suspension or withholding of the work by the employee in some form.
- b. there is an element of demands for which the place of employment is locked out or closed.
- c. there is an intention to re-employ the workers if they accept the demands.

Lay off (sec.2(kkk)):

‘Lay-off’ means the failure refusal or inability of an employee to give employment to a workman (a) whose name is borne on the muster-rolls of his industrial establishment, &(B) who has not been retrenched. The lay off can be for any of the following reasons.

1. Shortage of coal ,power or materials, or
2. The accusation of stocks, or
3. The breakdown of machinery ,or
4. Natural calamity or for any connected reason.

Essentials of Lay Off:

- a) There must be a failure or refusal inability of the employee to continue employees in his employment.
- b) the employees laid off must be on the muster rolls of the establishment on the day of lay-off.
- c) the failure, refusal of inability to give employment may be due to above reasons.
- d) the employees must have not been retrenched.

Difference between Lock out and Lay Off:

- 1). Lock out is the employer refuses to give employment. Because of closing of a place of employment or suspension. Lay off is employer refuses to give employment because of shortage of coal, power or raw materials, calamity etc....
- 2) Lock out is resorted to by the employer to coerce or pressurize the workman to accept his demands. Lay off is for the trade reasons beyond the control of employees.
- 3) Lock out is due to an ID and continues during the the period of disputes. Lay off is not concerned with a dispute with a workman.

Closure: sec.2 (cc):

It means the permanent the closing down of a place of employment or past thereof.

Difference between Lockout& closure:

Lock out and closure of a business is often confused.

Differences are:

- 1). In the case of lock out it is only the place of business which is closed; While in the case of closure of a business not only the place of business but the business itself is closed.
- 2). Lock out is a weapon of coercion in the hands of employer; Closure is generally for trade reasons.
- 3). Lock out is no severance but only suspension of relationship; Closure is severance of employment of relationship.
- 4). A lock out is caused by the existence of an ID. Whereas closure need not be in consequence of an ID

RETRENCHMENT: Sec.2 (00);

It means 'to end', conclude, or cease'. The term as used in the ID Act means the termination by the employer of the service of a workman for any reason whatsoever, otherwise than punishment inflicted by way of disciplinary action.

Retrenchment' however does not include;

- a. Voluntary retirement
- b. Retirement of the workman on reaching the age of super nation.
- c. Termination of the service as a result of the non renewal of the contract of employment.
- d. Termination of the service of a workman on the ground of continued ill-health.

Difference between 'retrenchment' and 'Closure':

- 1) Retrenchment is the termination by the employers of the service of a workman for any reason whatsoever otherwise than as a punishment inflicted by way of disciplinary action. Closure is closing down of the business for trade reasons and it affects all workmen.
- 2) Retrenchment is terminated on account of surplus labour. Closure is on account of total closure of work by an employer.
- 3). in retrenchment, the trade is remains uninterrupted as it continues. While closure is itself discontinued.

3. GHERAS:

Gheras means encirclement of the manager criminally intimates him to accept the demands of workers. It amounts the criminal conspiracy under sec.120-A of the Indian penal code.

Management Prerogatives:

Rights and power that can be exercised by the management without the permission of the Government or the unions

Example:

Exercise discipline within the premises.

Limitations:

- Can be used in places where the powers of the Government and unions
- Should not violate moral standards
- Should not become an unfair labour practice as listed in the ID Act.

Types of Work Stoppages:

1. Strike for definite period
2. Indefinite strike /fight to finish
3. Sectional/organizational strike
4. Picking
5. Stay out or in strike
6. Procession
7. Gate meeting
8. Lunch boycott
9. Wearing of black badges/clothes

10. Slogan shouting/such other demonstration
11. Morcha
12. Dharna
13. Bandh
14. Ghaero
15. Tool down.pen down strike
16. Go-slow strike
17. Work to rule
18. Boycott

INDUSTRIAL DISPUTLES SETTLEMENT MACHINERIES:

General methods of resolving ID:

I. Voluntary method

- Collective bargaining
- Code of discipline 1958
- Arbitration
- Permanent negotiation machinery
- Joint consultative machinery
- Tri-partite bodies

II. Statutory method:

a) Conciliation

b) Adjudication – focus on the below mentioned issues;

- a) Prevention of unfair labour practices
- b) Regulation of strike
- c) Regulation of retrenchment
- d) Prohibition of change of working conditions
- e) Machinery for resolving ID

I. Voluntary level:

Collective Bargaining

A collective bargaining process generally consists of **four types of activities**- distributive bargaining, integrative bargaining, attitudinal restructuring and intra-organizational bargaining.

Distributive bargaining:

It involves haggling over the distribution of surplus. Under it, the economic issues like wages, salaries and bonus are discussed. In distributive bargaining, one party's gain is another party's loss. This is most commonly explained in terms of a pie. Disputants can work together to make the pie bigger, so there is enough for both of them to have as much as they want, or they can focus on cutting the pie up, trying to get as much as they can for themselves. In general, distributive bargaining tends to be more competitive. This type of bargaining is also known as conjunctive bargaining

Integrative bargaining:

This involves negotiation of an issue on which both the parties may gain, or at least neither party loses. For example, representatives of employer and employee sides may bargain over the better training programme or a better job evaluation method. Here, both the parties are trying to make more of something. In general, it tends to be more cooperative than distributive bargaining. This type of bargaining is also known as cooperative bargaining.

Attitudinal restructuring:

This involves shaping and reshaping some attitudes like trust or distrust, friendliness or hostility between labor and management. When there is a backlog of bitterness between both the parties, attitudinal restructuring is required to maintain smooth and harmonious industrial relations. It develops a bargaining environment and creates trust and cooperation among the parties.

Intra-organizational bargaining:

It generally aims at resolving internal conflicts. This is a type of maneuvering to achieve consensus with the workers and management. Even within the union, there may be differences between groups. For example, skilled workers may feel that they are neglected or women workers may feel that their interests are not looked after properly. Within the management also, there may be differences. Trade unions maneuver to achieve consensus among the conflicting groups

Characteristics of Collective Bargaining

- It is a group process, wherein one group, representing the employers, and the other, representing the employees, sit together to negotiate terms of employment.
- Negotiations form an important aspect of the process of collective bargaining i.e., there is considerable scope for discussion, compromise or mutual give and take in collective bargaining.
- Collective bargaining is a formalized process by which employers and independent trade unions negotiate terms and conditions of employment and the ways in which certain employment-related issues are to be regulated at national, organizational and workplace levels
- Collective bargaining is a process in the sense that it consists of a number of steps. It begins with the presentation of the charter of demands and ends with reaching an agreement, which would serve as the basic law governing labor management relations over a period of time in an enterprise. Moreover, it is flexible process and not fixed or static. Mutual trust and understanding serve as the by products of harmonious relations between the two parties.
- It a bipartite process. This means there are always two parties involved in the process of collective bargaining. The negotiations generally take place between the employees and the management. It is a form of participation.
- Collective bargaining is a complementary process i.e. each party needs something that the other party has; labor can increase productivity and management can pay better for their efforts.
- Collective bargaining tends to improve the relations between workers and the union on the one hand and the employer on the other.
- Collective Bargaining is continuous process. It enables industrial democracy to be effective. It uses cooperation and consensus for settling disputes rather than conflict and confrontation.
- Collective bargaining takes into account day to day changes, policies, potentialities, capacities and interests.
- It is a political activity frequently undertaken by professional negotiators.

Collective Bargaining Process

Collective bargaining generally includes negotiations between the two parties (employees' representatives and employer's representatives). Collective bargaining consists of negotiations between an employer and a group of employees that determine the conditions of employment. Often employees are represented in the bargaining by a union or other labor organization. The result of collective bargaining procedure is called the collective bargaining agreement (CBA). Collective agreements may be in the form of procedural agreements or substantive agreements. Procedural agreements deal with the relationship between workers and management and the procedures to be adopted for resolving individual or group disputes

This will normally include procedures in respect of individual grievances, disputes and discipline. Frequently, procedural agreements are put into the company rule book which provides information on the overall terms and conditions of employment and codes of behavior. A substantive agreement deals with specific issues, such as basic pay, overtime premiums, bonus arrangements, holiday entitlements, hours of work, etc. In many companies, agreements have a fixed time scale and a collective bargaining process will review the procedural agreement when negotiations take place on pay and conditions of employment.

The collective bargaining process comprises of five core steps:

- 1. Prepare:** This phase involves composition of a negotiation team. The negotiation team should consist of representatives of both the parties with adequate knowledge and skills for negotiation. In this phase both the employer's representatives and the union examine their own situation in order to develop the issues that they believe will be most important. The first thing to be done is to determine whether there is actually any reason to negotiate at all. A correct understanding of the main issues to be covered and intimate knowledge of operations, working conditions, production norms and other relevant conditions is required.
- 2. Discuss:** Here, the parties decide the ground rules that will guide the negotiations. A process well begun is half done and this is no less true in case of collective bargaining. An environment of mutual trust and understanding is also created so that the collective bargaining agreement would be reached.
- 3. Propose:** This phase involves the initial opening statements and the possible options that exist to resolve them. In a word, this phase could be described as 'brainstorming'. The exchange of messages takes place and opinion of both the parties is sought.
- 4. Bargain:** negotiations are easy if a problem solving attitude is adopted. This stage comprises the time when 'what ifs' and 'supposals' are set forth and the drafting of agreements take place.
- 5. Settlement:** Once the parties are through with the bargaining process, a consensual agreement is reached upon wherein both the parties agree to a common decision regarding the problem or the issue. This stage is described as consisting of effective joint implementation of the agreement through shared visions, strategic planning and negotiated change.

Importance of Collective Bargaining

Collective bargaining includes not only negotiations between the employers and unions but also includes the process of resolving labor-management conflicts. Thus, collective bargaining is, essentially, a recognized way of creating a system of industrial jurisprudence. It acts as a method of introducing civil rights in the industry, that is, the management should be conducted by rules

rather than arbitrary decision making. It establishes rules which define and restrict the traditional authority exercised by the management.

Importance to employees

- Collective bargaining develops a sense of self respect and responsibility among the employees.
- It increases the strength of the workforce, thereby, increasing their bargaining capacity as a group.
- Collective bargaining increases the morale and productivity of employees.
- It restricts management's freedom for arbitrary action against the employees. Moreover, unilateral actions by the employer are also discouraged.
- Effective collective bargaining machinery strengthens the trade unions movement.
- The workers feel motivated as they can approach the management on various matters and bargain for higher benefits.
- It helps in securing a prompt and fair settlement of grievances. It provides a flexible means for the adjustment of wages and employment conditions to economic and technological changes in the industry, as a result of which the chances for conflicts are reduced.

Importance to employers

1. It becomes easier for the management to resolve issues at the bargaining level rather than taking up complaints of individual workers.
2. Collective bargaining tends to promote a sense of job security among employees and thereby tends to reduce the cost of labor turnover to management.
3. Collective bargaining opens up the channel of communication between the workers and the management and increases worker participation in decision making.
4. Collective bargaining plays a vital role in settling and preventing industrial disputes.

Importance to society

1. Collective bargaining leads to industrial peace in the country
2. It results in establishment of a harmonious industrial climate which supports which helps the pace of a nation's efforts towards economic and social development since the obstacles to such a development can be reduced considerably.
3. The discrimination and exploitation of workers is constantly being checked.
4. It provides a method or the regulation of the conditions of employment of those who are directly concerned about them.

Levels of Collective Bargaining

Collective bargaining operates at three levels:

1. National level
2. Sector or industry level
3. Company/enterprise level

Economy-wide (national) bargaining is a bipartite or tripartite form of negotiation between union confederations, central employer associations and government agencies. It aims at providing a floor for lower-level bargaining on the terms of employment, often taking into account macroeconomic goals.

Sectoral bargaining, which aims at the standardization of the terms of employment in one industry, includes a range of bargaining patterns. Bargaining may be either broadly or narrowly defined in terms of the industrial activities covered and may be either split up according to territorial subunits or conducted nationally.

The third bargaining level involves the company and/or establishment. As a supplementary type of bargaining, it emphasizes the point that bargaining levels need not be mutually exclusive.

Code of discipline:

Indian labour conference held at New Delhi July 11 1957, formulated a “code of discipline” for Indian organizations through discussions.

This code of discipline is developed for the purpose maintaining discipline both in public & private sector organs. This code is voluntary & statutory. However all major employers & unions has adopted the for implementation. The codes consists of three set principle to be followed by the parties to labour relations. These are under

- a) Mgt and union agrees
- b) Mg agrees
- c) Union agrees

Legislation its process is entirely governed by statutory prescription of ID Act, 1947 where parties are resort to arbitration in complaints with the directive of the code of discipline. The arbitration process in such cases follows the procedures as framed by the National Arbitration Promotion Board for the guidance of the Arbitration: The procedure of voluntary arbitration in India Governed by two different set of rules according to whether the arbitration is instituted under the central or state acts or under the code of discipline. Where the parties invoke arbitration as per the provisions of arbitration and the parties

Permanent negotiation machinery:

Among the voluntary institutions we may also mention PNM which is operating in the railways and post and telegraph industries.

Joint consultative machinery:

JMC deals with issues related to service condition in the Government sector. This is not only covers the under the definition of workmen under the ID Act, but also class 3 and class 4 employers of different ministers and the subordinate organs, which may not be industrial in characters.

Tripartite bodies:

There are a number of tripartite bodies which operate the central /state level, some of those are follows;

- Indian labour conference –once in a year
- Standing labour committees-recommended by ILC and central Government.
- Wage boards
- State labour advisory board – at state level
- Central implementation and evaluation committee – concerned with implementation of law and award

Industrial committee – for improving productivity and working condition, recommendation are submitted to ILC for consideration and acceptance.

II. Statutory level:

Machinery for resolving of ID:

Sec.2 to 9, provides an elaborate and effective machinery for bringing about industrial peace by setting up various authorities for the investigation and settlement of IDs. These authorities are;

A. Conciliation:-

The authorities that make use of conciliation as a method of settlement if IDs, are;

- works committee
- conciliation officers
- board of conciliation &
- court of inquiry

B. Adjudication:-

The aforesaid authorities endeavour to compose any industrial difference of opinion or settle the ID before it may be adjudicated upon by-

- Labour courts,
- Industrial tribunal &
- National Tribunal

The various authorities which constitute the machinery for the prevention of ID are discussed in the next page;

CONCILIATION MACHINERY:

Works committee (sec.3)-

In the case of any industrial establishment in which 100 or more than are employed or have been employed on any day preceding 12 months, the appropriate Government ,may by general or special require the employer to constitute a works committee.

The committee shall consist of equal no of employee representatives and employer representation.

Powers and Duties:

- a. Promote measures for securing & preserving amity & good relations between the employers and workers to that.
- b. Comment upon matters of their common interests or concern
- c. Endeavour to compose any material difference opinion in respect of such matters. These include labour welfare, recreations, training, crèches & hospitals, wages, hrs of work, bonus, gratuity, promotions and transfer.

Conciliation Officers:(sec-4)

The appropriate Government, by notification in the official Gazette, appoint such no of persons as it think to be conciliation officers. The duties of the conciliation officers shall be to meditate in 7 promote the settlement of ID.

Appointment:

A conciliation officer may be appointed for a specified area or for specified industries in a specified area or for more specified industries. He may be appointed either permanently or for a limited period. He shall be deemed to be a public servant.

Duties:

- To hold conciliation proceedings

- To investigate the disputes
- To send a report & memorandum of settlement to appropriate Government
- To send a full report to the appropriate Government. Setting forths steps taken by him in case of no settlement is arrived at.

Time:

He should submit within 14 days of commencement of such proceedings or within such shorter period as may of period fixed by the appropriate Government.

Powers:

- Power to enter premises
- Power to call for & inspect documents

Boards of conciliation:**Appointment & conciliation:**

- The Government may by notification in the official gazette constitute a board of conciliation for promoting the settlement of an ID.
- It consists of chairman & 2 or 4 members. As the Government thinks fit. Quorum is required.

Reference of disputes:

Where the Government at any time, by order in writing refer the dispute to a board for promoting settlement.

Prohibition of strike or lock out**Duties:**

- To bring about a settlement of the dispute.
- To send a report & memorandum of settlement to the Appropriate Government
- To send a full report to the appropriate Government. Setting forth steps taken by him in case of no settlement is arrived at.
- To communicate reason to the parties if no further reference made.
- To submit report within 2 month
- Report of the bond to be in writing & to be signed & its publication.

Powers:

- Power to enter premises
- Powers of civil court:
 - enforcing the attendance of any person & examining him on oath.
 - compelling the production of documents & materials & witnesses
 - issuing commissions for the examination of witnesses;
 - in report of each other matters as may be prescribed.

Courts of Inquiry: (sec-6)**Appointment & constitution:**

The Government may by notification in the officials Gazette, constitute a court of Inquiry. Where a court consists of one independent person & more members a court, requires person.

Note:

Reference of dispute, power & duties is as same of board of conciliation

Adjudication machinery:

Secs. 7 to 9 pertains to the constitute of adjudications authorities under the Act. These authorities are:

Labour courts:

The government may by notification in the official gazette constitute. Labour court or refer such matters to a court already constituted – such matters which are listed in the second schedule. The proceeding of labour court is called as adjudication and the judgment is called as award.

Qualification of proceeding officer:

- He is or has been high court judge.
- He has been a district judge or an additional judge for not less than 3 years. (or)
- He has held any judicial office in India for not less than 7 years
- He has been the proceeding officer of labour court constituted under any provincial act for not less than 5 years.

Disqualification;-

- If the court issues an order; or
- Attainment at the age of 65 years & above

Duties:

- report to be sent within 30 days.
- Same as court of Inquiry

Powers:

- Cost of decree

Industrial Tribunal:- (sec.7-A)

To look into matters specified in the second and third schedule of the ID Act, 1947.

Qualifications, duties, powers are same as labour courts.

Additional powers:

- Power to appoint assessors
- Power to award cost

National tribunal:

A national tribunal can be constituted by the central Government to deal with a dispute which in the opinion of the central Government involves a question of national importance or is of such a nature that industrial establishments situated in more than one state are likely to be interested in or affected by such dispute.

The subject matter of this dispute may relate to matters covered by the second and third schedule of the ID Act, 1947. A high court judge will be appointed as proceeding officer. The award is to be published by the Central Government.

Powers and duties are same as labour court.

QUESTION BANK

Part A

1. Define an industrial dispute. Who can raise an industrial dispute?
2. Explain 'Code of Discipline'.
3. What is conciliation?
4. What are the criticisms against Adjudication?
5. Distinguish between Adjudication and Arbitration.
6. How does Retrenchment differ from Lock-out?
7. Distinguish between Adjudication and Collective Bargaining.
8. What do you mean by Strike and Lock out?
9. What are the legal provisions for lockout?
10. What do you understand by 'Tripartite Machinery'?
11. What is unfair labour practice?
12. State the objectives of Collective Bargaining.
13. Who are the parties involved in Collective Bargaining? What is the subject matter?
14. "Highly democratic unions are extremely difficult to negotiate with" – Discuss.

Part B

1. Which reasons/ causes are responsible for most Industrial disputes in India Give a detailed discussion
2. "Liberalization of economy causes industrial conflicts" – Discuss with reference to recent Indian experience.
3. Differentiate between Lock-outs and Lay-offs. What are the legal requisites to declare Lock-outs by the managements?
4. Discuss the different methods / techniques of labour protests?
5. Describe the available machinery for the prevention and settlement of industrial disputes in India.
6. What is the Code of discipline to be followed for industrial harmony?
7. What are the types of Mediation? How does it differ from Conciliation?
8. Explain the objectives and functions of joint councils and shop councils.
9. What is a quality circle? Explain their process and problems.
10. Write short notes on: Works Committee, JMC & Unit Councils.

11. What are strikes? Explain the various types.
12. Critically evaluate the role of management in making workers participation in management a success in India.
13. What are the attitudes of Trade Unions and Management with respect to Joint Consultation?
14. Explain how Joint Consultation works? What are the attitudes of trade unions and employees towards it?