LexisNexis

Date and Time: 07 July 2020 01:17:00 IST

Job Number: 120555548

Documents (100)

1. *Short Title, Extent and Commencement [Section 1]*
   Client/Matter: -None-
2. *Legislations before the Act of 1947*
   Client/Matter: -None-
3. *Statement of Objects and Reasons*
   Client/Matter: -None-
4. *Objectives of Industrial Disputes Act*
   Client/Matter: -None-
5. *Definitions [Section 2]*
   Client/Matter: -None-
6. *Conditions of Service for Change of which Notice is Requisite*
   Client/Matter: -None-
7. *Power of Government to Exempt [Section 9B]*
   Client/Matter: -None-
8. *Legality of Change*
   Client/Matter: -None-
9. *Requirement of Notice*
   Client/Matter: -None-
10. *Prejudicial Changes*
    Client/Matter: -None-
11. *Other Changes*
    Client/Matter: -None-
12. *Writ Remedy*
    Client/Matter: -None-
13. *Works Committee [Section 3]*
    Client/Matter: -None-
14. *Grievances Settlement Authority [Section 9C]*
    Client/Matter: -None-
15. *Conciliation [Sections 4 & 5]*
    Client/Matter: -None-
16. *Conciliation Officers [Section 4]*
    Client/Matter: -None-
17. *Conciliation and Reference*
    Client/Matter: -None-
18. *Duties of Conciliation Officers [Section 12]*
    Client/Matter: -None-
19. *Board of Conciliation [Section 5]*

Client/Matter: -None-

20. *Courts of Inquiry [Section 6]*

Client/Matter: -None-

21. *THE INDUSTRIAL DISPUTES ACT, 1947*

Client/Matter: -None-

22. *THE INDUSTRIAL DISPUTES ACT, 1947*

Client/Matter: -None-

23. *THE INDUSTRIAL DISPUTES ACT, 1947*

Client/Matter: -None-

24. *THE INDUSTRIAL DISPUTES ACT, 1947*

Client/Matter: -None-

25. *THE INDUSTRIAL DISPUTES ACT, 1947*

Client/Matter: -None-

26. *THE INDUSTRIAL DISPUTES ACT, 1947*

Client/Matter: -None-

27. *THE INDUSTRIAL DISPUTES ACT, 1947*

Client/Matter: -None-

28. *Reference of Disputes to Boards, Courts or Tribunals [Section 10]*

Client/Matter: -None-

29. *Effect of Reference to National Tribunal*

Client/Matter: -None-

30. *Reference is an Administrative Act*

Client/Matter: -None-

31. *Reference as a Remedy*

Client/Matter: -None-

32. *General Reference and its Validity*

Client/Matter: -None-

33. *Power to Amend, Modify, Vary or Withdraw Order of Reference*

Client/Matter: -None-

34. *Validity of Reference for Workmen Working in Another State*

Client/Matter: -None-

35. *Exclusion of Civil Courts' Jurisdiction*

Client/Matter: -None-

36. *Power of Appropriate Government to Decline Reference*

Client/Matter: -None-

37. *Delay*

Client/Matter: -None-

38. *Dismissal for Offence Involving Moral Turpitude*

Client/Matter: -None-

39. *Duty of Tribunal to Confine itself to Issues Raised by Parties*

Client/Matter: -None-

40. *General Conclusions on Exercise of Power of Reference*

Client/Matter: -None-

41. *Right of Employer to Lead Evidence*

Client/Matter: -None-

42. *Arbitrational Machinery or Voluntary Reference of Disputes to Arbitration [Section 10(A)]*

Client/Matter: -None-

43. *Alternative Remedy*

Client/Matter: -None-

44. *Procedure and Powers of Conciliation Officers, Boards, Courts and Tribunals [Section 11]*

Client/Matter: -None-

45. *Powers of Labour Courts, Tribunals and National Tribunals to give appropriate Relief in case of Discharge or Dismissal of Workmen [Section 11A]*

Client/Matter: -None-

46. *Examples Regarding [Section 11A]*

Client/Matter: -None-

47. *Duties of Labour Courts, Tribunals and National Tribunals [Section 15]*

Client/Matter: -None-

48. *Form of Report or Award [Section 16]*

Client/Matter: -None-

49. *Publication of Reports and Awards [Section 17]*

Client/Matter: -None-

50. *Commencement of Award [Section 17A]*

Client/Matter: -None-

51. *Payment of Full Wages to Workman Pending Proceedings in Higher Courts [Section 17B]*

Client/Matter: -None-

52. *Persons on Whom Settlements and Awards are Binding [Section 18]*

Client/Matter: -None-

53. *Period of Operation of Settlement and Awards [Section 19]*

Client/Matter: -None-

54. *Commencement and Conclusion of Proceedings [Section 20]*

Client/Matter: -None-

55. *Certain Matters to be kept Confidential [Section 21]*

Client/Matter: -None-

56. *Prohibition of Strikes and Lock-outs [Section 22]*

Client/Matter: -None-

57. *General Prohibition of Strikes and Lock-outs [Section 23]*

Client/Matter: -None-

58. *Illegal Strikes and Lock-outs [Section 24]*

Client/Matter: -None-

59. *Prohibition of Financial Aid to Illegal Strikes and Lock-outs [Section 25]*

Client/Matter: -None-

60. *Application of Sections 25C to 25E*

Client/Matter: -None-

61. *Definition of Continuous Service [Section 25B]*

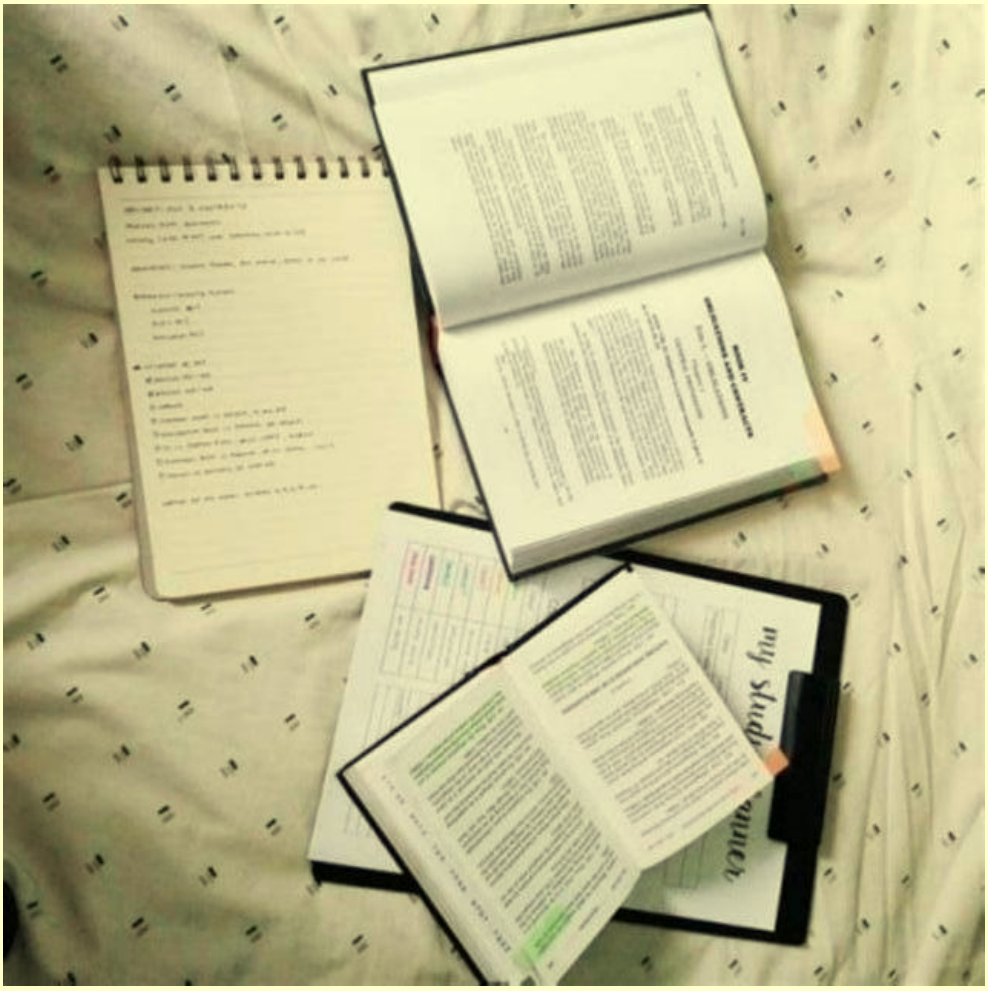
Client/Matter: -None-

62. *Definition of Lay-Off*

Client/Matter: -None-

63. *Quantum of Lay-off Compensation [Section 25(C)]*
Client/Matter: -None-
64. *Retrenchment [Section 2(oo)]*
Client/Matter: -None-
65. *Termination or Non-Renewal in accordance with Contract [Section 2(oo)]*
Client/Matter: -None-
66. *Conditions Precedent to Retrenchment of Workmen [Section 25F]*
Client/Matter: -None-
67. *Re-employment of Retrenched Workmen [Section 25H]*
Client/Matter: -None-
68. *Effect of Takeover on Right of Re-employment*
Client/Matter: -None-
69. *Compensation to Workmen in Case of Transfer of Undertakings [Section 25FF]*
Client/Matter: -None-
70. *Closure and Compensation [Section 25FFF]*
Client/Matter: -None-
71. *Sixty Days' Notice to be Given of Intention to Close Down [Section 25FFA]*
Client/Matter: -None-
72. *Compensation to Workmen in Case of Closing Down [Section 25FFF]*
Client/Matter: -None-
73. *Effect of Laws Inconsistent with Chapter v [Section 25J]*
Client/Matter: -None-
74. *Application of Chapter vb [Section 25K]*
Client/Matter: -None-
75. *Definitions [Section 25L]*
Client/Matter: -None-
76. *Prohibition and Prior Permission for Lay-Off [Section 25M]*
Client/Matter: -None-
77. *Conditions Precedent to Retrenchment of Workmen [Section 25N]*
Client/Matter: -None-
78. *Procedure for Closing Down an Undertaking [section 25-O]*
Client/Matter: -None-
79. *Special Provision for Restart of Units Closed before Amendment of 1976 [Section 25P]*
Client/Matter: -None-
80. *Penalty for Lay-off and Retrenchment without Previous Permission [Section 25Q]*
Client/Matter: -None-
81. *Penalty for Closure [Section 25R]*
Client/Matter: -None-
82. *Application of Certain Provisions to Certain Establishments [Section 25-S]*
Client/Matter: -None-
83. *Prohibition of Unfair Labour Practice*
Client/Matter: -None-
84. *Penalty for Committing Unfair Labour Practices*
Client/Matter: -None-

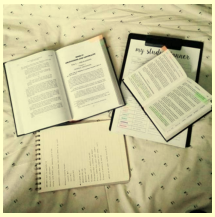
85. *Penalty for illegal strikes and lock-outs [Section 26]*
Client/Matter: -None-
86. *Penalty for Instigation, etc. [Section 27]*
Client/Matter: -None-
87. *Penalty for Giving Financial Aid to Illegal Strikes and Lock-Outs [Section 28]*
Client/Matter: -None-
88. *Penalty for Breach of Settlement or Award [Section 29]*
Client/Matter: -None-
89. *Penalty for Disclosing Confidential Information [Section 30]*
Client/Matter: -None-
90. *Penalty for Closure without Notice [Section 30A]*
Client/Matter: -None-
91. *Penalty for Other Offences [Section 31]*
Client/Matter: -None-
92. *Offence by Companies etc. [Section 32]*
Client/Matter: -None-
93. *Conditions of Service, etc. to Remain Unchanged under Certain Circumstances During Pendency of Proceedings [Section 33]*
Client/Matter: -None-
94. *Special Provision for Adjudication on Fact of Variance [Section 33A]*
Client/Matter: -None-
95. *Power to Transfer certain Proceedings [Section 33B]*
Client/Matter: -None-
96. *Recovery of Money due from an Employer [Section 33-C]*
Client/Matter: -None-
97. *Cognizance of Offences [Section 34]*
Client/Matter: -None-
98. *Protection of Persons [Section 35]*
Client/Matter: -None-
99. *Representation of Parties [Section 36]*
Client/Matter: -None-
100. *Power to Remove Difficulties [Section 36A]*
Client/Matter: -None-



Law College Notes & Stuffs

Exclusive group for Law Students

Join Us Here for More Materials



Law College Notes & Stuffs

Short Title, Extent and Commencement [Section 1]

PART I THE INDUSTRIAL DISPUTES ACT, 1947

Learning Objectives

In Part I on *Industrial Disputes Act, 1947* , students will be able:

1. To know what is an 'industry' and what are 'industrial disputes' and 'deemed industrial disputes' and explore their meaning through different cases;
2. To understand what are the conditions where notice of change is required to be given by the employer to his workmen;
3. To know about the authorities provided by the Act to settle industrial disputes;
4. To explore about Reference of Disputes to Boards, Courts or Tribunals under the Act;
5. To understand procedure, powers and duties of authorities under the Act;
6. To understand and distinguish between strikes and lock-outs, retrenchments and lay-offs, transfers and closures as well as special provisions relating to them;
7. To know what are unfair labour practices that are prohibited under the Act;
8. To understand the procedure of inquiry and investigation in relation to industrial disputes;
9. To know about different penalties that can be imposed for violation of the provisions of the Act.

CHAPTER 1 Preliminary

The *Industrial Disputes Act, 1947* is "as Act to make provision for the investigation and settlement of industrial disputes, and for certain other purposes." The Bill for this Act was introduced in the Legislative Assembly by the Government of India on 28th October, 1947 and was passed on 11th March, 1947 and it became law from 1st April, 1947.

Short Title, Extent and Commencement [Section 1]— Updated On 08-01-2019

The Act is called the *Industrial Disputes Act, 1947* . It extends to the whole of India.[1] It came into force on the first day of April, 1947.

1 Subs. by Act 36 of 1956, section 2 for sub-section (2) (w.e.f. 29-8-1956).

End of Document

Legislations before the Act of 1947

Avtar Singh: Introduction to Labour and Industrial Law

PART I THE INDUSTRIAL DISPUTES ACT, 1947

Learning Objectives

In Part I on *Industrial Disputes Act, 1947* , students will be able:

1. To know what is an 'industry' and what are 'industrial disputes' and 'deemed industrial disputes' and explore their meaning through different cases;
2. To understand what are the conditions where notice of change is required to be given by the employer to his workmen;
3. To know about the authorities provided by the Act to settle industrial disputes;
4. To explore about Reference of Disputes to Boards, Courts or Tribunals under the Act;
5. To understand procedure, powers and duties of authorities under the Act;
6. To understand and distinguish between strikes and lock-outs, retrenchments and lay-offs, transfers and closures as well as special provisions relating to them;
7. To know what are unfair labour practices that are prohibited under the Act;
8. To understand the procedure of inquiry and investigation in relation to industrial disputes;
9. To know about different penalties that can be imposed for violation of the provisions of the Act.

CHAPTER 1 Preliminary

The *Industrial Disputes Act, 1947* is "as Act to make provision for the investigation and settlement of industrial disputes, and for certain other purposes." The Bill for this Act was introduced in the Legislative Assembly by the Government of India on 28th October, 1947 and was passed on 11th March, 1947 and it became law from 1st April, 1947.

LEGISLATIONS BEFORE THE ACT OF 1947— Updated On 08-01-2019

Before proceeding with the *Industrial Disputes Act, 1947*, it is necessary to know what were the laws for settlement and investigation of industrial disputes before 1947. We can divide the period into three parts:

1. Period between 1819 to 1930
2. Period between 1930 to 1940
3. Period from 1940 onwards

Period from 1819 to 1930

During the period from 1819 to 1930 the following three legislations were important:—

(i) *Bengal Regulation VII of 1819.*—Under this regulation, the breach of contract was made a criminal offence.

(ii) Indian *Trade Unions Act, 1926*.—This Act guaranteed workmen the right to organise themselves and gave them a legal corporate status along with immunization from civil and criminal liability in respect of strikes.

(iii) *Trade Disputes Act, 1929.*—The main object of this Act was to make provisions for establishment of Courts of Inquiry and Boards of Conciliation for investigation and settlement of trade disputes respectively. This Act prohibited strikes and lock-outs without notice in public utility services. Any such strike or lock-out was made illegal by this Act which had any object other than the furtherance of a trade dispute within the trade or industry in which the strikers or the employers locking-out were engaged and was designed to inflict severe, general and prolonged hardship upon the community and thereby compel the Government to take or abstain from taking any particular course of action.

Period from 1930 to 1940

In 1932, the Trade Disputes Act was amended and made permanent by the Trade Disputes (Extending Act), 1934.

During the period between 1930 and 1940 substantial progress was made in building up a permanent machinery for the speedy and amicable settlement of industrial disputes. In 1938, the Trade Disputes Amendment Act (XI of 1938) was passed which provided for the conciliation officers charged with the duty of mediating in or promoting the settlement of industrial disputes. Water transport and tramways were included in public utility service and the provisions regarding illegal strikes and lock-outs were made less restrictive by this Act.

Period from 1940 onwards

After the Second World War the whole economic structure underwent a drastic change. To meet such a situation the Government of India passed the Defence of India Rules in 1942. These Rules empowered the Government to make general or special orders to—

(i) prohibit strike or lock-outs,

(ii) refer any dispute for conciliation or adjudication,

(iii) require employers to observe such terms and conditions of employment as might be specified, and

(iv) enforce the decisions of the adjudicators.

The Provincial Governments were also empowered in this respect by a Notification after few months.

In August, 1942, an Ordinance named, 'The Essential Services (Maintenance) Ordinance' was promulgated which prohibited strikes and lock-outs without 14 days' previous notice.

Rule 81-A of the Defence of India Rules, 1942, which empowered the Government to refer disputes to lapse on 1st October, 1946 but was kept in force by the Emergency Provisions (Continuance) Ordinance, 1946.

Statement of Objects and Reasons

Avtar Singh: Introduction to Labour and Industrial Law

PART I THE INDUSTRIAL DISPUTES ACT, 1947

Learning Objectives

In Part I on *Industrial Disputes Act, 1947* , students will be able:

1. To know what is an 'industry' and what are 'industrial disputes' and 'deemed industrial disputes' and explore their meaning through different cases;
2. To understand what are the conditions where notice of change is required to be given by the employer to his workmen;
3. To know about the authorities provided by the Act to settle industrial disputes;
4. To explore about Reference of Disputes to Boards, Courts or Tribunals under the Act;
5. To understand procedure, powers and duties of authorities under the Act;
6. To understand and distinguish between strikes and lock-outs, retrenchments and lay-offs, transfers and closures as well as special provisions relating to them;
7. To know what are unfair labour practices that are prohibited under the Act;
8. To understand the procedure of inquiry and investigation in relation to industrial disputes;
9. To know about different penalties that can be imposed for violation of the provisions of the Act.

CHAPTER 1 Preliminary

The *Industrial Disputes Act, 1947* is "as Act to make provision for the investigation and settlement of industrial disputes, and for certain other purposes." The Bill for this Act was introduced in the Legislative Assembly by the Government of India on 28th October, 1947 and was passed on 11th March, 1947 and it became law from 1st April, 1947.

STATEMENT OF OBJECTS AND REASONS— Updated On 08-01-2019

According to the statement of objects and reasons of the Industrial Disputes Bill there were many defects in Trade Disputes Act of 1929 which needed to be overcome by fresh legislation. The main defect of the 1929 Act was that while restraints had been imposed on the rights of strike and lock-out in public utility services, no provision was made to render the proceedings institutable under the Act for the settlement of an industrial dispute, either by reference to a Board of Conciliation or to a Court of Inquiry, conclusive and binding on the parties to the dispute. However, this defect was overcome during the war by empowering the Central Government to refer industrial disputes to adjudicators and to enforce their award under Rule 81-A of the Defence of India Rules. This Rule originally was to lapse on 1st October 1946 but was kept in force for a further period of six months by the Emergency Powers (Continuance) Ordinance, 1946. The Bill embodied the essential principles of Rule 81-A, which had proved generally acceptable to both employers and workmen, retaining intact, for the most part, the provisions of the Trade Disputes Act, 1929.

For the prevention and settlement of industrial disputes two institutions have been provided in the Bill, namely, Works Committee and Industrial Tribunal. Works Committees consisting of representatives of employers and workmen and Industrial Tribunal consisting of one or more members possessing qualifications ordinarily required for appointment as judge of a High Court. Power has been given to appropriate Governments to require Works Committees to be constituted in every industrial establishment employing 100 workmen or more and their duties will be to remove causes of friction between the employer and workmen in the day-to-day working of the establishment and to promote measures for securing amity and good relations between them. A reference to an Industrial Tribunal will lie where both the parties to an industrial dispute apply for such reference and also where the appropriate Government considers it expedient so to do. An award of a Tribunal may be enforced either wholly or in part by the appropriate Government for a period not exceeding one year. This power to refer disputes to Industrial Tribunal and enforce their awards is an essential corollary to the obligation that lies on the Government to secure conclusive determination of the disputes with a view to redressing the legitimate grievances of the parties thereto.

This Bill also seeks to re-orient the administration of the conciliation machinery provided in the Trade Disputes Act, 1929. In all disputes in public utility services conciliation will be compulsory while in the case of other establishments it will be optional. To expedite conciliation proceeding time limits have been prescribed for their conclusion—in the case of conciliation officers it is 14 days while in the case of Board of Conciliation time limit is two months from the date of notice of strike.

There is prohibition of strikes and lock-outs during the pendency of conciliation and adjudication proceedings on settlements reached in the course of conciliation proceedings and awards of Industrial Tribunals declared binding by the appropriate Government.

The appropriate Government is also empowered by the Bill to declare, if public interest or emergency so requires, by Notification in the Official Gazette, any industry to be a public utility service for such period, if any, as may be specified in the Notification.

Objectives of Industrial Disputes Act

Avtar Singh: Introduction to Labour and Industrial Law

PART I THE INDUSTRIAL DISPUTES ACT, 1947

Learning Objectives

In Part I on *Industrial Disputes Act, 1947* , students will be able:

1. To know what is an 'industry' and what are 'industrial disputes' and 'deemed industrial disputes' and explore their meaning through different cases;
2. To understand what are the conditions where notice of change is required to be given by the employer to his workmen;
3. To know about the authorities provided by the Act to settle industrial disputes;
4. To explore about Reference of Disputes to Boards, Courts or Tribunals under the Act;
5. To understand procedure, powers and duties of authorities under the Act;
6. To understand and distinguish between strikes and lock-outs, retrenchments and lay-offs, transfers and closures as well as special provisions relating to them;
7. To know what are unfair labour practices that are prohibited under the Act;
8. To understand the procedure of inquiry and investigation in relation to industrial disputes;
9. To know about different penalties that can be imposed for violation of the provisions of the Act.

CHAPTER 1 Preliminary

The *Industrial Disputes Act, 1947* is "as Act to make provision for the investigation and settlement of industrial disputes, and for certain other purposes." The Bill for this Act was introduced in the Legislative Assembly by the Government of India on 28th October, 1947 and was passed on 11th March, 1947 and it became law from 1st April, 1947.

Objectives of Industrial Disputes Act— Updated On 08-01-2019

The two main objectives of the *Industrial Disputes Act, 1947* are industrial peace and economic justice. For bringing industrial peace it is necessary to have continuous and growing production which is possible only when there are no interruptions and stoppages in production and when various agencies of production are satisfied and are in a harmonious bend to work.

For bringing economic justice, main causes of labour struggle like increase in wages, grant of allowance and benefits, resistance to decrease in wages should be removed. It is necessary to satisfy labour with their existing economic condition so that there arise no interruptions in production.

End of Document

Definitions [Section 2]

Avtar Singh: Introduction to Labour and Industrial Law

PART I THE INDUSTRIAL DISPUTES ACT, 1947

Learning Objectives

In Part I on *Industrial Disputes Act, 1947* , students will be able:

1. To know what is an 'industry' and what are 'industrial disputes' and 'deemed industrial disputes' and explore their meaning through different cases;
2. To understand what are the conditions where notice of change is required to be given by the employer to his workmen;
3. To know about the authorities provided by the Act to settle industrial disputes;
4. To explore about Reference of Disputes to Boards, Courts or Tribunals under the Act;
5. To understand procedure, powers and duties of authorities under the Act;
6. To understand and distinguish between strikes and lock-outs, retrenchments and lay-offs, transfers and closures as well as special provisions relating to them;
7. To know what are unfair labour practices that are prohibited under the Act;
8. To understand the procedure of inquiry and investigation in relation to industrial disputes;
9. To know about different penalties that can be imposed for violation of the provisions of the Act.

CHAPTER 1 Preliminary

The *Industrial Disputes Act, 1947* is "as Act to make provision for the investigation and settlement of industrial disputes, and for certain other purposes." The Bill for this Act was introduced in the Legislative Assembly by the Government of India on 28th October, 1947 and was passed on 11th March, 1947 and it became law from 1st April, 1947.

Definitions [Section 2]— Updated On 08-01-2019

Appropriate Government [Section 2 (A)]

Section 2(a) of *Industrial Disputes Act* has defined the term 'appropriate Government' in relation to the following the appropriate Government is the Central Government:—

(i) in relation to any industrial disputes concerning any industry carried on by or under the authority of the Central Government, or

(ii) by a railway company or concerning any such controlled industry as may be specified in this behalf by the Central Government, or

(iii) in relation to an industrial dispute concerning a Dock Labour Board established under *S. 5A of the Dock Workers (Regulation of Employment) Act, 1948* (9 of 1948), or

(iv) the Industrial Finance Corporation of India Limited formed and registered under the *Companies Act, 1956* (1 of 1956), or

(v) the Employees' State Insurance Corporation established under S. 3 of the Employees' State *Insurance Act* , 1948 (3 of 1948), or

(vi) the Board of Trustees constituted under *section 3A of the Coal Mines Provident Fund and Miscellaneous Provisions Act, 1948* (46 of 1948), or

(vii) the Central Board of Trustees and the State Boards of Trustees constituted under S. 5A and S. 5B, respectively, of the Employees' Provident Fund and Miscellaneous Provisions Act, 1952 (19 of 1952), or

(viii) the Life Insurance Corporation of India established under *S. 3 of the Life Insurance Corporation Act, 1956* (31 of 1956), or

(ix) the Oil and Natural Gas Corporation Limited registered under the *Companies Act, 1956* (1 of 1956), or

(x) the Deposit Insurance and Credit Guarantee Corporation established under *S. 3 of the Deposit Insurance and Credit Guarantee Corporation Act, 1961* (47 of 1961), or

(xi) the Central Warehousing Corporation established under *S. 3 of the Warehousing Corporations Act, 1962* (58 of 1962), or

(xii) the Unit Trust of India established under S. 3 of the Unit Trust of India Act, 1963 (52 of 1963), or

(xiii) the Food Corporation of India established under S. 3, or a Board of Management established for two or more contiguous States under S. 16, of the *Food Corporations Act, 1964* (37 of 1964), or

(xiv) the Airports Authority of India constituted under *S. 3 of the Airports Authority of India Act, 1994* (55 of 1994), or

(xv) a Regional Rural Bank established under S. 3 of the Regional Rural Bank Act, 1976 (21 of 1976), or

(xvi) the Export Credit and Guarantee Corporation Limited, or

(xvii) the Industrial Reconstruction Bank of India Ltd., or

(xiii) the National Housing Bank established under *S. 3 of the National Housing Bank Act, 1987* (53 of the 1987)], or

(xix) an air transport service, or

(xx) a banking or an insurance company, or

(xxi) a mine, an oil field, a Cantonment Board, or

(xxii) a major port, any company in which not less than fifty-one per cent of the paid-up share capital is held by the Central Government, or any under any corporation, not being a caoprattion referred to in this clause, established by or law made by Parliament, or the Central public sector undertaking subsidiary companies set up by te principal undertaking and autonomous bodies owned or controlled by the Central Government, the Central Government, and

In relation to any other industrial dispute, including the State public sector undertakings, subsidiary companies set up by the principal undertaking and autonomous bodies owned or controlled by the State Government (other than the above stated), the appropriate Government is the State Government. However, in case of a dispute between the contractor and the contract labour employed through the contractor in any industrial establishment where such dispute first arose, the appropriate government shall be the Central Government or the State Government, as the case may be, which has the control over such industrial establishment.

The above stated definition requires some important guidelines to be considered. Where operations extend to more than one State, the principles applicable for determination of appropriate Government is as follows:

(i) Only one Government can be appropriate Government for reference.

(ii) The principles of *section 20, CPC* about jurisdiction of courts can be taken as guide.

(iii) The industry should be carried on in a State.

(iv) To give jurisdiction to the Government, the industrial dispute or subject matter of the dispute must have substantially arisen within its cognisance *i.e.,* there must be nexus between the dispute and the territory of the State.

The definition explains extensively the range in which the Central Government is to be regarded as the Appropriate Government and then says that in all other cases the Appropriate Government would be the State Government. In this connection a question has often arisen whether in reference to Central Government undertakings, the Central Government would be Appropriate Government wherever they may be located.

In the case of *Cotton Corpn. of India Ltd. v. Odusmath* G.C., while discussing the meaning of ‘appropriate government’ it was held that whatever be the extent, depth and sweep of the Central Government over a company registered under the *Companies Act* , it remains a separate juristic person in existence distinct from the Central Government. It cannot be treated as carrying on business under the authority of the Central Government unless so

specified in this behalf. So the Central Government would not necessarily be the appropriate Government.

In the important case of *Goa Sampling Employees Assn v. General Superintendence Co.* an industrial dispute between the Goa Sampling Employees Association and General Superintendence Co. of India (P.) Ltd. was referred by the Central Government to the Industrial Tribunal, Bombay, for adjudication. However, an objection was raised that the Central Government was not the 'appropriate Government' for making the reference. It was held by the Supreme Court that the *Constitution* makes a dichotomy between the State and the Union Territory. Part-VI of the *Constitution* does not apply to Union Territories. Apart from the definitions of the expressions 'Central Government', 'State Government' and 'Union Territory' the *Constitution* itself makes a distinction between 'State' and its Government called the 'State Government' and the Union territory and the Administration of the Union Territory. Unless otherwise clearly enacted, the expression 'State Government' would not comprehend Administration of Union Territory.

Clause (c) of *section 3(60) of the General Clauses Act, 1897* would show that in the Union Territory, there is no concept of State Government but wherever the expression 'State Government' is used in relation to the Union Territory, the Central Government would be the State Government. The concept of State Government in relation to Union Territory is obliterated by the definition.

Administration of Union Territory does not qualify for the description as the State Government. Therefore, the Central Government is the appropriate Government in relation to industrial dispute arising within the Union Territory.

The proper test for locating the appropriate Government is to see the location of the dispute, *i.e.* "where did the dispute arise" Where, on the date of reference, the employer is not carrying on any business in any state, that particular State Government would be the appropriate Government in whose territory the cause of action arose wholly or in part. In a dispute regarding service conditions of staff posted at Calcutta belonging to a mine situated in Orissa, it was held that the state of West Bengal was the appropriate Government and not the Central Government. The Delhi Government was held to be the appropriate Government for employees controlled by the Delhi office though posted outside Delhi. A company, wholly owned and controlled by the Central Government, had two units, one in West Bengal and the other in Karnataka. Reference by the Government of West Bengal of a dispute arising there was held to be valid. The removal of a workman employed in the branch office of a company was held to be a dispute arising in the state where the branch office was located and therefore, the Government of that state was the appropriate Government.

In a dispute regarding termination of services of appellant-workmen, the State Government of West Bengal referred the dispute to the industrial tribunal. The High Court held the reference by the State Government to be without jurisdiction. In appeal, the Supreme Court observed that as the termination orders were served upon the appellants at Calcutta as they did not obey transfer orders, it is not correct the contend that the State of West Bengal was not the appropriate Government. A part of the cause of action arose in Calcutta in respect whereof the State of West Bengal was the appropriate Government.

The mere fact of an industry being on the list of "controlled industries" under the Industrial (Development and Regulation) Act, 1951 would not make the Central Government as the appropriate Government unless the Central Government so declares.

For industries located in Union Territories, the Central Government has been held to be the appropriate Government. A railway labour contractor, who was the immediate employer and the railway as principal employer, removed an employee. The resulting dispute was referred by the State Government. This was held to be not proper, the Central Government being the appropriate Government.

Arbitrator [Section 2(AA)]

Section 2(aa) says that the term 'arbitrator' includes an umpire. The term has not been properly defined in the section. In *Arbitration Act* , 1940 the term 'umpire' was used. As this Act was replaced by the *Arbitration and Conciliation Act, 1996* , the concept of 'umpire' was replaced with that of presiding arbitrator. Now his work does not come to play only when the arbitrators have differed in their opinion. He becomes a part and parcel of the arbitration. In the absence of unanimity, majority opinion prevails.

However, section 10A has retained the old position of an umpire. He has to spring into action when the arbitrators have a difference of opinion. The opinion of the umpire then prevails. (for details see section 10A).

Average Pay [Section 2(AAA)]

'Average pay' means the average of the wages payable to a workman—

(i) in the case of monthly paid workman, in the three complete calendar months,

(ii) in the case of weekly paid workman, in the four complete weeks,

(iii) in the case of daily paid workman, in the twelve full working days,

Any of the above three periods must be the period preceding the date on which the average pay becomes payable if the workman had worked for three complete calendar months or four complete weeks or twelve full working days, as the case may be, where it is not possible to calculate it, the average pay shall be calculated as the average of the wages payable to a workman during the period he actually worked.

This concept of average pay is used for payment of lay off and retrenchment benefits. It has to be calculated according to the mode of payment of wages. Where payment is on monthly basis, average pay means the amount payable to a workman in three complete calendar months. In the case of weekly paid workman, it means the amount payable for four complete weeks. In the case of daily paid workman, it means the amount payable in the 12 full working days. The computation has to come upto the proceeding day on which the average becomes payable. Where the workman has not put in the requisite period, the calculation must be on the basis of the period for which he actually worked.

Wages paid in 3 months immediately preceding retrenchment divided by 3 would be average pay.

Award [Section 2(B)]

The term 'award' means an interim or a final determination of any industrial dispute or of any question relating thereto by any Labour Court, Industrial Tribunal or National Tribunal and includes an arbitration award made under section 10-A.

Interim award is also within the jurisdiction of the Industrial Tribunal. It is a provisional and temporary determination and is subject to a final adjustment on the final determination. Interim relief is given in aid of the final relief and it should never prejudice the final determination.

If a special case is made out by the party an award may also be given retrospective operation. For giving retrospective operation totality of circumstances should be considered.

Due importance must be given to the word "determination." Where an Industrial Tribunal allows the parties to withdraw the reference before any decision on merits, there is no award. A Tribunal's decision on the scope of the reference was held to be an award and, therefore, appealable under *Article 136 of the Constitution* . There is no difference between an award and a settlement from the view point of their legal force. Rejection of a reference by reason of the default of the workman in appearing has been held to be not an award. An interim award and an interim relief are two different things.

In *Hotel Imperial v. Hotel Workers Union,* the workmen of three hotels were suspended on the grounds of misconduct pending applications under section 33. The Tribunal had ordered the workmen to be paid their wages plus Rs. 25/- per month in lieu of food till final decision with regard to their dismissal. On appeal the Supreme Court stayed the order of the tribunal. It was contended that the Tribunal can not adjudicate upon the question of interim relief. The Supreme Court observed that the interim relief, where it is admissible, can be granted as a matter incidental to the main question without being itself expressed in plain terms. It was held by the Supreme Court that ordinarily interim relief should not be the whole relief that the workman would get it they finally succeeded. An interim relief is granted in aid of the final relief to be granted. If final relief itself cannot be granted, no temporary relief of the same nature can be given.

An interim award is not the final determination of points involved in an industrial dispute. It is only a provisional arrangement made in some urgency and it is subject to a final adjustment on the final determination of a dispute.

Banking Company [Section 2(BB)]

The term 'banking company' means a company as defined in section 5 of the Banking *Companies Act* , 1949(10 of 1949), having branches or other establishments in more than one state and includes the following:—

(i) the Export-Import Bank of India,

(ii) the Industrial Reconstruction Bank of India,

(iii) the Small Industries Development Bank of India established under *section 3 of the Small Industries Development Bank of India Act, 1989* (39 of 1989),

(iv) the Reserve Bank of India,

(v) the State Bank of India,

(vi) a corresponding new bank constituted under *section 3 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970* (5 of 1970),

(vii) a corresponding new bank constituted under *section 3 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1980* (40 of 1980), and

(viii) any subsidiary bank, as defined in the *State Bank of India (Subsidiary Banks) Act, 1959* (38 of 1959).

Two conditions are necessary for any company to be a banking company:-

(i) it must be a banking company as defined in section 5 of the Banking *Companies Act* , 1949, and

(ii) it must have branches or other establishments in more than one state

Introduction of *Banking Regulation Act, 1949* in section 2(bb) of the *Industrial Dispute Act, 1947* is a case of incorporation by reference. Subsequent amendments in the *Banking Regulation Act, 1949* would not have any effect on the expression 'Banking Company' as defined in that section.

The *Industrial Disputes Act* is a complete and self-contained code, and its working is, not dependent on the *Banking Regulation Act* .

In a case, the respondent trade union made a complaint of victimisation against appellant co-operative bank under section 28 of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971. The industrial court returned the complaint on the basis of objection raised by the bank that the MRTU and PULP Act was not applicable to the bank as it operated in more than one State and the appropriate Government would be the State Government. The High Court did not uphold the objection, set aside the industrial court's order and remanded the matter back to it for decision on merits. In appeal, the Supreme Court observed that the question is whether s. 2(bb) of the *I.D. Act, 1947* defining a 'Banking Company' by reference of *section 5 of the Banking Regulation Act, 1949* would take in amendments in the latter Act or not? It has to be answered in the light of two concepts of statutory interpretation, namely incorporation by reference or mere reference of one statute in another. The Supreme Court held that introduction of BRA, 1949 was a case of in

corporation by reference, and therefore, subsequent amendments would not have any effect on the expression 'Banking Company' as defined in that section. It was further held that in relation to a multi-state Co-operative Bank, such as the appellant, the appropriate Government would be the State Government.

Board (Section 2(C)]

For the purposes of the Act, the term 'Board' means the Board of Conciliation constituted under the Act. [For details about the "Board" see notes under s. 5].

Closure [Section 2(CC)]

The term 'Closure' means the permanent closing down of a place of employment or part thereof. [For further details see s. 25-O]

Conciliation Officer [Section 2(D)]

The term 'Conciliation Officer' means a Conciliation Officer appointed under this Act. Such officers are appointed under s. 4 of the Act. Their function is to settle disputes through the process of conciliation. It is an alternative to actual adjudication of disputes, a method of alternative dispute resolution. [For details see under Conciliation].

Conciliation Proceeding [Section 2(E)]

The term 'conciliation proceeding' means a proceeding held by a conciliation officer or the Board of Conciliation under this Act. The definition became necessary because under sections 4 and 5 of the Act, due emphasis has been given to the frictionless method of settling disputes. The emphasis of the Act seems to be that the machinery of conciliation should be tried in the first instance. [see notes under sections 4 and 5].

Controlled Industry [Section 2(EE)]

The term 'controlled industry' means any industry the control of which by the union has been declared by any Central Act to be expedient in the public interest.

The concept of "controlled industry" was introduced into the Indian economy by the *Industries (Development and Regulation) Act, 1951* for the purpose of bringing about controlled development of such industries. In the wake of the economic liberalisation, only a few items have remained on the list of controlled industries. By far a great bulk of industries has been delisted. The concept was being used for the purpose of ascertaining whether the Central Government, being the controlling authority, was the appropriate Government in reference to such companies or not.

Court [Section 2(F)]

'Court' means the court of inquiry constituted under this Act. Such a court is constituted under s. 6 of the Act for the purpose of conducting an inquiry into the genesis of an industrial dispute and other matters connected with or relevant to the dispute. [see notes under s. 6].

Employer [Section 2(G)]

'Employer' means—

(i) in relation to an industry carried on by or under the authority of any department of the Central Government or a State Government, the authority prescribed in this behalf, or where no authority is prescribed, the head of the department;

(ii) in relation to an industry carried on by or on behalf of a local authority, the chief executive officer of that authority.

The U.P. *Industrial Disputes Act, 1947* has added following two more clauses to the original ones:

(iii) an association or a group of employers.

(iv) where the owner of an industry in the course of or for the purpose of conducting the industry contracts with any person for the execution by or under such person of the whole or any part of any work which is ordinarily part of the industry, the owner of such industry.

The definition is not exhaustive. It extends only to the enumerated clauses. The Act applies to all employers whether individuals or associations.

Executive [Section 2(GG)]

The 'executive' in relation to a trade union, means the body, by whatever name called, to which the management of the affairs of the trade union is entrusted.

The word 'executive' has been used in relation to a trade union. The executive body of a trade union is an important feature of an Act devised to bring about settlement of industrial disputes. Collective bargaining can be resorted through such a representative body.

Independent Person [Section 2(I)]

The term 'independent person' is defined under s. 2(i). A person shall be deemed to be 'independent' for the purpose of his appointment as the Chairman or other member of a Board, Court or Tribunal, if he is unconnected with the industrial dispute referred to such Board, Court or Tribunal or with any industry directly affected by such dispute.

Provided that no person shall cease to be independent by reason only of the fact that he is a shareholder of an incorporated company which is connected with, or likely to be affected by, such industrial dispute; but in such a case, he shall disclose to the appropriate Government the nature and extent of the shares held by him in such a company.

The concept of “independent person” has been created by the Act for the purpose of appointing such persons to important positions under the Act for the purpose of settlement of disputes. Section 5, for example, says that the chairman of a Board of Conciliation must be an independent person. The Court of Inquiry under s. 6 has to consist of at least one independent person. That is why a definition of an independent person became necessary. The primary emphasis of the definition is that he should be unconnected with the industrial dispute as also with any industry directly affected by the dispute. A proviso to this statement says that a person shall not taken to lose his independence by reason only of the fact that he is a shareholder of a company which is connected with or is likely to be affected by the industrial dispute. The person concerned must, however, disclose to the appropriate Government the nature and extent of his shareholding in the company.

Industry [Section 2(J)]

Definition of Industry

The term ‘industry’ means any business, trade, undertaking, manufacture or calling of employers and includes any calling, service, employment, handicraft, or industrial occupation or avocation of workmen.

The Amendment of 1982 had substituted a new definition but no enforcement date has been notified so far. Therefore, the original definition remains in force. The amended definition is given below:—

“Industry” means any systematic activity carried on by co-operation between an employer and his workmen for the production, supply or distribution of goods or services with a view to satisfy human wants or wishes. Those wants or wishes are not included which are merely spiritual or religious in nature. All the workmen, whether employed by the employer directly or by or through any agency including a contractor, are included in the category of workmen. For carrying on such systematic activity it is not necessary that—

(i) any capital has been invested for the purpose of carrying on such activity; or

(ii) such activity is carried on with a motive to make any gain or profit.

The following activities are included in the definition of “industry”:—

(a) any activity of the Dock Labour Board [established under *section 5A of the Dock Workers (Regulation of Employment) Act, 1948*].

(b) any activity relating to the promotion of sales or business or both.

The following activities are not included in the definition of “industry”:—

(1) any agricultural operation except where such agricultural operation is carried on with any other activity involved in production, supply or distribution of goods or services in an integrated manner. It is necessary that the other activity should be the predominant activity. If agricultural operation is predominant activity than it will not be included in definition of “industry.”

An *Explanation* attached to this provision says that “agricultural operation” does not include any activity carried on in a plantation [defined in section 2(f) of the Plantation Labour Act, 1951];

(2) hospitals or dispensaries are not included in the definition.

(3) educational, scientific, research or training institutions are not included in the definition of “industry.”

(4) institutions owned or managed by those organisations which are engaged in any charitable, social or philantrophic service either wholly or substantially are not included in the definition of “industry”

(5) Khadi or village industries also do not come under the definition of “industry.”

(6) any activity of the Government relatable to the sovereign functions are not included in the definition of “industry.”

All the activities carried on by the departments of the Central Government dealing with defence, research, atomic energy and space are also not included in the definition of “industry.”

(7) any domestic service is not included in the definition of “industry.”

(8) any professional activity practicised by an individual or body of individuals, if the number of persons employed by the individual or body of individuals is less than 10, is also not included in the definition of “industry.”

(9) any activity carried on by a co-operative society or a club or any other like body of individuals is also not an industry if the number of persons employed by either of them is less than 10 in relation to such activity.

Scope of Industry

The definition of industry is a comprehensive definition and it is in two parts : one part defines it from the point of view of the employers and other from the standpoint of the employees. Therefore, any activity which falls within either of these two parts, automatically becomes an industry.

Liberal Construction

Industrial laws should be liberally constructed, *i.e.;* widest possible interpretation should be given to the term ‘industry’ as well as ‘industrial dispute’ in order to meet the requirements of modern technological progress and in

order to bring about a fair and satisfactory adjustment of relations between employers and workmen for the promotion of industrial peace and harmony. It is necessary to draw a line in a fair and just manner putting some limitations on the width of the words.

Guidelines for Ascertaining whether an Activity is an Industry

There are a few guidelines for ascertaining whether an activity is an industry or not. They are given below:

(i) the activity must be systematically and habitually undertaken for the production of goods or rendering of material services with the help of organised labourforce. It must partake the nature of trade or business or be an undertaking for manufacture or calling of employers.

(ii) undue significance should not be attached to the popular or conventional attributes of trade, business, calling *etc.* Therefore, the profit motive is not essential. It was held in the subsequent decision in *Federation of ICCI v. Workmen,* (1972) 1 SCC 40 [LNIND 1971 SC 573] that an exemption given to a charitable institution under *s. 32(5) of the Payment of Bonus Act, 1965* is not relevant to the construction of s. 2(j) (industry).

(iii) there must be essential and direct co-operation between capital and labour.

(iv) the co-operation must be for rendering of material services.

(v) the above stated conditions should be satisfied by the principal activity of the operation or undertaking and not by the subsidiary one.

(vi) the principal activity will lend colour to the whole activity and it must be one which is capable of being owned and transferred.

(vii) when the above conditions are fulfilled it is immaterial who does the activity, an individual, local body, corporation or State, The character of activity will not be affected by the nature of the organisation or ownership.

There is a long line of cases in which the concept of industry was discussed. Only some of them may be taken up here. The earliest important case was that of D.N. *Bannerji v. P.R. Mukherji,* in which it was held that the definitions in the Act would also include disputes that might arise between municipalities and their employees in branches of work that can be said to be analogous to the carrying out of a trade or a business. The court observed that it is incumbent on it to ascertain what the Statute means by “industry” and “industrial dispute” leaving aside the original meaning attributed to the words in a simplicitor state of society, when we had only one employer perhaps, doing a particular trade or carrying on a particular business with the help of his own tools, material and skill and employing a few workmen in the process of production or manufacture the court observed:

> “Though the word ‘undertaking’ in the definition of “industry” is wedged in between business and trade on the one hand and manufacture on the other and though, therefore, it might only mean a business or trade undertaking, still it must be remembered that if that were so, there was no need to use the word separately from business or trade. The wider import is attracted even more clearly than we look at the latter part of the definition which refers to “calling, service employment, or industrial occupation, or avocation of workmen.” “Undertaking” in the first part of the definition and “industrial occupation or

avocation" in the second part obviously mean much more than what is ordinarily understood by trade or business. The definition was apparently intended to include within its scope what might not strictly be called a trade or business venture."

The court found support in the statement in *National Association of Local Govt. Officers v. Bolton Corporation,* where Lord WRIGHT after referring to the definitions of 'trade dispute' and 'workmen' contained in the order of reference to the National Arbitration Tribunal pointed out that they are identical with and have the same meaning as the definitions contained in the Industrial Courts Act, 1919 have. Thus, the word "industry" would include within its scope what might not strictly be called "trade or business."

In the very important case of *State of Bombay v. Hospital Mazdoor Sabha,* it was decided that the J.J. Group of Hospitals came within the definition of industry. In this case, the services of some employees were terminated by the superintendent of the hospital after serving them a notice. The Hospital Mazdoor Sabha was a registered trade union of the employees of hospitals in the State of Bombay. The Union filed a writ petition claiming mandamus directing the State of Bombay to reinstate these employees in their posts. It was contended that the retrenchment of the employees was not according to the provisions of the *Industrial Disputes Act, 1947* .

The writ petition was resisted on the ground that the J.J. Group of Hospitals was not an industry, and therefore, the *Industrial Disputes Act* was not applicable.

The Bombay High court decided in favour of the employees holding that J.J. Group of Hospitals was an industry within the meaning of s. 2(j). It was observed by Justice GAJENDRAGADKHAR:

"There is another point which cannot be ignored. Section 2(j) does not define industry in the usual manner by prescribing what it means : the first clause of the definition gives the statutory meaning of 'industry' and the second clause deliberately refers to several other items of industry and brings them in the definition in an inclusive way. It is obvious that the words which are used in an inclusive definition, it would be inappropriate to put an interpretation upon terms of wider connotation."
"...The conventional meaning attributed to the words "trade and business" has lost some of its validity for the purpose of industrial adjudication. Industrial adjudication has necessarily to be aware of the current of socio-economic thought. It must recognise that in the modern welfare State healthy industrial relations are a matter of permanent importance and its essential function is to assist the State by helping a solution of industrial disputes which constitute a distinct and permanent phenomenon of modern industrialised States. In attempting to solve industrial disputes, industrial adjudication does not and should not adopt a doctrinaire approach that is why, we think that in construing the wide words used in section 2(j) it would be erroneous to attach undue importance to the attributes associated with business or trade in the popular mind in days gone by."
"It would be possible to exclude some activities from section 2(j) without any difficulty. Negatively stated the activities of the Government which can be properly described as regal or sovereign activities are outside the scope of section 2(j)."

The Supreme Court worked out the following formula for deciding whether an establishment is an industry or not. It observed that—

(1) an activity systematically or habitually undertaken—

(a) for the production or distribution of goods, or

(b) for rendering of material service to community at large, or a part of such community with the help of employees is an undertaking,

(2) such activity generally involves the co-operation of employer and employees,

(3) the object is the satisfaction of material human needs,

(4) it must be arranged or organised in a manner in which trade or business is generally arranged or organised,

(5) it must not be casual or for pleasure.

After this case, the Supreme Court laid down the following rules in *Corporation of The City of Nagpur v. Employees* regarding the scope of "industry":

(i) The definition of "industry" in the Act is very comprehensive. It is in two parts : one part defines it from the standpoint of employer and the other from the standpoint of the employee. If an activity falls under either part of the definition, it will be an industry within the meaning of the Act.

(ii) The history of industrial disputes and the legislation recognises the basic concept that the activity shall be organised one and not that which pertains to private or personal employment.

(iii) If a service rendered by an individual or a private person would be an industry, it would equally be an industry in the hands of a corporation.

(iv) If a service rendered by corporation is an industry, the employees in the departments connected with that service whether financial, administrative or executive would be entitled to the benefits of the Act.

(v) The regal functions prescribed as primary and inalienable functions of State though statutorily delegated to a Corporation are necessarily excluded from the purview of the definition. Such regal functions shall be confined to legislation power, administration of law and judicial power.

(vi) If a department of a municipality discharges many functions, some pertaining to industry as defined in the Act and the other non-industrial activities, the predominant functions of the department shall be the criterion for the purposes of the Act.

In *Management of Safdarjung Hospital v. Kuldeep Singh Sethi,* it was held that "an industry is to be found when the employees are carrying on any business, trade or undertaking, manufacture or calling of employers. If they are not, there is no industry as such." It was held that employees in a Government Health Department are not workmen engaged in an industry.

In order to have a comprehensive, clear and conclusive declaration as to what is an 'industry' under the *Industrial Dispute Act* , the matter was placed before a Bench of seven judges in *Bangalore Water Supply and Sewerage Board v. A. Rajappa* The judgement of the Bench was unanimous and it was held that industry overflows trade and business. Capital, ordinarily assumed to be a component of "industry" is an expendable item so far as the statutory definition of 'industry' is concerned. Absence of capital does not negative 'industry.' Even charitable services do not cease to be 'industries' by definition although popularly charity is not an industry. 'Profit-making motive is not a *sine qua non* of industry, functionally or definitionally.. The main judgment laid down the following principles, saying that while they are authoritative they are not exhaustive:—

"Industry," as defined in Sec. 2(j) and explained in *Bannerjis'* case, has a wide import.

I.

(a) where (i) systematic activity; (ii) organised by co-operation between employer and employee (the direct and substantial element is commercial); (iii) for the production and/or distribution of goods and services calculated to satisfy human wants and wishes (not spiritual or religious) but inclusive of material things or services geared to celestial bliss i.e.; making on a large-scale of *(prasad* or food) *prima facie,* there is an industry in that enterprise.

(b) Absence of profit-motive or gainful objective is irrelevant, be the venture in the public, joint or private or other sector.

(c) The true focus is functional and the decisive test is the nature of the activity with special emphasis on the employer-employee relations.

(d) If the organisation is a trade or business, it does not cease to be one because of philanthropy animating the undertaking.

II. Although sec. 2(j) uses words of the widest amplitude in its two limbs, their meaning cannot be magnified to overreach itself.

"Undertaking" must suffer contextual and associational shrinkage as explained in *Banerjis'* case so also service, calling and the like. This yields the inference that all organised activity, possessing the triple element in point No. I (supra) although not trade or business, may still "be industry" provided the nature of the activity, *viz.,* the employer-employee basis bears resemblance to what we find in trade or business. This takes into the fold of 'industry' undertakings, callings and service adventures, analogous to the carrying on of trade or business.

III. Application of these guidelines should not stop short of their logical reach by invocation of creeds, cults or inner sense of incongruity or outer sense of motivation for resultant economic operation. The ideology of the Act being industrial peace, regulation and resolution of industrial disputes between employer and workman—the statutory ideology must inform the reach of the statutory definition. Nothing less, nothing more.

(a) 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 triple tests listed in I (supra) cannot be exempted from the scope of Sec. 2 (j).

(b) A restricted category of professions, clubs, co-operatives and even gurukulas and little research labs, may quality for exemption if in simple ventures substantially and going by the dominant nature criterion substantively, no employees are entertained but in minimal matters, marginal employees are hired without destroying the non-employee character of the unit.

(c) If in a pious or altruist mission many employ themselves free or for small honorarium, such as lawyers volunteering to run a free legal service clinic or doctors serving in their spare hours in a free medical center or ashramites working at the bidding of the holiness, divinity or like personality and the services are supplied free or at nominal cost and those who serve are not engaged for remuneration or on the basis of master and servant relationship then the institution is not an industry, even if stray servants, manual or technical, are hired. Such undertakings alone are exempt—not other generosity, compassion, development passion or project.

IV. The Dominant Nature Test—

(a) Where a complex of activities, some of which qualify for exemption, others not, involves employees of the total undertaking, some of whom are not "workmen" as in *Delhi University* case or some departments are not productive of goods and services if isolated, even then the predominant nature of the services and the integrated nature of the departments as explained in the *Nagpur Corporation* case will be the true test. The whole undertaking will be "industry" although those who are not "workmen" by definition may not benefit by the statute.

(b) Notwithstanding the previous clauses, sovereign function, strictly understood qualify for the exemption, not the welfare activities or economic adventures undertaken by Government or statutory bodies.

(c) Even in departments discharging sovereign functions, if there are units which are industries and they are substantially severable, then they can be considered to come within s. 2(j).

(d) Constitutional and competently enacted legislative provisions may well remove an activity from the scope of the Act. The decisions previously taken in *Safdarjung* case, *Delhi Varsity* case, *Gymkhana* Club case etc. were overruled by this decision and only one decision of *Hospital Mazdoor Sabha* was restored and rehabilitated."

The whole picture of cases which were overruled and others which were followed becomes clear by the decision of the Supreme Court in *Coir Board v. P.S. Indira Devi* in this case, the question was whether the Coir Board constituted under the *Coir Industry Act, 1953* was an "industry." It was held that while employer is defined in the context of an industry and the workman is also defined as person employed in an industry, the term "industry" itself has been defined to mean business, trade, manufacture, undertaking or calling, while the terms business, trade, manufacture or calling are fairly clear, the term 'undertaking' which accompanies these four words gave scope for judicial expansion of the meaning of the word 'Industry.' The words 'service' employment and avocation of workmen' also being somewhat imprecise like the word 'undertaking' have led to varying definitions of 'Industry' being given from time to time by judicial pronouncements when the Courts were called upon to decide whether any particular organization could be considered as an industry or not.

The Supreme Court applied non-conventional interpretation of the word 'undertaking' to connote an activity

systematically and habitually undertaken for production or distribution of goods or for rendering material services to the community at large or a part of such community with the help of employees. Profit motive was considered as not relevant. This view of an industry covered organisations which would not have normally been considered as industries. The non-conventional interpretation was adopted because conventional meaning of trade and business had lost some of this validity for the *I.D. Act* which was a welfare measure for the benefit of workers. The non-conventional interpretation was adopted in the case of D.N. *Banerji v. P.R. Mukherjee.* *The Corporation of the City of Nagpur and its Employees* *The State of Bombay v. The Hospital Mazdoor Sabha.* This non-conventional interpretation was reiterated in the case of *The Workmen of Indian Standard Institution v. The Management of Indian Standard Institution,* by saying that the widest possible connotation should be given to the word 'industry' since *I.D. Act* was a welfare legislation for the welfare of the workers.

However, in another set of cases, the Supreme Court and number of High Courts gave a slightly more restricted and conventional meaning to the term 'Industry' as defined under the *I.D. Act* , vide *Vational Union of Commercial Employees & v. M.R. Meher, Industrial Tribunal, Bombay,* *University of Delhi v. Ram Vath,* *The Secretary, Madras Gymkhana club Employees' Union v. The Management of Gymkhana Club,* *The Cricket Club of India v. Bombay Labour Union* and *The Management of Safdarjung Hospital, New Delhi v. Kuldip Singh Sethi.* However, views taken in the *Madras Gymkhana* case, *Safdarjung Hospital* case and *University of Delhi* case were overruled by a decision of a Bench of 7 Judges of the Supreme Court in the case of *Bangalore Water Supply & Sewerage Board v. A. Rajappa,* by a majority of 5 with 2 dissenting.

The definition of 'Industry' under the *I.D. Act* was held to cover all professions, clubs, educational institutions, co-operatives, research institutions, charitable projects and anything else which could be looked upon as organised activity where there was a relationship of employer and employee and goods were produced or service was rendered. Even in the case of local bodies and administrative organisations the Court evolved a 'predominant activity' test so that whenever the predominant activity could be covered by the wide scope of the definition as propounded by the Court, the local body or other organisations would be considered as an industry. Even in those cases where the predominant activity could not be so classified, the Court included in the definition all those activities of that organisation which could be so included as industry, departing from its own earlier decision and that one had to go by the predominant nature of the activity. In fact the Court observed that even a defence establishment or a mint or a security press could, in a given case, be considered as an industry, very restricted exemptions were given from all the embracing scope of the definition so propounded. Pious or religious missions were considered exempt even if a few servants were hired to help the devotees. Where normally no employees were hired but the employment was marginal the organisation would not qualify as an industry. Sovereign functions of the State as traditionally understood would also not be classified as industry though Government departments which could be severed and labelled as industry would not escape the *I.D. Act* . The 2 judges dissented from the above view stating that the dominant nature itself should be applied for deciding whether an establishment is an industry or not. Even the majority was of the view that legislative exercise was necessary to settle the position.

Subsequent decisions of the Supreme Court have left some uncertainty about the question of activities and organisations that can be labelled as Industries under the *I.D. Act* . In *Physical Research Lab v. K.G. Sharma,* it was held that the activities of the Physical Research Laboratories would not be covered by the definition of an industry under the *I.D. Act* . Similarly in the case of *Sub-divisional Inspector of Post, Vaikam v. Theyyam Joseph.* The establishment of sub-divisional Inspector of post was held to be not an industry but an exercise of sovereign function. In the case of *Bombay Tel. Canteen Employees' Association, Prabhadevi Telephone Exchange v. Union of India.* the Supreme Court held that the workmen employed in the department canteen of the Telephone Nigam Ltd. and admittedly holding civil posts were not workmen within the meaning of the *I.D. Act* . However, in the case of the *General Manager, Telecom v. D. Srinivasa Rao,* it was held that the cases of *Sub-divisional Inspector of Post, Vaikam,* and *Bombay Telephone Canteen Employees*

Association were not correctly decided in view of the test laid down in the case of *Banglore Water Supply & Sewerage Board's* case.

Looking to the uncertainty prevailing in this area and in the light of the experience of the last 2 decades in applying the test laid down in the case of BWS&SB, it is necessary that the decision in the *Banglore Water Supply & Sewerage Board's* case is re-examined. The experience in the last 2 decades does not appear to be entirely happy. Instead of leading to industrial peace and welfare of the community (which was avowed purpose of artificially extending the definition of industry, the application of the *I.D. Act* to organisations, which were, quite possibly not intended to be so covered by the machinery set up under the *I.D. Act* might have done more damage than good, not merely to the organisations but also to employees by the curtailment of employment opportunities.

Therefore, it is of paramount importance that a proper law is framed to promote the welfare of labour employed in industries. It is equally important that the welfare of labour employed in other kinds of organisation is also promoted and protected. But the kind of measures which may be required for the latter may be different and may have to be tailored to suit the nature of such organisations, their infrastructure and their financial capacity as also the needs of their employees.

The elimination of profit motive or a desire to generate income as the purpose of industrial activity has let to a large number of philanthropic and charitable activity being affected by the *I.D. Act* . A number of voluntary organisations used to run workshops in order that the poor or destitute women may earn some income. Voluntary welfare organisations organise activities like preparation of spices, masalas, pickles or they would secure small orders from industries for poor women. A small number of employees were employed to assist in the activities. The income earned by these activities was distributed to the women who were given employment. Such organisations are not organised like industries and they do not have the means or manpower to run them as industries. A large number of such voluntary welfare schemes have had to be abandoned because of the wide interpretations given to the term 'industry.'

Apart from such activities, there may be other activities also which were undertaken in the spirit of the community service, such as charitable hospitals where free medical services and free medicines may be provided. Such activities may be sustained by free services given by professional men and women and by donations. Sometimes such activities may be sustained by using profits in the paid section of that activity for providing free services in the free section. Doctors who work in these hospitals may work for no returns or sometimes for very nominal fees. The definition needs re-examination so that, while the workers in an industry have the benefit of industrial legislation, the community as such is not deprived of philanthropic and other vital services which contribute so much to its well-being. Educational services and the work done by teachers in educational institutions, research organisations, professional activities or recreational activities, amateur sports, promotion of arts, all these and many others similar activities also require to be considered in this context.

Amended definition of 'Industry' under the *I.D. Act, 1947* by enacting the *Amending Act* , 1982 has not been notified by the Executive as having come into force.

Since the difficulty has arisen because of the judicial interpretation given to the definition of 'Industry' in the *I.D. Act* there is no reason why the matter should not be judicially re-examined. The Coir Board has been set up to promote coir industry, open markets for it and provide facilities to make the coir industry's products more marketable. It is not set up to run any industry itself, looking to the predominant purpose for which it

is setup, it could be called an 'Industry.' However, if one were to apply the tests laid down by *Banglore Water Supply & Sewerage Board's* case, it is an organisation where there are employers and employees. The organisation does some useful work for the benefit of others. Therefore, it will have to be called an 'industry' under the
I.D. Act .

Such sweeping test was not contemplated by the *I.D. Act* and it is not that every organisation which does useful service and employs people can be labelled as 'industry.' Therefore, the Hon'ble Chief Justice of India is to consider whether a larger Bench should be constituted to reconsider the decision in *Bangalore Water Supply and Sewerage Board's* case.

Similarly, construction activity, education, educational institutions, cooperative housing societies are also included in the definition of 'industry.'

Activities of Government and Industry

In a welfare State, the State has to undertake many activities which would otherwise be industries and the correct test to determine whether a particular activity undertaken by the Government in such cases is an industry or not would be to ascertain whether, if that activity had been undertaken by a private agency, it would have been an 'industry' to which the Act would apply. The public welfare function of the State is a sovereign function. The State does not become an industry in the discharge of such functions. Predominant nature of services and integrated nature of departments is the true test for determining whether an establishment is an 'industry' or not. If there are units in departments which are industries and are substantially separable, they are 'industries', although they are discharging sovereign functions. On this basis, the telecom department of Union of India has been held to be an 'industry.'

Regal and Sovereign Functions not 'Industry'

Regal and sovereign functions cannot be called 'industries.' Those activities which a constitutional government can and must take for governance and which no private citizen can undertake will be outside the scope of definition of 'industry.' Administration of justice, maintenance of law and order, repression of crimes are a few of the regal and sovereign functions. It would not matter that they have been delegated or are carried on by government servants. Whether a particular function of the State is or is not a sovereign function depends on the nature of the power and the manner in which it is carried on. *Pachgaon Parwati Scheme* in Pune District and social foresting work in Ahmednagar District undertaken by the Forest Department of the State Government was held to be an industry and not a part of sovereign functions of the State. Functions carried on by All India Radio and Doordarshan are not confined to sovereign functions but they carry on commercial activity for profit by getting commercial advertisements telecast or broadcast by them, therefore, they are 'industries' under section 2(j).

Municipal Corporation

A corporation may discharge a dual function. When it is statutorily entrusted with regal functions such as making of laws, disposal of certain cases judicially, *etc.* it is excluded from the ambit of the definition of 'industry.' But when it is entrusted with welfare activities, it comes under the term 'industry.'

Other activities of a municipality except regal functions, if undertaken by an individual they would have been an industry, then they would equally be industry in the hands of a municipality or a local body.

Town and Urban Improvement

Trusts created by statute for town and urban improvement will fall within the definition of 'Industry.' Therefore, Nagpur Improvement Trust was held to be an 'industry' within the meaning of section 2 (j).

Professions

Professions are not industries. The attributes of a profession are—

(a) activities depends upon intellectual skill of the professional and are not run on commercial lines.

(b) the activity involve integrity, degree of intelligence and academic or professional qualifications.

(c) the activity is controlled by professional body.

Law, medicine, ecclesiastical, chartered accountants are professions but that of an insurance surveyor is not a profession.

Hospitals and Charitable Institutions

The Supreme court has discussed the question whether hospital is an industry or not in a number of cases. In *State of Bombay v. Hospital Mazdoor Sabha,* the Supreme Court held that J.J. Group of hospitals is an industry for the purposes of retrenchment and reinstatement of its employees. On this basis, an Ayurvedic College of Pharmacy manufacturing medicines for sale and for benefit of students of the college was held to be an industry.

However, the employees in a Government Health Department have been held to be not workmen engaged in an industry. The hospitals run by the Government as a part of its function is not an industry.

In *Dhanrajgiri Hospital v. Workmen,* it was held that this hospital was not an industry because it was not carrying on any economic activity on the nature of trade or business. However, in view of the Supreme Court decision in *Bangalore Water Supply & Sewarage Board v. Rajappa,* the case of Dhanrajgiri hospital has become overruled. In *Bangalore Water Supply* case, it was held that the charitable institutions fall into three categories:—

(a) those that yield profit, but the profits are siphoned off for altruistic purposes;

(b) those that make no profit but hire the services of employees as in any other business, but the goods and services which are the output are made available at a low or no cost to the indigent poor; and

(c) those that are oriented on a humane mission fulfilled by men who work, not because they are paid wages, but because they share the passion for the cause and derive job satisfaction.

The first two categories are industries but not the third, on the assumption that they all involve co-operation between employers and employees.

On the analysis of the abovestated case law it can be said that such hospitals as are run by the Government as part of its sovereign functions with the sole object of rendering free service to the patients are not industries. Those hospitals, whether charitable or commercial, public or private, would be industry it they fulfill the triple test laid down in *Bangalore Water Supply case.* Where there is—

(i) a systematic activity,

(ii) organised by co-operation between employer and employee (the direct and substantial element is commercial),

(iii) for the production and/or distribution of goods and services calculated to satisfy human wants and wishes (not spiritual or religious) but inclusive of services geared to celestial bliss, of material things, *prima facie,* there is an "industry" in that enterprise. This is known as triple test.

Indian Red Cross Society (Haryana State Branch) and Indian Cancer Society, Bombay have been held to be industries.

Educational Institutions

In the case of *University of Delhi v. Ramnath,* the question arose whether an educational institution is an industry or not? In this case, the services of two drivers for College for women of Delhi University were terminated because the running of buses for transporting girls students was going into a loss. The termination order was challenged on the ground that the drivers were workmen and the termination of their services amounted to retrenchment. They demanded retrenchment compensation and filed petitions before the Industrial Tribunal. The Tribunal decided in favour of the drivers but the University of Delhi challenged the decision of the Tribunal contending that the university is not an industry. The Supreme Court held that the work of imparting education is more a mission and a vocation than profession or trade and thus, university is not an industry. However, later on the Supreme Court itself overruled its decision and on the basis of the triple test laid down in *Bangalore Water Supply case,* held that even a university would be an industry. Only those employees who will come within the definition of workmen under the *Industrial Disputes Act, 1947* will be able to take the benefits given to the workmen under the Act.

In another case, the question was whether the society70 which owned two colleges was purely an educational institution or industry. The Calcutta High Court observed that our conception of society is not static but it keeps on changing with the time. An undertaking which depends on the intelligence or capacity of an individual does not become an industry merely because it is a large establishment. Where the organisation does not depend upon the intellectual skill of any individual but is run with a profit motive, it will come under the definition of "industry."

In a case, Osmania University has been held to be not an industry. The Supreme Court held in *Ahmedabad Textile Industry's Research Association v. State of Bombay,* that although the association was established for the purpose of research, its main object was the benefit of the members of the association, the association is organised and arranged in the manner in which a trade or business is generally organised; it postulates co-operation between employers and employees; moreover the personnel who carry on the research have no right in the result of the result. Thus, the association was held to be an industry.

In another case, the Asiatic Society was held to be not an industry by the Calcutta High Court on the basis that a society which is established with the object of catering to the intellectual needs of man by promoting general knowledge of the country by conducting research and publishing journals and books cannot be an industry.

The Indian institute of Petroleum and management of a private educational institution have been held to industries.

The Central Institute of fisheries and Physical Research Laboratory have been held to be not industries. Where an employer ran an Ayurvedic College, a pharmacy and a hospital and bulk of the medicines manufactured in such pharmacy was sold in the medicine, there was no evidence to show that the hospital and the pharmacy were run only for the benefit of students studying in the Ayurvedic College, the pharmacy was held to be an 'industry.'

Clubs

In *Madras Gymkhana Club Employees' Union v. Management,* the object of the club was to provide venue for sports and game and facilities for recreation and entertainment. The club also had a catering department which provided food and refreshment generally as well as on special occasions. The club was held to be not an industry. In *Cricket Club of India v. Bombay Labour Union,* the question was whether the Cricket Club of India, Bombay was an industry or not although it was incorporated as a company under the *Companies Act, 1956* . It was held that the club was a self-service institution and not an industry. Both these cases were overruled and on the basis of *Bangalore Water Supply case,* it has been held that large clubs are 'industry.'

A restricted category of professions, clubs, co-operatives and even Gurukulas and little research laboratories may qualify for exemption if, in simple ventures, substantially and going by the dominant nature criterion substantively, no employees are entertained, but in minimal matters marginal employees are hired without destroying the non-employee character of the unit.

Trust for Promotion of Art and Culture

On the basis of the facts the Supreme Court found that the *Bharat Bhawan Trust* was engaged only in the promotion of art and preservation of artistic talent. Its activities were not meant for large scale production involving co-operation of efforts of employer and employee. Therefore, the courts, concluded that it was doubtful. Whether it could be regarded as an industry.

Forest Department

The forest department of state has been held to be an industry. In comparison in another case, the court said that ordinarily a Department of the Government is not to be regarded as an industry. The burden lies on the person

(dismissal of a temporary clerk) to prove that the establishment in which he is working is an industry.

Marketing Committee

In interpreting any statute, the pith and substance of the statute should be found out. Where none of the functions of the Market Committee established under Karnataka Agricultural Produce Marketing (Regulation) Act, 1966 were found to be sovereign or inalienable functions of the State, it was held that such a Market Committee was an "industry." The fact that it was not constituted for making any profits was inconsequential. Its temporary employees who had not become Government servants under the provisions of the Karnataka Act were held to be "workmen" under the *Industrial Disputes Act, 1947* .

Temples

Where the Jain Temple was held to be not an 'industry', the Supreme Court in the facts and circumstances of the case awarded compensation to the workman.

Other Bodies

Other bodies like Federation of Indian Chamber of Commerce, company carrying agricultural operations, co-operative societies, Bihar Khadi Gramudyog Sangh, Irrigation department of the State Government, Telecom department, and Public Works Department have been held to be industries. But a circulating library run by the employees of Central Railway, a temple in which the activities of Dharm, Dhyan, Bhakti and Puja are carried on have been held to be not an 'industry.' Whether the octroi department of gram panchayat is an industry or not, the question was left open by the court.

Agricultural operations carried on by a limited public company like any other business or trade by investing capital and employing labour is held to be an 'industry' within the meaning of section 2(j) of the Act. Where a company owned flats for letting them out and workers were appointed for maintenance of flats and giving services, it was held that such activity satisfies the definition of 'industry.'

Indian Standards Institution registered under the *Societies Registration Act, 1860* has been held to be an 'industry.' Research Association founded for the purpose of establishing a textile research institute would be an industry.

The activities of Pinjrapole in breeding cattle and selling milk amounted to running business on commercial lines, though not of the normal type of a well-organised dairy farm. When value of milk sold by Pinjrapole in the market was substantial and more than the milk utilised for the sick and infirm animals, activity of Pinjrapole was found to be carried an as business for making profit and hence, it was held to be an 'industry.' Where personal services are rendered to members of society constituted only for purposes of those members, society has been held to not an 'industry' and is employees were also held to be not 'workmen.'

A solicitors' firm carrying on work of attorney has been held to be not an 'industry.

Industrial Dispute [Section 2(k)]

Section 2(k) of the Industrial Disputes Act, 1947 defines an 'industrial dispute' as follows:

"Industrial dispute" means 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 of employment or with conditions of labour of any person. The definition can be divided into three parts:

— first, there must be a dispute or difference;

— second, the dispute or difference must be between employers and employers, or between employers and workmen or between workmen and workmen;

— third, the dispute or difference must be connected with the employment or non-employment or the terms of employment or with the conditions of labour of any person.

Limitations of the Definition

There are two crucial limitations of the definition of industrial dispute:

(i) The dispute must be a real dispute between the parties to the dispute so as to be capable of settlement or adjudication resulting in one party to the dispute giving necessary relief to the other, and

(ii) The person regarding whom the dispute is raised, must be one in whose employment, non-employment, terms of employment, conditions of labour (as the case may be) the parties to the dispute have a direct and substantial interest. A dispute between a union and an employer's association is not industrial dispute.

Connection of the Dispute with any Industrial Matter or Demand

Demands give rise to industrial disputes. It is implicit in the demand that it should be made to the employer or employee. Within the meaning of section 2 (k) a dispute can arise only when there exists a demand by workman and that such demand is refused by the employer. The written demand directly on the management is not in all cases a necessary condition, the demand can be made even through the conciliation officer.

The words "any person", for the purpose of raising a dispute was held not to include a person who was offered appointment but could not join because of failure to accept his joining report. The existence of employer-employee relationship was considered to be necessary.

Individual and Collective Industrial Disputes

Both the individual and collective disputes may ripen into industrial dispute. In its true nature an industrial dispute is a collective dispute. Even if at the inception a dispute is initiated by an individual, yet if it is taken up by the fellow-workers or a union, or a sufficient number of workers, it may assume the collective character and would become an industrial dispute. However, a dispute which continues to retain its individual character cannot be regarded as an industrial dispute. It is also not necessary that a majority should take up an industrial dispute. It is sufficient if a substantial group of workmen take it up.

Individual Dispute when Industrial Dispute—Deemed Industrial Dispute [Section 2A]

A new section 2A was added by the Act of 1965 in the Act which specified categories of individual disputes which are also deemed to be industrial disputes. The section has been revised again by the Act of 2010. The section reads:

Dismissal etc., of an individual workman to be deemed to be industrial dispute (Section 2-A).

Where any employer—

(i) discharges, dismisses, retrenches or otherwise terminates the services of an individual workman

(ii) any dispute or difference between that workman and his workmen

(iii) connected with, or arising out of, such discharge, dismissal, retrenchment or termination shall be deemed to be an industrial dispute

(iv) notwithstanding that no other workman nor any union of workmen is a party to the dispute [Sub-section (1)].

Sub-section (2) provides that notwithstanding anything contained in section 10, any worker as above stated may make an application directly to the Labour Court or Tribunal for adjudication of his dispute after expiry of forty five days from the date he had made application to the conciliation officer of the appropriate Government for conciliation of the dispute. On receiving such application, the Labour Court or Tribunal will have powers and jurisdiction to adjudicate upon the dispute as if it was a dispute referred to it by the appropriate Government in accordance with the provisions of this Act. All provisions of the Act will apply in relation to such adjudication as they apply to industrial dispute referred to it by the appropriate Government.

Sub-section (3) provides that the application shall be made to the Labour Court or Tribunal before the expiry of three years from the date of discharge, dismissal, retrenchment or otherwise termination of service as specified in sub-section (1).

Individual dispute in cases other than discharge, dismissal or termination of service of a workman can acquire the character of industrial dispute, if espoused by substantial number of employees or union of employees. Where claim of an employee to be declared as semi-permanent on completion of two years' service was found to be not an

industrial dispute, writ petition was held to be maintainable inspite of not availing alternative remedy under *Industrial Disputes Act* .

Steps to make statutory provision enabling workman to approach Labour Court or Industrial Tribunal directly without requirement of reference by Government in case of dispute governed by section 2-A was held to be appropriate.

In a case, a workman's name was strike off the rolls by the management when he absented for eight days. He challenged the order and succeeded at all levels *viz.,* Labour Court, writ court and Division Bench. Management appealed and it was held that striking off the name amounts to termination and retrenchment when the workman was not absent for eight consecutive days. The management's request to refer the issue to a seven-member bench was rejected and it was held that the management's contention that section 2A is *ultra vires* cannot be entertained at the appellate stage without any basis having been laid at earlier stages.

Respondent conductor was found guilty of issuing tickets of lower denomination of 50 paise instead of 4 rupee tickets to passengers who were illiterate. He was removed from the service for the dishonesty. The decision of removal was upheld by the labour court as well as a single judge of High Court but a Division Bench in appeal held that the punishment gave excess gravity to the offence and directed the appellant to give fresh appointment to the respondent. The Supreme Court observed that gravity of misconduct could not be minimised by the fact the conductor was not earlier caught in such dishonest misconduct and held that there was no justification for interfering with the punishment.

In a case, disciplinary proceedings were initiated by the appellant against some of its workmen and in the preliminary enquiry, the workers were found to be guilty and punishment was imposed on them. The aggrieved workers contended before the industrial tribunal that the enquiry was not conducted properly and there was serious violation of principles of natural justice on the basis that the workmen during the course of enquiry sought the assistance of lawyer to help them in the enquiry proceedings but their plea was rejected by the enquiry officer and thereafter they did not participated in the proceedings and the enquiry officer decided against them. The tribunal as well as the High Court quashed the enquiry proceedings and the appellant was given a chance to prove the charge afresh by adducing evidence before the tribunal. In appeal by the employer, the Supreme Court observed that in this case the presenting officer was not a law graduate nor was he a legally trained person and further the nature of charges against the workmen were not complex involving voluminous records. The assistance of a lawyer for the workmen was not required in the disciplinary proceedings. The Supreme Court directed the tribunal to consider the matter on merits afresh.

Delay in initiation or conclusion of departmental inquiry is not always a ground to set aside departmental inquiry and quash charges. It has been held that court should consider all relevant facts and determine whether setting aside of disciplinary proceeding is in interest of honest administration.

In a case, a scheme was formulated for the gradual absorption of employees of Vayudoot Company (in Short Haul Operations Department) in the Indian Airlines, when Vayudoot got merged in Indian Airlines. The writ petitions were filed by them and certain other persons challenging the scheme. A single Judge of the High Court allowed the petitions with certain directions but a Division Bench of the High Court in appeal did not upheld that decision. Against the decision of the Division Bench, the appeal was filed in the Supreme Court. The Supreme Court observed that it was optional for the Short Haul Operations Department employees to join the main stream of Indian Airlines. Once they chose to join the main stream, they could not turn back and challenge the conditions. Merely because some of the employees of Indian Airlines would suffer in terms of seniority and chances of promotion, the whole scheme could not be rejected as discriminatory or arbitrary. If the erstwhile Vayudoot employees were fixed horizontally as the junior most employees of that post, there would be no question of injustice. The Supreme Court

further observed that in case of policy decision employees might suffer to certain extent, but such sufferings should be taken to be incidence of service. The appeal was dismissed by the Supreme Court.

In case of termination of service due to misconduct, if workman is held entitled to reinstatement, it does not necessarily justify grant of back wages. The payment of back wages is a discretionary power which has to be exercised keeping in view the facts in entirety. Once employer has lost confidence in employee and bona fide loss of confidence is affirmed, reinstatement cannot be directed. It has been held by the Supreme Court while considering whether punishment of termination upon a bank employee is shockingly excessive or disproportionate to gravity of proved misconduct, loss of confidence in an employee is an important and relevant factor. Bank was held to be justified in contending that not only employees who are dishonest but those who are guilty of gross negligence are not fit to continue the service. It was held by the Supreme Court that High Court's interference with the findings of departmental enquiry without expressly holding that finding of guilt was erroneous. Finding of guilt by departmental enquiry was upheld by the Supreme Court but punishment was modified from dismissal to compulsory retirement. In case of misconducts of grave nature like theft or corruption, it was held by the Supreme Court that no punishment other than dismissal is punishable.

Where appellant appointed at Class III post in a public sector enterprise could not maintain standard of confidentiality and discretion required to be maintained and indulged in making scandalous remarks before press official alleging widespread corruption within the organization, his conduct was found to be not of a *bona fide* whistle blower and his termination was held to be not disproportionate to misconduct.

Where a departmental enquiry is independent of criminal proceedings, acquittal in criminal court will be of no help to the employee. Allegations of theft against the respondent were proved in fair departmental enquiry and he was dismissed from services. However, he was acquitted of offences in criminal revision. The question arose that what will be the effect of such acquittal? It was held that question of considering reinstatement after decision of acquittal or discharge by a competent criminal court arises only and only if dismissal from services was based on conviction by criminal court in view of provisions of *Article 311(2) of Constitution* or analogous statutory rules applicable in a case. It was further held by the Supreme Court that even if a person stands acquitted by a criminal court, domestic enquiry can be conducted since the standard of proof required in them are different. It was held that delinquent employee was found guilty of charges and natural justice was adhered to in the proceedings, punishment of dismissal was proportionate to delinquency. It was further held that once employer has lost confidence in the employee and bona fide loss of confidence is affirmed, reinstatement cannot be directed by court.

It was further held by the Supreme Court that order of the Labour Court upholding punishment of dismissal should not have been interfered by the High Court unless the charges leveled in domestic enquiry and criminal trial were same and the witnesses were also the same. Order of dismissal was modified by High Court to order of termination with terminal benefits. This was not challeng32ed by the employer, therefore, delinquent employee was held entitled to said relief.

Where punishment of compulsory retirement was imposed on the Store Attendant in Bank Note Press due to contracting second marriage and nondisclosure of it, the Supreme Court held that court should not interfere with employer's decision in matters of punishment unless it is illogical, or suffered from procedural impropriety or shocking disproportionality.

Non-supply of the documents relied on by the Inquiry Officer do not vitiate the departmental proceedings in entirety. Directing reinstatement of employee in all cases of such failure reduces rules of justice to mechanical ritual. A settled principle of natural justice is that if any material is sought to be used in an enquiry, then copies of that

material should be supplied to the party affected.

In a case involving regularisation of service, the employee discharged duties as material checking clerk for 6 years and also passed written examination but secured less marks in interview, directions were issued to consider him for selection to post in 'open time' and on such selection to grant him seniority too.

Where labour court gave direction for reinstatement of workman but without back wages and no specific direction entitling consequential benefits to workman was given, it was held that he would not claim benefit of national increments during period of service.

Only general principles of evidence apply to the proceedings before labour and industrial tribunal but provisions of the *Evidence Act* do not apply. Where a workman is dismissed from service without holding enquiry then it is on the management to prove that his dismissal was justified as it was not possible to conduct enquiry to prove misconduct of the workman. Burden of proving a fact lies on the party who substantially affirms it and not on the party who denies it. Labour court was right in putting up onus on the management to prove that dismissal was justified but onus should not have been shifted on the appellant workman to prove that his dismissal was unjustified.

In a case the question was under what circumstances dismissal without enquiry is permissible? Respondent went on unauthorized leave on two occasions for 266 days which was condoned by the appellant bank. Again she went on leave without sanction for 150 days, bank invoked clause 17(b) of the Fifth Bipartite Settlement and issued notice to her to join within 30 days failing which it will presumed that she has voluntarily terminated service. She failed to join and bank treated her as deemed to have voluntarily terminated her employment. It was held by the Supreme Court that no establishment can function if it allows its employees to behave in this manner. Order of the bank was held to be valid.

Complicated principles and procedures laid down in *Civil Procedure Code* and *Evidence Act* are not applicable to domestic enquiry. The only right of a delinquent employee is that he must be informed of charges against him and he must be given full opportunity of defending himself against those charges.

Termination Simpliciter

When an order of termination can be treated as simpliciter or when it can be treated as punitive and when a stigma is said to be attached to an employee discharged during the period of probation, was a question before the Supreme Court in a case involving termination of service of an employee under U.P. Temporary Government Servants (Termination of Service Rules, 1975). The Supreme Court observed, "if findings were arrived at in an enquiry as to misconduct, behind the back of the officer or without a regular departmental enquiry, the simple order of termination is to be treated as 'founded' on the allegations and will be bad. But if the enquiry was not held, no findings were arrived at and the employer was not inclined to conduct an enquiry, it would only be a case of motive and the order would not be bad. Similar is the position if the employer did not want to enquire into the truth of the allegations because of delay in regular departmental proceedings or he was doubtful about securing evidence. In such a circumstance, the allegations would be a motive and not the foundation and the simple order of termination would be valid. For a long line of decisions it appears to us that whether an order of termination is simpliciter or punitive has ultimately to be decided having due regard to the facts and circumstances of each case, Many a times the distinction between the foundation and motive in relation to an order of termination is either then or overlapping. It may be difficult either to categorise or classify strictly orders of termination simpliciter falling in one or other

category, based on misconduct as foundation for passing the order of termination simpliciter or on motive on the ground of unsuitability to continue in service." Proportionately of punishment depends upon the circumstances in which alleged misconduct was committed as well as nature of misconduct.

Reappreciation of Evidence by High Court

A Head Constable on *band-o-bast*-duty was held guilty of misconduct of committing theft of C.C.T.V. lens costing Rs. 15,000 and was dismissed from service. The High Court quashed the dismissal of head constable and granted reinstatement with back wages and benefits. In appeal by the State, the Supreme Court observed that there was no allegations of violation of natural justice or illegality in conducting the enquiry. It was found that the High Court reappreciated the evidence as an appellate authority. The High Court was held to have committed patent error of law, as it could not under *Article 226 of the Constitution of India* act as an appellate Court and reappreciate the evidence.

An Individual dispute was allowed to be referred even though the facts constituting the cause of action transpired before s. 2A came into force. The section does not prescribe any time-limit for making a reference. The discretion of the appropriate Government under s. 10(1) to make a reference or not is not affected by the section. Where an application of the workman under s. 10 is pending before a Labour Court, his application for reference of the same dispute under s. 2A was entertained. If the requirements of S. 2A are satisfied, the jurisdiction of the civil courts becomes ousted.

The dispute raised by the employee concerned is a deemed industrial dispute notwithstanding that no other workmen or their union came forward to support the dispute. Section 10 which authorises the appropriate Government to make reference does not distinguish a dispute under s. 2(k) from that under s. 2A. Even where the sponsoring workers or a union withdraws its support, dispute under s. 2A remains an industrial dispute and can be adjudicated accordingly.

An individual dispute can be raised for testing the validity of a retirement. A dispute which does not fall within the periferry of s. 2A can qualify as an industrial dispute if it is sponsored by other workmen or unions. The claim of an employee to be declared as semi permanent on completion of two years' service was held to be not an industrial dispute, a writ petition was accordingly allowed. A civil suit or arbitration would also be available as remedies. The civil court has jurisdiction to entertain the grievance of a person in relation to his service conditions unless it becomes an industrial dispute by espousal as contemplated by the decisions of the Supreme Court in *Bombay Union of Journalists and Premier Automobiles* cases.

An industrial dispute under s. 2A does not abate or come to an end on the death of the workman concerned.

In a case, Labour Court found that the bus conductor after collecting money from the passengers had not issued tickets to them; there was intention to misappropriate the money collected from passengers. High Court directed reinstatement of the conductor with back wages on the ground that the passengers found without tickets were not examined and cash with the conductor was not checked. It was held by the Supreme Court setting aside the judgment of the High Court that for reversing findings of fact recorded by domestic tribunal, cogent reasons should be provided by the High Court and non-observance of this would vitiate judicial order.

A Collective Dispute

A collective dispute dose not mean that all the workmen or a majority of them of the establishment concerned should sponsor and support the dispute. In all cases outside section 2A of the Act, a labour dispute becomes an industrial dispute if it has the support of a substantial section of the workmen concerned in the establishment. This is also called community of interest.

Nature of Proof Required to Establish Collective Character and Community of Interest

What would be a substantial or a considerable section of workmen in a given case would, of course, depend upon the particular facts. That an industrial dispute is supported by other workmen will also have to be established either in the form of a resolution of a union of which the workmen may be members or of the workmen themselves, who support the dispute, or in any other manner. For example, gratuity is a collective dispute and it is not necessary that it should be supported by substantial number.

Where there is a general union and at its instance an industrial dispute is referred for adjudication, the mere fact that the general union has on its roll only a few of the workmen of a mill as its members, that in itself would not be sufficient to show that there is a collective dispute. In such a case not only should it be proved that the workmen who are members of the general union formed a substantial or a considerable section of the workmen of the particular mills, but also that in order to vest the dispute with the character of an industrial dispute, those members participated together and arrived at an understanding, either by a resolution or by other means, and collectively supported on the date of the reference the demand or the cause of an individual dispute. In ascertaining whether there has been such a collective expression and support, reference to workmen of other establishments who happened to be members of the general union would be irrelevant.

Supporting Workmen must be Directly and Substantially Interested

“Those who seek to support the cause of a workman must themselves be directly and substantially interested in the dispute; persons who are not employees of the same employer cannot be regarded as so interested, that by their support they may convert an individual dispute into an industrial dispute.” Workmen cannot raise dispute about non-workmen.

Support must be Forthcoming on the Date of Reference

Support must Come from Employees of the Same Establishment and of the Same Employer

Where an employer at Madras had an establishment at Bombay and the dispute was in relation to an individual workman in the Bombay establishment, it would not become an industrial dispute even if the individual dispute was supported by the workmen in the same industry in Bombay or by the workmen of the employer in Madras.

A Dispute Espoused by Foreign Union cannot be Industrial Dispute

A dispute between a line operator and its management which was not espoused by any of the unions of workmen employed in similar or allied trades, but by a foreign union, viz., U.P. Working Journalists Union, Lucknow, with which the lino operator had no connection whatsoever, was held to be an individual dispute and the reference made for such a dispute was held to be bad.

Union need not be Recognised: All Workmen need not be Parties

A dispute becomes an industrial dispute even where it is sponsored by a union which is not registered or where the dispute raised is by only some of the workmen because in either case the matter falls within sec. 18 (3) (a) and (b) of the Act.

Membership ofunion is not Conclusive as to its Nexus with Dispute

Mere membership of the union is not conclusive as to its nexus with the dispute. Once the nexus is established, the condition of antecedent membership of the union recedes to the background and cannot by regarded as one of the substance of the rule.

It is not necessary that on the date on which a disciplinary action is taken in respect of an employee, the cause of the aggrieved workmen should be taken up by the union or the substantial section of the workmen.

Number of Workmen Required to Make an Industrial Dispute

No hard and fast rule can be laid down as to number of workmen whose association will convert an individual into an industrial dispute. That must depend on the facts of each case, and the nature of the dispute. The group might even be a majority but it must be such as to lead to an interference that the dispute is one, which affects workmen as a class.

Where the cause of an individual workman was taken up by the union which had twenty five percent of the entire workers as members, it was held that a substantial section or an appreciable number of workmen had taken up the cause of the individual workman and, therefore, the dispute was an industrial dispute. Even when most of the workmen are not members of the union espousing a cause, the dispute will be an industrial dispute and the conciliation officer would be entitled to hold proceedings. A dispute may be raised by a minority group of workers. Subsequent withdrawal of sponsoring workers so as to reduce the dispute to its original status of an individual dispute, would not militate against the dispute being disposed of as an industrial dispute.

Well Recognised Sections may take up Dispute

A well-recognised section of an undertaking like clerical staff should be considered as a unit for the purpose of the application of the rule that a considerable body of workmen should support the dispute in order to make it an industrial dispute.

Community of Interests

Section 2A has not changed the principle of community of interests so far as industrial disputes are concerned.

(p) Where a workman raises an industrial dispute and dies during its pendency, the legal heirs of the deceased workman cannot be deprived of their right to continue the proceedings and claim benefits as successors.

The workman may have withdrawn the demands with a view to negotiating with the employer, but such withdrawal

of demands cannot be said to be “settlement” as contemplated by sec. 2(p) of the Act.

(q) Where a workman dismissed from service and directed to be reinstated accepts such reinstatement with back wages, he cannot afterwards raise dispute regarding back wages. Such dispute has been held to be not maintainable.

Industrial Establishment or Undertaking [Section 2(KA)]

“Industrial establishment or undertaking” means an establishment or undertaking in which any industry is carried on.

The proviso to the section says that where many activities are carried on in any establishment and only one or some of the activities are industries then—

(a) in case the unit carrying on industrial activity is severable from the other units of the same establishment, such unit shall be deemed to be a separate industrial establishment.

(b) if the predominant activity carried on in any establishment is an industry and other activities carried on in the same establishment are—

(i) not severable from the predominant activity, and

(ii) for the purpose of carrying on such predominant activity,

the entire establishment will be deemed to be an industrial establishment or undertaking.

A place where any industry is carried on is regarded, for the purposes of the Act, an industrial establishment or an undertaking. Where several activities are being carried on at a place and only one or more of them qualify as industry, the place where such activity is being carried on would be regarded as an industry provided that it is severable from the rest of the undertaking or establishment. Where the predominant activity is of industrial nature but is not severable from the rest of the activities then the whole of the place would be regarded as an industrial establishment if the other activities are being carried on for the purpose of aiding the carrying on the predominant activity.

Insurance Company [Section 2(KK)]

‘Insurance Company’ means an insurance company as defined in *section 2 of the Insurance Act, 1938* (4 of 1938), having branches or other establishments in more than one State.

The definition has been defined in term of its definition in *s. 2 of the Insurance Act, 1938* , According to *Insurance Act* , an insurance company means any insurer being a company, association or partnership which may be wound up under the Indian *Companies Act* , 1913 (now of 1956) or to which the *Indian Partnership Act, 1932* applies.

Khadi [Section 2 (KKA)]

"Khadi" has the meaning assigned to it in clause (d) of *section 2 of the Khadi and Village Industries Commission Act, 1956* (61 of 1956). According to *Khadi and Village Industries Commission Act, 1956* , 'Khadi' means any cloth woven on handlooms in India from cotton, silk or wollen yarn handspun in India or from a mixture of any two or all of such yarns.

Labour Court [Section 2(KKB)]

'Labour Court' means a Labour Court constituted under *s. 7 of the Industrial Disputes Act, 1947* . The Labour Courts are constituted under s. 7 for adjudication of industrial disputes relating to matters specified in the Second Schedule. The Labour Courts are constituted by the appropriate Government. Some other functions under the Act can also be assigned to them. [For further details see under s. 7].

Lay-off [Section 2(KKK)]

"Lay-off" means the failure, refusal or inability of an employer to give employment to a workman whose name is borne on the muster rolls of his industrial establishment and who had not been retrenched on any of the following grounds:—

(i) shortage of coal, power or raw materials, or

(ii) accumulation of stocks, or

(iii) breakdown of machinery, or

(iv) natural calamity, or

(v) for any other connected reason.

The explanation given with the provision says that when a workman (whose name is borne on the muster rolls of the industrial establishment) presents himself on the fixed time during normal working hours on any day, he has to be given employment by the employer within two hours of his so presenting. If the workman is not given work within two hours, he shall be deemed to have been laid-off for that day.

The proviso to the section says that when a workman who comes for first half of the shift is asked to present himself

for work during the second half of the shift, he shall be deemed to have been laid-off only for one-half of that day.

The proviso further provides that even if after presenting himself in the second half of the shift he is not given work, he shall not be deemed to have been laid-off for the second half of the shift for the day but he will be entitled to full basic wages and dearness allowance for that part of the day.

(Chapter V-A of the Act deals with detailed provisions about lay-off and retrenchment).

Lock-out [Section 2(L)]

"Lock-out" means the—

(i) temporary closing of a place of employment, or

(ii) the suspension of work, or

(iii) the refusal by an employer to continue to employ any number of persons employed by him.

It comprehends the action of an employer in temporarily closing down his undertaking or refusing to provide work at all, provided that by so doing he is seeking to compel his employees to accept demands made either by him or another employer or to withdraw demands made by them on him or by other employees upon another employer or other employers. As the strike is a weapon in the hands of workers, lock-out is a weapon in the hands of employers.

Ingredients of a Lock-out

Following are the ingredients of a lock-out

(i) Temporary cessation of work or withholding of work in some form.

(ii) The element of a demand for which the factory is locked out.

(iii) The intention to re-open or take the workers back if they accept the demands.

Termination of Service and Lock-out

Termination of service does not amount to lock-out because in termination of service the employment or industrial relationship is severed or broken whereas in a lock-out there is only suspension of relationship. Termination of services of more than one person at the same time would not be lock-out.

Suspension and Lock-out

A suspension of workmen is not a lock out even if it is for indefinite period, without pay, provisional of a number of workmen or simultaneously.

Retrenchment, Closure and Lock-out

Termination of employment by closure or retrenchment does not amount to lock- out.

Punishment and Lock-out

A lock-out is neither an alteration of the conditions of the service of the workmen, nor a discharge, nor punishment whether by dismissal or otherwise of the workmen within the meaning of the *section 33 of the Industrial Disputes Act, 1947* . It is not a lay-off also.

Major port [Section 2(LA)]

'Major port' means a major port as defined in clause (8) of section 3 of the Indian *Ports Act* , 1908 (15 of 1908).

Mine [Section 2(LB)]

'Mine' means a mine as defined in clause (j) of sub-section (1) of *section 2 of the Mines Act, 1952* (32 of 1952).

National Tribunal [Section 2(LL)]

'National Tribunal' means a National Industrial Tribunal constituted under s. 7B. The Central Government may, by notification in the Official Gazette, constitute one or more National Industrial Tribunals for adjudication of industrial disputes which, in the opinion of the Central Government, involve questions of national importance or are of such a nature that industrial establishments situated in more than one state are likely to be interested in.

Office-bearer [Section 2(LLL)]

'Office-bearer', in relation to a trade union, includes any member of the executive thereof, but does not include an auditor. The members of the executive of a trade union are its office-bearers. The auditor is not included in the officebearers.

Prescribed [Section 2(M)]

The term 'prescribed' means prescribed by rules made under this Act.

Public Utility Service [Section 2(N)]