CHAPTER IV

DISPUTE RESOLUTION PROCESS IN LABOUR DISPUTES

1. Outline of Labour Disputes Cases

Background of Disputes

The rise of large scale industries in India dates back only from the latter half of the 19th century. The first cotton mills in India was set up in 1851 in Bombay and the first jute mills in 1855 in Bengal. Thereafter the number of industries began to increase both in Bombay and Bengal. The industrial set up has brought in its wake problems of employment, non-employment, terms of employment and conditions of service of the workmen employed therein, which ultimately led to disputes between labour and management. However, until 1926 no on legislative attempt was made to delineate the contour of the expression "trade dispute" or any of its synonyms. It was only in 1926 that section 2(g) of the Trade Unions Act, 1926 defined "trade dispute" to mean:

> "any dispute between employers and workmen, or between workmen and workmen, or between employers and employers which is connected with the employment or non-employment or the terms of employment or the conditions of labour of any persons."

Three years later the Trade Dispute Act, 1929, used the expression "trade dispute." Thus Section 2 (f) of the Trade Dispute Act, 1929 defined "trade dispute" to mean:

> "any dispute or difference between employers and workmen and workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour of any person."

The aforesaid definition was borrowed from Section 8 of the (English) Industrial Courts Act, 1919.

The scope of Section 2 (f) attracted the attention of the Royal Commission of labour. The Commission suggested widening the coverage of the definition. The Trade Dispute (Amendment) Act, 1938, accordingly amended the definition of the Trade Dispute Act, 1929 to include disputes between employers and employers and at the same time provided for the omission of the following words between an employer and any of his workmen from Section 3 of the Trade Dispute Act, 1929. The amended definition of the "trade dispute" was incorporated in the Industrial Disputes Act, 1947.

In 1947 Section 2 (k) of the Industrial Disputes Act, 1947, defines "industrial dispute" to mean:

> 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 the conditions of labour, of any person.

The dimensions of the aforesaid definition determine the permissible area of both community intervention in industrial relations as well as labour activity.

Stated broadly, the definition of "industrial dispute" contains two limitations. (i) The adjective "Industrial" relates to the dispute of an industry as defined in the Act, and (ii) it expressly states that not all sorts of dispute and differences but only those which bear upon the relationship of employers and workmen regarding employment, non-employment, terms of employment and conditions of labour are contemplated.

Types of Disputes

Broadly speaking dispute may be classified into three broad categories, namely, (i) interest disputes and rights dispute (ii) collective and individual dispute and (iii) dispute relating to formation and recognition of trade union.

1) Interest Disputes and Rights Disputes

Interest disputes are related with collective labour interest or what is also referred to as community of interest. They are raised for securing benefits for labour as a class. By espousing

these disputes, the union or a group of persons attempt to establish such rights which are not yet in existence, or they want to increase the magnitude of some existing rights. From this point of view, disputes relating to, for example, revision of pay scales, dearness allowance, bonus, holidays, compensatory allowance, etc. can be classified as interest disputes are of collective nature, even as they may not always benefit all employees of the organisation concerned.

Rights disputes, on the other hand, usually related to existing rights of disputant parties. For example, disputes relating to interpretation of collective agreement or individual employment contract or any law, etc. are rights disputes. These disputes can be expressed in the form of making of money claims, complaints against unlawful dismissals or other disciplinary actions, non-implementation or partial implementation of existing collective agreement, etc. Such claims may be based in a settlement, court award, law, or even a custom. It is thus noticeable that, rights disputes related to existing standards and stipulations in contracts on which the employees have been employed.[1]

2) Collective and Industrial Disputes

The alignment of parties determine whether a dispute is "individual" or collective. Where both the parties are composed of single individuals, the case falls into the category of "industrial dispute". Where one, or both, of the parties include more than one person the dispute is "collective". The emphasis is on the parties to the dispute, and not on the nature of rights involved. A "collective dispute" may either relate to "collective rights", e.g., wages, bonus, holidays and the like, or to "individual disputes" generally relate to "individual rights", but the theoretical possibility of its being concerned with "collective rights" is not ruled out.

(a) "Collective disputes"

i. Both the parties include more than one person:
   Employers and Workman
   Employers and Employers
   Workmen and Workmen

ii. Only one of the parties include more than one person
   Employer and Workman

[1] Debi S. Saini, *Redressal of Labour Grievances, Claims and disputes* Oxford & IBH Publishing Ltd., Bombay (1994) p.45.

Employer and Employer

Workman and Employers

Workman and Workmen

(b) "Individual Disputes"

Employer and Workman

Employer and Employers

Workman and Workman

This categorization raises a basic question, namely are "individual disputes" "industrial disputes?" The question has evoked considerable conflict of opinion.

3) Disputes Relating to Formation and/or Recognition of Unions

In cases of weak labour power or powerful employers, the management does not allow formation of a union in the organisation. It may resort to unfair labour practices for ensuring this. Sometimes, a union may be allowed to be formed, but the employer may refuse to recognize it for collective bargaining. Also, the employer may "resort to the use of various repressive measures to weaken a union." Interestingly, the Indian Law provides for formation of a union but has yet to make legal provisions for union recognition by employers. This may related to one union as well as multi-union situations. Often it also happens that, the management prefers to negotiate with a particular union of its choice and not with the other or others. Disputes which arise from this situation are referred to as recognition disputes. Recognition disputes, technically speaking, are not considered as industrial disputes under the Industrial Disputes Act 1947 (IDA). For this reason, such disputes can be contested between labour and management only at a moral level; or they may involve making of complaint against unfair labour practices by one party against the other party. For the processing of such disputes, it is necessary that workmen remain united, alert, and also make use of legal provisions to strengthen their position.[2]

[2] *Id*., at 5-6.

2. Organization/Institutions for Dispute Resolution

Courts, in-court mediation, special courts, arbitration, mediation, administrative mechanism, others (industrial association, consumers' association, legal aid association, bar association, senior members of the society, community and native agreements, etc.)

(i) Works Committee[3]

The institutions of work committee were introduced in 1947 under the Industrial Disputes Act, 1947 (IDA), to promote measures for securing good relations between employers and workmen.[4] It is concerned with problems arising in day-to-day working of the establishment and to ascertain grievances of the workmen. The determinative decision of works committee is neither agreement nor compromise nor arbitration. Further, it is neither binding on the parties nor enforceable under the Act.[5]

(ii) Conciliation officers

The appropriate government is empowered under Industrial Disputes Act, 1947 to appoint any number of conciliation officers, for mediating in and promoting the settlement of industrial disputes.[6] A conciliation officer is appointed for a specified area; or for specified industries in a specified area; or for one or more specified industries; either permanently; or for a limited period.[7]

(iii) Board of Conciliation

This is a higher forum which is constituted for a specific dispute. It is not a permanent institution like the Conciliation Officer. The Government may, as occasion arises, constitute a Board of Conciliation for settlement of an industrial dispute with an independent chairman and equal representatives of the parties concerned as its members. The chairman who is appointed by the Government, is to be a person unconnected with the dispute or with any industry directly affected by such dispute. Other members are to be appointed on the recommendations of the parties concerned, and if any party fails to make recommendations, the Government

[3] IDA, 1947, Section 3.
[4] *Id.,* Section 3(2).
[5] *North Brook Jute Co. Ltd. v Their Workmen* (1960) 1 LLJ 580 (SC); *See,* S.C.Srivastava, *Industrial Relations Machinery*, 25. (1983, Deep & Deep, New Delhi).
[6] IDA, 1947, Section 4(1).
[7] *Id.,* Section 4(2).

shall appoint such persons as it thinks fit to represent that party. The Board cannot admit a dispute in conciliation on its own. It can act only when reference is made to it by the Government.[8]

The Boards of conciliation are however, rarely constituted by the Government these days. The original intention was that major disputes should be referred to a Board and minor disputes should be handled by the conciliation officers. In practice, however, it was found that when the parties to the dispute could not come to an agreement between themselves, their representatives on the Board in association with independent chairman (unless latter had the role of an umpire or arbitrator), could rarely arrive at a settlement. The much more flexible procedure followed by the conciliation officer is found to be more acceptable. This is more so when disputes relate to a whole industry, or important issues, and a senior officer of the Industrial Relations Machinery, i.e. a senior officer of the Directorate of Labour, is entrusted with the work of conciliation. The Chief Labour Commissioner (Central) or Labour Commissioner of the State Government generally intervene themselves in conciliation when important issues form the subject matters of the dispute.

(iv) Court of Inquiry

Under the Industrial Disputes Act, 1947, Court of Inquiry may be constituted by the appropriate Government for inquiring about matter appearing to be connected with or relevant to an Industrial Dispute. The court may consist of one or more independent persons. It has to submit its report within six months on the matter referred to Units.[9]

(1) The appropriate Government may be ocassion arises, by notification in the Official Gazette constitute a Court of Inquiry for inquiring into any matter appearing to be connected with a relevant to an industrial dispute.

(2) A court may consist of one independent person or of such numbe of independent person as the appropriate Government may think fit and where a court consists of two or more members, one of them shall be appointed as the Chairman.

[8] *Id.,* Section 5.
[9] *Id.,* Section 6.

(v) Voluntary Arbitration

When Conciliation Officer or Board of Conciliation fail to resolve conflict/dispute, parties may voluntary arbitration for settling their dispute. For settlement of differences or conflicts between two parties, arbitration is an age old practice in India.

Section 10-A of the Industrial Disputes Act, 1947 provides for the settlement of industrial disputes by voluntary reference of dispute to arbitrators and to achieve this purpose, this section makes following provisions:

Where any industrial dispute exists or in apprehended and the same has not yet been referred for adjudication to Labour court, Tribunal or National Tribunal, the employer and the workmen may refer the dispute, by a written agreement, for the arbitration of specified arbitration or arbitrators. The presiding officer of a Labour Court of Tribunal or National Tribunal can also be named by the parties as arbitrator.

Where an arbitration agreement provides for a reference of the dispute to an even number of arbitrators, the agreement shall provide for the appointment of another person as umpire who shall enter upon the reference, if the arbitrators are equally divided in their opinion, and the award of the umpire shall prevail and shall be deemed to be the arbitration award for the purpose of this Act.

The Government of India has also been emphasizing the importance of voluntary arbitration for settlement of disputes in the labour policy chapter in the first three plan documents, and has also been advocating this step as an essential feature of collective bargaining. This was also incorporated in the Code of Discipline in Industry adopted at the 15th Indian Labour Conference in 1958. Parties were enjoined to adopt voluntary arbitration without any reservation. The position was reviewed in 1962 at the session of the Indian Labour Conference where it was agreed that this step would be the normal method after conciliation effort fails, except when the employer feels that for some reason he would prefer adjudication. In the Industrial Trade Resolution also which was adopted at the time of Chinese aggression, voluntary arbitration was accepted as a must in all matters of disputes. The Government had thereafter set up a National Arbitration Board for making the measure popular in all the states, and all efforts are being made to sell this idea of management and employees and their unions.

In 1956 the Government decided to place voluntary arbitration as one of the measures for settlement of a dispute through third party intervention under the law. Sec. 10A was added to the Industrial Disputes Act, and it was enforced from 10th March, 1957.

(vi) Adjudication

Unlike conciliation and voluntary arbitration, adjudication is compulsory method of resolving conflict. The Industrial Disputes Act, 1947 provides the machinery for adjudication, namely, Labour Courts, Industrial Tribunals and National Tribunals.

(a) Labour Courts:

(i) The appropriate Government is authorized under the Industrial Disputes Act to set up one or more labour courts for the adjudication of industrial disputes relating to any of the following matter:[10]

1. The propriety or legality of an order passed by an employer under the standing orders;
2. The application and interpretation of standing orders;
3. Discharge or dismissal of workmen including reinstatement / grant of relief to workmen wrongfully dismissed;
4. Withdrawal of any customary concession or privilege;
5. Illegality or otherwise of a strike or lock-out.[11]

(ii) The Labour Court consist of one person who is known as presiding officer.

(b) Industrial tribunals

(i) The appropriate Government is empowered under the Industrial Disputes Act, 1947 to constitute one or more industrial tribunals for the adjudication of industrial disputes relating to: [12]

1. Wages, including the period and mode of payment;
2. Compensatory and other allowances;
3. Hours of work and rest intervals;
4. Leave with wages and holidays;
5. Bonus, profit sharing, provident fund and gratuity;

[10] *Id.*, Section 7(1)
[11] *Id.*, Second Schedule.
[12] *Id.*, Section 7A(1).

6. Shift working otherwise than in accordance with standing orders;
7. Classification by grades;
8. Rules of discipline;
9. Rationalisation;
10. Retrenchment of workmen and closure of establishment.[13]

(ii) The Tribunal shall consist of one person knows as Presiding officer. The Government may also appoint two assessors to advise the Presiding Officer in the proceedings.

(iii) Central Government has set up Industrial Tribunals - cum – Labour Courts (here in after referred to as CGIT) on the basis of concentration of industries in a region and the number of disputes arising in the region. At present, there are 17 CGIT-cum-Labour courts set up in the country.

(iv) Like Central Government, State Government and the administrations of the union territories have also a number of Industrial tribunals and Labour courts as on 31.10.1998 was 333.[14] There is a plan to set up 15 more CGIT-cum-Labour Courts during the IX Five Year Plan, where considered necessary and feasible.[15] This need arose due to year wise increase in the pendency before the existing CGIT-cum-labour courts.

(c) National Tribunals:

(i) The Central Government is authorized under the Industrial Disputes Act, 1947 to constitute one or more National Industrial Tribunals for the adjudication of industrial disputes which, involve questions of national importance or are of such a nature that industrial establishments situated in more than one states are likely to be interested in, or affected by, such disputes.[16]

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[13] *Id.,* Schedule III.
[14] Annual Report 2000-2001, Ministry of Labour, Government of India.
[15] Government of India, Ministry of Labour, Rajya Sabha Unstarred Question No 820, Answered On 02.03.2000, *Disputes Pending For Adjudication*; See http://164.100.24.219/rsq/quest.asp?qref=10405
[16] IDA, 1947, Section 7B(1).

(ii) It shall consist of one person, known as presiding officer. He may also be assisted by two assessors appointed by the Central Government to advise him in adjudicating disputes.

(vii) Grievance Settlement Authorities

Under Section 9C of Industrial Disputes Act, 1947 (which has not yet been enforced) it has been provided that an employer in an industrial establishment with 50 or more employees should provide for a grievance settlement authority for the settlement of industrial disputes with individual employees.[17] These bodies are made up of representatives of workers and employers. No reference can be made under the Act to Boards of Conciliation, Labour courts or Industrial tribunals, unless the dispute has first been the subject of a decision of a grievance settlement authority.[18]

(viii) *Lok Adalats*

The Labour *Lok Adalats* in India to bring down the pendency of cases in labour courts are being held. Thus in Punjab in order to reduce [19] a backlog of about 18,000 cases some of even more than five years old,[20] Labour *Lok Adalats* were organized. *Lok Adalat* relating to labour disputes was held at Ludhiana. Up to May, 2001, about 6,600 cases were settled by the *Lok Adalats* held in Punjab.[21] Like Punjab in Delhi also in order to reduce the pendency of cases, a *Lok-Adalat* was organized on 9th November, 2001 in the CGIT-cum-Labour Court and 69 cases have been settled. [22] In the Employees Provident Fund Organization, a system of ventilation and redressal of grievances from employees, employers, trade unions, subscribers of provident fund has been introduced. For the same, *Lok Adalats* are held on 10th of every month. During 2000-2001 915 Lok Adalats were organized at various field offices of the Employees Provident Fund Organization, in which 5758 out of 6423 cases were disposed of during 2000-2001. [23]

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[17] *Id*., Section 9C.
[18] http://www.ilo.org/public/english/employment/gems/eeo/law/india/c_all.htm
[19] *Set up Lok Adalats for labour disputes*, The Hindu, New Delhi, Sunday, may 27, 2001.
[20] Mr. A Sivananthiran, Senior Specialist, ILO-SAAT and officials of Ministry of Labour, Government of Punjab, http://www.iira-india.com/news3.htm
[21] *Supra* note 19.
[22] Government of India, Ministry of Labour, Rajya Sabha Unstarred Question No 541**,** Answered On 22.11.2001, *Pending Cases In Labour Courts And Industrial Tribunals* ; See http://164.100.24.219/rsq/quest.asp?qref=58848
[23] *Supra* note 14.

(ix) Central Industrial Relations Machinery (CIRM)

In pursuance of the recommendation of the Royal Commission on Labour in India for prevention and settlement of industrial disputes, enforcement of labour laws and to promote welfare of workers in the undertakings of the Central Government the Organization of the Chief Labour Commissioner known as Central Industrial Relations Machinery (CIRM) was set up in April, 1945. The CIRM is headed by the Chief Labour Commissioner. The machinery has a complement of 253 officers and their establishments are spread over in different parts of the country with zonal, regional and unit level formations. At present there are 18 regions each headed by Regional Labour Commissioner with headquarters at Ajmer, Ahmedabad, Asansol, Bangalore, Mumbai, Bhubaneshwar, Chandigarh, Cochin, Calcutta, Guwahati, Hyderabad, Jabalpur, Chennai, New Delhi, Patna, Nagpur, Dhanbad and Kanpur. Our of these, 14 regions have been placed under the supervision of field/zonal Deputy Chief Labour Commissioners and 4 regional offices are supervised directly by headquarters office of Chief Labour Commissioner.

The quasi-judicial functions of CIRM broadly consist of (i) promotion of peaceful and harmonious industrial relations through investigation, prevention and settlement of industrial disputes in the industries for which the Central Government is the appropriate Government under the Industrial Disputes Act, (ii) enforcement of Awards and settlements in the Central Sphere.[24] The Officers of the CIRM also persuade the parties to accept voluntary arbitration for settlement of disputes, which are not otherwise settled. As a result, few disputes are settled by the parties through voluntary arbitration offered by the officers of the CIRM, either under the Code of Discipline or under Section 10-A of the Industrial Disputes Act. [25]

Quite apart from the aforesaid statutory mechanisms there are following non-statutory mechanisms for preventing and settling industrial disputes:

(i) Code of Discipline,

(ii) Joint Management Council,

(iii) Tripartite Machinery and

(iv) Joint Consultative Machinery .[26]

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[24] *Ibid.*

[25] Govt. of India, Ministry of Labour, Office of Chief Labour Commissioner, New Delhi. Standard reference note on the working of CIRM for the year 1999-00, No. 7(1)/2000-Coord.

[26] S.C.Srivastava, *Industrial Relations and Labour Laws*, Vikas Publishing House (2000).

(x) Non-governmental organizations (NGOs)

There are several NGOs registered in India, which deal with labour problems, espouse their cause, fight for their rights even up to the Supreme Court. The following are some of the prominent NGO's in the filed:

1) *DISHA* a NGO (a registered body) is working in the state of Gujarat and deal with organized labourers working under the Forest Department. It was able to raise the labourers' employment related issues at various levels of the Forest bureaucracy, as well as in the court of law. It also filed cases regarding regularization of employment of those labourers who have completed the stipulated period of service in Forest Department.[27]

2) *BANDHUA MUKTI MORCHA* has also done commendable area in the field of labour welfare. In 1984, it filed public interest litigation, wherein the practice of magistrates and judicial officers of letting off employers violating labour welfare legislations with small fines was condemned.[28] It was because of the efforts of this organization, that in 1991, the Supreme Court of India, constituted Committee, to identify bonded labourers and to collect all material in respect of them so that further directions could be issued in terms of the requirement of a scheme to rehabilitate them.[29]

3. Fact Finding regarding the Organizations/Institutions

(a) Statutory bases (laws or regulations on the establishment and procedures of the organization / institutions)

Article 246(4) of the Constitution of India empowers the Union and the states to legislate on the labour matters. In pursuance to this 165 legislation has been enacted; both at

[27] http://www.disha-india.org/forest.htm
[28] *BMM v Union of India*, (1984) 3 SCC 161.
[29] *Bandhua Mukti Morcha v Union of India*, (1991) 4 SCC 174.

Central and State levels to deal with various aspects of labour. These labour legislations are in conformity with the conventions of International Labour Organization (ILO), Indian Government has been enacting number of labour related legislations in conformity with the conventions, which are accepted as international standards for labour all over the world.

At present there are 59 Central legislation affecting labour. Quite apart from this States have also enacted various labour legislation which are applicable to only within those states. Central government controls the legal jurisdiction of applying labour laws in establishments like railways, defence and other industries which are of national importance. Some of prominent Central statutes are the Workmen's Compensation Act, 1923; Indian Trade Unions Act, 1926; The Payment of Wages Act, 1936; Minimum Wages Act, 1948; Weekly Holidays Act 1942; Industrial Employment (Standing Orders Act) 1946; Industrial Disputes Act 1947; Factories Act, 1948; Employees State Insurance Act, 1948; Employees Provident Funds Scheme, 1952; Employees Provident Funds & Miscellaneous Provisions Act, 1952; Working Journalists & Other Newspaper Employees Conditions of Service & Miscellaneous Provisions Act, 1955; Employment Exchange (Compulsory Notification of Vacancies) Act, 1959; Apprentices Act, 1961; Maternity Benefit Act, 1962; Contract Labour (Regulation & Abolition) Act, 1970; Employees Family Pension Scheme, 1971; Payment of Gratuity Act, 1972; Employees Deposit Linked Insurance Scheme, 1976; Equal Remuneration Act, 1976; Administrative Tribunal Act, 1985; Inter-State Migrant Workmen (Regulation of Employment & Conditions of Service) Act, 1979; Payment of Bonus Act, 1965; Labour Laws (Exemption From Furnishing Returns & Maintaining Registers by Certain Establishments) Act, 1988; Merchant Shipping Act, 1958; Children (Pledging of Labour) Act 1933; Child Labour (Prohibition & Regulation) Act, 1951; Beedi & Cigar Workers (Conditions of Employment) Act, 1966; Plantation Labour Act, 1951; Mines Act, 1952 and the Indian Railways Act, 1989, Quite apart from these Central enactments some states have enacted special legislations, which suit their industrial environment. Thus, Maharashtra has enacted the Maharashtra Recognition of Trade Unions & Prevention of Unfair Labour Practices Act, 1971; the Maharashtra Workmen' Minimum House-Rent Allowance Act 1983; and the Maharashtra Mathadi, Hamal, and other Manual Workers (Regulation, Employment & Welfare) Act, 1969; etc.

(b) Running cost

The cost of running dispute resolution mechanism involves not only the regular payment wages and allowances (including social security benefit to the Presiding Officers and supporting staff but also include the maintenance cost of physical structures and physical facilities to run these offices in smooth manner and every ancillary and incidental cost that helps in reducing social tension, by creating social welfare funds. Some of these costs are enumerated below:

1) Rs 10 million is sanctioned by the State of Karnataka to construct a new Labour court complex in the Bangalore City, which will house all the labour courts and tribunals.[30]
2) A budget provision of Rs. 5 million is made by the Employees Provident Fund Organisation and a provision of Rs.1.8 million by the Employee State Insurance Corporation, to publicize the programmes and achievements in the areas of provident fund, pension, medical care and cash benefits and other important decisions/developments in the field of social security for the benefit of the provident fund subscribers and insured persons and also for information of the general public.[31]
3) Under the scheme of National Child Labour Project financial assistance is given directly to the Districts Child Labour Projects Societies instead of routing it through the state governments. During the first year of the 9th five- year plan i.e. 1997-98, grants amounting to Rs. 189.3 million have been sanctioned to the 70 Districts Child Labour Projects Societies in 10 states. The details regarding sanction of funds (state-wise) are: [32]

S.No.	State	Grants Sanctioned
1.	Andhra Pradesh	Rs. 5,55,00,000
2.	Bihar	Rs. 1,89,00,000
3.	Karnataka	Rs. 27,00,000
4.	Maharashtra	Rs. 25,00,000
5.	Madhya Pradesh	Rs. 1,10,00,000
6.	Orissa	Rs. 3,42,00,000

[30] *ILO official moots revamp of labour courts*, Deccan Herald, Thursday, july 12, 2001. Bangalore ed.
[31] Government of India, Ministry of Labour, Rajya Sabha, Starred Question No 369**,** Answered On 14.12.2000, *Expenditure On Publicity*.
[32] Government of India, Ministry of Labour, Rajya Sabha Unstarred Question No 243**,** Answered On 20.11.1997, *Central Assistance For Rehabilitation of Child Bonded Labour*; See Http://164.100.24.219/Rsq/Quest.Asp?Qref=7080

7.	Rajasthan	Rs. 55,00,000
8.	Tamil Nadu	Rs. 2,60,00,000
9.	West Bengal	Rs. 2,00,00,000
10.	Uttar Pradesh	Rs. 1,30,00,000
	Total	Rs. 18,93,00,000

4) The expenditure incurred on establishment of E.D.P Centres, purchase of computer hardware, software, peripherals and payments for data entry work are debited to Budget Head of Computerization in the EPF Organization. The information relating to total expenditure in this regard, region-wise and year- wise, during the last 3 years is given below: [33]

S No.	**Region**	**Amount spent Rs.(In`000) during**		
		1993-94	1994-95	1995-96
1.	Andhra Pradesh	1199.83	1707.37	1426.19
2	Bihar	-	847.76	192.08
3	Delhi	193.09	2081.98	575.37
4	Gujarat	1407.16	-	
5	Haryana	-	789.69	-
6	Karnataka	261.04	1115.02	1759.66
7	Kerala	123.50	1557.32	364.56
8	Madhya Pradesh	978.51	547.40	529.11
9	Maharashtra	2661.75	3319.04	2666.84
10	N.E Region	36.57	1060.59	131.83
11	Orissa	181.08	674.55	71.03
12	Punjab	1038.09	1236.62	34.44
13	Rajasthan	430.41	920.35	80.91
14	Tamil Nadu	1089.46	897.00	669.68
15	Uttar Pradesh	-	795.27	40.76
16	West Bengal	929.38	1715.02	899.63
17	Central Office	76.97	5566.26	437.43
18	NATRSS	874.13	-	-

(c) Status

1. Every Board, court, Labour Court, Industrial Tribunal, National Tribunal and any other authority, constituted under the IDA, like, conciliation officer, have the same powers as are vested in a civil court under the Civil Procedure Code, 1908 when trying a suit, in

[33] Government of India, Ministry of Labour, Rajya Sabha Starred Question No 352, Answered On 16.12.1996, *Total Expenditure Incurred on Computerisation In EPF Organisation*, See http://164.100.24.219/rsq/quest.asp?qref=24770

respect of the matters, namely (a) enforcing the attendance of any person and examining him on oath; (b) compelling the production of documents and material objects; (c) issuing commissions for the examination of witnesses; (d) in respect of such other matters as may be prescribed.

2. Every inquiry or investigation by the above mentioned authorities is deemed to be a judicial proceeding within the meaning of sections 193 and 228 of the Indian Penal Code. [34]

(d) Persons in charge of resolution (qualification, requirement of legal education/ knowledge and appointment)

Labour Court: A person cannot be appointment as the presiding officer of a Labour Court, unless:

(i) he is, or has been, a judge of a high court;[35] or

(ii) he has, for a period of not less than 3 years, been a district judge or an additional district judge;[36] or

(iii) he has held any judicial office in India for not less than seven years;[37] or

(iv) he has been the presiding officer of a Labour Court constituted under any Provincial Act or State Act for not less than five years.[38]

Industrial tribunal: A person cannot be appointed as the presiding officer of a Tribunal unless:-

(i) he is, or has been, a Judge of a high court; [39] or

(ii) he has, for a period of not less than 3-years, been a district judge or an additional district judge.[40]

National Tribunal: A person is not qualified for appointment as the presiding officer of a National Tribunal unless he is, or has been, a judge of a high court. [41]

Disqualifications for the presiding officers of Labour Courts, Tribunals: No person can

[34] IDA, 1947, Section 11(3).
[35] *Id.*, section 7(3)(a).
[36] *Id.*, section 7(3)(b).
[37] *Id.*, section 7(3)(d).
[38] *Id.*, section 7(3)(e).
[39] *Id.*, section 7A(3)(a).
[40] *Id.*, section 7(3)(aa).
[41] *Id.*, Section 7B(3).

be appointed to the office of the presiding officer of a Labour Court, Tribunal or National Tribunal, if:

(a) he is not an independent person; or

(b) he has attained the age of sixty-five years.[42]

(e) Substantive rules applicable to dispute resolution

In India, Industrial Disputes Act 1947 and other state legislation and the rules framed there under generally govern the dispute resolution. Many laws passed before independence remain on the statute books, and new pieces of legislation, occasionally take contemporary English legislation as their inspiration. The judiciary plays a key constitutional role. Foreign judgements are recognized in India, except in cases where misconduct or misinterpretation are deemed to have occurred, or where such judgment sustains a claim, which is in breach of any Indian law.

(f) Proceedings

The Industrial Disputes Act, 1947 authorizes the Conciliation Officer, Board, Court of Inquiry, an arbitrator, Labour Court, Industrial Tribunal or National Tribunal to follow such procedure as they deem fit.[43]

Proceedings before the conciliation officers[44]

Under the Industrial Disputes Act, 1947 conciliation proceedings before a conciliation officer involves the following processes:

(1) Where any industrial dispute exists or is apprehended, the conciliation officer is authorized to hold conciliation proceedings in the prescribed manner.[45]

(2) The conciliation officer is under an obligation, for the purpose of bringing about a settlement of the dispute, without delay, to investigate the dispute and all matters affecting the merits and the right settlement thereof and do all such things as he thinks fit for the purpose of inducing the parties to come to a fair and amicable settlement of the dispute.

[42] *Id.,* Section 7C.
[43] *Id.,* Section 73(1).
[44] *Id.,* Section 12.
[45] *Ibid*.

(3) If a settlement of the dispute or of any of the matters in dispute is arrived at in the course of the conciliation proceedings, the conciliation officer has to send a report thereof to the appropriate government together with a memorandum of the settlement signed by the parties to the dispute.[46]

(4) If no such settlement is arrived at, the conciliation officer, as soon as practicable, send to the appropriate Government a full report setting forth the steps taken by him for ascertaining the facts and circumstances relating to the dispute and for bringing about a settlement thereof, together with a full statement of such facts and circumstances, and the reasons on account of which, in his opinion, a settlement could not be arrived at.

(5) If, on a consideration of the report send by the Conciliation officer, the appropriate government is satisfied that there is a case for reference to a Board, Labour Court, Tribunal or National Tribunal[47], it may make such reference. Where the appropriate government does not make such a reference it shall record and communicate to the parties concerned its reasons there for.

(6) A report by the Conciliation officer is to be submitted within 14days from the commencement of the conciliation proceedings or within such shorter period as may be fixed by the appropriate government.[48]

Proceedings before the Board of Conciliation[49]: (1) Where a dispute has been referred to a Board under the Industrial Disputes Act, 1947 Act, it shall be the duty of the Board to endeavour to bring about a settlement of the same and for this purpose the Board shall, in such manner as it thinks fit and without delay, investigate the dispute and all matters affecting the merit and the right settlement thereof and may do all such things as it thinks fit for the purpose of inducing the parties to come to a fair and amicable settlement of the dispute.

(2) If a settlement of the dispute or of any of the matter in dispute is arrived at in the course of the conciliation proceedings, the Board shall send a report thereof to the appropriate government together with a memorandum of the settlement signed by the parties to the dispute.

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[46] *Id.*, Section 12(3).
[47] *Id.*, Section 12(5)
[48] *Id.*, Section 12(6).
[49] *Id.*, Section 13.

(3) If no such settlement is arrived at, the Board shall, as soon as practicable after the close of the investigation, send to the appropriate government a full report setting forth the proceedings and steps taken by the Board for ascertaining the facts and circumstances relating to the dispute and for bringing about a settlement thereof, together with a full statement of such facts and circumstances, its findings thereon, the reasons on account of which, in its opinion, a settlement could not be arrived at and its recommendations for the determination of the dispute.

(4) If, on the receipt of a report by the Board, in respect of a dispute relating to a public utility service, the appropriate government does not make a reference to a Labour Court, Tribunal or National Tribunal it records and communicates to the parties concerned its reasons therefor.[50]

(5) The Board is required to submit its report within two months of the date on which the dispute was referred to it or within such shorter period as may be fixed by the appropriate government.[51]

Proceedings before the courts of inquiry: A court shall inquire into the matters referred to it and report thereon to the appropriate government ordinarily within a period of 6-months from the commencement of its inquiry.[52]

Proceedings before the Labour Courts, and Tribunals

Where an industrial dispute has been referred to a Labour Court, Tribunal or National Tribunal for adjudication, it shall hold its proceedings expeditiously and shall within the period specified in the order referring such industrial dispute or the further extended period submit its award to the appropriate government.[53]

Form of report or award:

(i) The report of a Board or court or tribunal should be in writing,

(ii) It should be signed by all the members of the Board or court or presiding officer of a Labour Court or Tribunal or National Tribunal.[54]

(iii) Every report of a Board or court together with any minute of dissent recorded therewith, every arbitration award and every award of a Labour Court, Tribunal or

[50] *Id.*, sections 13(4).
[51] *Id.*, Sections 13(5).
[52] *Id.*, section 14.
[53] *Id.*, Sections 15(1).
[54] *Id.*, Section 16.

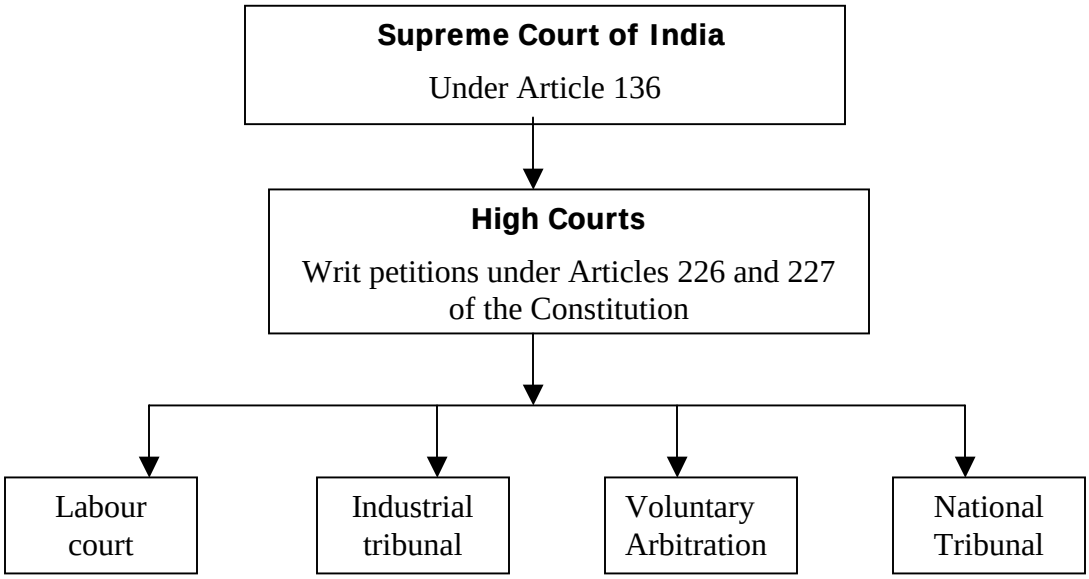
National Tribunal shall, within period of 30 days from the date of its receipt by the appropriate government, is published by notification in the Official Gazette.

(iv) The appropriate government may within 90- days from the date of publication of the award make an order rejecting or modifying the award, and shall, on the first available opportunity, lay the award together with a copy of the order before the Legislature of the State, if the order has been made by a state government, or before Parliament, if the order has been made by the Central Government. [55]

(g) Relationship of the court system in terms of proceedings

Under Article 32 and 226 of the Constitution, the Supreme Court and High Courts are empowered to issue writs, orders and directions in respect to the orders issued by labour courts, Tribunals and National Tribunals and under Article 136 a special leave may lie in the Supreme Court against the orders of Labour Court, Tribunals and National Tribunal.

Labour Adjudication System In India



[55] *Id.*, section 17A(2).

(h) Time

Under the Industrial Disputes Acts, 1947 the Labour Court required to dispose of cases relating to individual workmen within a period of 3 months. In other cases the appropriate government is required to specify the period within which an award must be submitted by the labour court or tribunal.[56] Similarly Labour court is required to decide an application for computation of monetary benefits to a workman within a period of 3 months.[57]

The following Table gives the number of cases pending in three different and successive years:

Pending cases with the various CGIT-cum-labour courts:[58]

As on 31.12.97	As on 31.12.98	As on 31.12.99
6793	7302	8468

The rate of disposal over the years was declining, as evident from the following statement of cases disposed for three successive years:

Number of cases disposed by the CGIT- cum- labour courts during: [59]

1-1-96 to 31-12-96	1-1-97 to 31-12-97	1-1-98 to 31-10-98
1149	977	724

The main reasons for increasing pendency and lower disposal rate are as follows:

(i) Almost all the disputes are now required to be referred to the Industrial Tribunal-cum-Labour Courts in conformity with the direction of the Supreme Court;

(ii) Vacancies in the post of Presiding Officers arise from time to time;

(iii) Procedural impediments;

(iv) Shortage of labour courts in states / union territories;[60]

(v) Adjournments sought by parties to file documents, etc.[61]

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[56] *Id.*, Section 10(2A).
[57] *Id.*, Section 33C(2).
[58] Government of India, Ministry of Labour, Rajya Sabha Unstarred Question No 2995**,** Answered On 20.04.2000, *Cases Pending In Labour Courts*, http://164.100.24.219/rsq/quest.asp?qref=13815
[59] Government of India, Ministry of Labour, Rajya Sabha Unstarred Question No 2105, Answered On 15.03.1999, *Disputes Pending In Labour Courts High Courts*; See http://164.100.24.219/rsq/quest.asp?qref=1664
[60] Government of India, Ministry of Labour, Rajya Sabha Starred Question No 254, Answered On 09.12.1996, *Pending Cases In The Central Government Industrial Tribunal Cum Labour Court And State Level Labour* ; See http://164.100.24.219/rsq/quest.asp?qref=27743

(i) Statistical data (the number of organizations / institutions, the number of parties involved and the number of disputes resolved, pending or unresolved)

Central Government Industrial Tribunal - As on January 2002, 17 Central Government Industrial Tribunal-cum- Labour Court (CGIT) have been set up.[62] The following table gives the number of Central Government Industrial Tribunal-cum- Labour Court (CGIT)-cum-Labour Court located at different places.

Sl. No	Location	No. of CGIT-cum-Labour court
1	Mumbai	2
2	Dhanbad	2
3	Asansol	1
4	Bangalore	1
5	Calcutta	1
6	Chandigarh	1
7	Jabalpur	1
8	New Delhi	1
9	Kanpur	1
10	Lucknow	1
11	Jaipur	1
12	Nagpur	1
13	Bhubaneshwar	1
14	Chennai	1
15	Hyderabad	1
	Total	17

Pendancy of cases before CGIT cum Labour Courts - The total number of cases pending between 5 to 10 years with Central Government Industrial Tribunal cum labour courts during 1998 and 1999 are given below:

S. No.	Name of the CGIT-cum-Labour Court	Total No. of cases as on 31. 12. 1999[63]	Total No. of cases as on 31. 12. 1998[64]	Pending between 2 to 5 years	Pending between 5 to 10 years	Remarks
1	Asansol	309	167	6	1	
2	Bangalore	441	587	109	94	
3	Calcutta	184	231	32	51	
4	Chandigarh	1372	1237	454	415	
5	Dhanbad-I	1286	1112	375	180	
6	Dhanbad-II	1138	980	393	138	As on

[61] Government of India, Ministry of Labour, Rajya Sabha Unstarred Question No 2825, Answered On 13.07.1998, *Disputes Pending At Industrial Tribunals Dhanbad*; See http://164.100.24.219/rsq/quest.asp?qref=47124

[62] http://labour.nic.in/cgit/welcome.htm

[63] Government of India, Ministry of Labour, Rajya Sabha Starred Question No 206**,** Answered On 09.03.2000, *Cases Pending With Labour Courts* ; See http://164.100.24.219/rsq/quest.asp?qref=11106

[64] *Supra* note 59.

						Feb.2000
7	Jabalpur	1229	1598	350	224	
8	@Jaipur	177				@ Has started functioning from 1-9-98.
9	Kanpur	724	231	68	46	
10	#Lucknow	18				# Has started functioning from 15-6-99
11	$Nagpur	52				$ Has started functioning from 1-7-99.
12	New Delhi	1057	846	201	120	
13	Mumbai-I	189	204	78	32	
14	Mumbai-II	292	190	10	5	
	Total	8468	7483	2076	1306.	

As on 30.9.1996, 6, 049 Industrial disputes and 4833 applications were pending before CGIT-cum-Labour Courts.

As on 31.12.1995, in Andhra Pradesh, Rajasthan, Pondicherry, Manipur, Punjab, Haryana and Daman & Diu - 42,181 industrial disputes and applications were pending.[65]

Grievance settlement authorities - The grievances received from the Cabinet Secretariat, Department of Administrative Reforms, PMO, etc., are referred to the field officers in labour department for redressal and on receipt of the action taken report from the field formations, the petitioner is informed about the action taken on his /her grievances. Out of 2,01,732 grievance cases received during 1999-2000, in the EPF offices, 1,93,055 cases were settled.[66] The type of grievances and number of grievances handled and settled by the Labour Welfare Commissioners during the year 1999 is as under: [67]

[65] *Supra* note 60.
[66] *Supra* note 14.
[67] *Supra* note 25.

s. no.	Type of grievance	Number of grievances
1	Individual Grievances (Handled)	28242
2	Individual Grievances (Settled)	26975
3	Collective Grievances (Handled)	5829
4	Collective Grievances (Settled)	5286
5	Total Grievances Handled i.e., total of S. No. 1 & 3	34071
6	Total Grievances Settled i.e., total of S. No. 2 & 4	32261
7	Grievances relating to terms & conditions of service or others concerning the establishments (Handled)	20907
8	Grievances relating to terms & conditions of service or others concerning the establishments (Settled)	19563
9	Other Grievances (Pvt. & Domestic) (Handled)	13164
10	Other Grievances (Pvt. & Domestic) (Settled)	12698
11	Total Grievances Handled i.e., total of S. No. 7 & 9	34071
12	Total Grievances Handled i.e., total of S. No. 8 & 10	32261

Central Industries and Relations Machinery

During 1959-66 the percentage of disputes settled by conciliation machinery varied from 57 to 83 in the Central sphere. During 1988, 10,106 disputes were referred to conciliation out of which the number of failure report received was 3,183[68] in the Central sphere. The failure report of conciliation was 2691 referred in Karnataka, 4471 out of 9918 referred in Punjab, 4430 out of 4530 in Delhi and 22 out of 230 cases referred to conciliation in Goa. During 1997, CIRM intervened in 783 cases of threatened strikes and its conciliatory efforts succeeded in averting 696 strikes, which represents a success rate of 88.88%.[69]

Year wise industrial disputes handled by the CIRM in Central Sphere[70] is given below:

[68] See Government of India, Ministry of Labour, *Annual Report*, 1988-89 (Vol. 1), p. 69 (1989).
[69] See Government of India Ministry o f Labour, *Annual Report*, 1997-98 1.16 (1998).
[70] *Supra* note 25.

Year	No.of disputes referred to CIRM during the year	No.of disputes considered unfit for intervention by CIRM	No. of disputes settled without holding formal conciliation proceedings	No. of disputes in which formal conciliation proceedings were held	No. of disputes in which Conciliation proceedings led to the settlement of disputes	No. of disputes in which conciliation proceeding ended in failure	No. of dispute pending with CIRM of the close of the year
1990	12850	9	4083	4787	1497	3290	3971
1991	12508	132	3972	4214	1142	3072	4190
1992	11950	47	3292	3878	919	2959	4733
1993	12958	319	3091	3839	775	3064	5709
1994	13037	20	3124	4488	914	3574	5405
1995	12181	5	2978	3938	772	3223	5260
1996	12064	3	3289	4165	914	3251	4607
1997	12889	95	3286	4586	1364	3222	4922
1998	13895	18	3174	5526	1618	3908	5177
1999	13642	7	2929	-	840	4497	5283
2000	7613	0	729	-	230	1487	-

Disposal of the Industrial Disputes by CIRM - The following table tabulates the number of disputes handled by CIRM, and the time for disposal of cases

Year	No. of Disputes handled by CIRM (Including B.F.)	Disputes Disposed Off				Total No. of Disputes of (Excepting those not considered fit for intervention)
		Within One Month	Between 1 to 2 Months	Between 2 to 4 Months	Beyond 4 Months	
1994	13037	1073 (14.06)	1932 (25.31)	2274 (29.79)	2333 (30.64)	7612
1995	12110	945 (13.70)	1953 (28.30)	2180 (31.58)	1824 (26.42)	6902
1996	12064	845 (11.33)	1895 (25.41)	2032 (27.25)	2685 (36.01)	7457
1997	12889	1209 (15.18)	2259 (28.35)	2165 (27.17)	2334 (29.30)	7963
1998	13895	1240 (14.25)	2290 (26.32)	2840 (32.64)	2330 (26.79)	8700
1999	12472	1190 (17.6)	2108 (30.21)	1815 (26.01)	1864 (26.72)	6977

Voluntary Arbitration - The following table gives the number of disputes referred to voluntary arbitration under CIRM during 1994 to 1999: [71]

[71] *Ibid.*

Year	Number of disputes Under the Code of Discipline	Referred to voluntary Under Section 10-A of the I.D. Act.	Arbitration Total
1994	-	5	5
1995	-	11	11
1996	-	3	3
1997	-	1	1
1998	-	1	1
1999	-	1	1

Position of implementation of tribunal awards and conciliation settlements by CIRM from 1994 to1999[72] - The following tables states the position in respect of Implementation of Tribunal Awards and implementation of conciliation settlement:

Year	No. of Awards Received during the year (Including B.F.)	No. of Awards Implemented	No. of Awards Implementation was in progress at end of the Year		No. of Awards not implemented due to due to Stay other order reasons
1994	1082	260	331	186	305
1995	1194	302	577	244	71
1996	1135	196	535	160	244
1997	1618	238	855	232	293
1998	951	171	188	173	596
1999	1493	201	292	803	404

Implementation of Conciliation Settlements:

Year	No. of Settlements Registered with (CIRM) (Including Pending at the end of Previous Year)	No. of Settlements fully implemented	No. of Settlements in the Course of the Implementation at the end of the Year	No. of Settlements which have been willfully neglected.
1994	802	679	118	5
1995	829	753	71	5
1996	992	888	103	3
1997	1030	917	113	-

[72] *Ibid.*

1998	1276	913	-	363
1999	806	400	-	007

State –wise information regarding pendency of industrial disputes

1. Bihar

The number of Industrial dispute pending at the two CGIT-cum-Labour Court in Dhanbad, tribunals-wise and period wise as on 31.03.1998 is: [73]

Name of CGIT-cum-LabourCourt	**More than 3 months**	**More than 6 months**	**Above 1 year**	**Total**
No. 1, Dhanbad	38	184	791	1013
No. 2, Dhanbad	488	250	141	879
Total	526	434	932	1892

In the State of Bihar at present 2 industrial tribunals and 9 labour courts are functioning in different parts of the State. Industrial tribunals are located at Patna & Muzaffarpur, while labour courts are at Patna, Bhagalpur, Chapra,Dalmianagar, Begusarai & Motihari.

2. Delhi

As on date there are 3 Industrial Tribunals and 10 labour Courts at state level and one CGIT-cum-Labour Court are functioning in Delhi. Number of cases pending before each of these [74]

Name of the Tribunal/Labour Court	**Category of the cases**	**No. of cases pending**	**Pending for 2 years**	**Pending for 3 years**	**Pending for 5 years**
Central Level CGIT-cum-Labour Court	Disputes	703	211	132	52
	Applications	1175	359	214	129
	Total	1878	570	346	181
Industrial Tribunal-I	Disputes	1044	58	94	175
	Applications	123	17	16	27
Industrial Tribunal-II	Disputes	1519	170	115	155

[73] *Supra* note 61.
[74] Government of India, Ministry of Labour, Rajya Sabha, Unstarred Question No 1405, Answered On 11.12.1995, *Labour Courts And Industrial Tribunals In Delhi*; See http://164.100.24.219/rsq/quest.asp?qref=36066

	Applications	1322	409	79	78
Industrial Tribunal-III	Disputes	1136	270	160	147
	Applications	109	18	12	13
Labour Court-I	Disputes	1799	351	424	448
	Applications	1890	337	536	492
Labour Court-II	Disputes	1873	350	288	369
	Applications	2231	308	305	663
Labour Court-III	Disputes	1957	174	226	94
	Applications	1609	165	160	70
Labour Court-IV	Disputes	1977	82	86	295
	Applications	1541	393	32	73
Labour Court-V	Disputes	1304	136	191	60
	Applications	1631	91	164	268
Labour Court-VI	Disputes	536	1	-	25
	Applications	1109	-	-	32
Labour Court-VII	Disputes	1109	327	100	23
	Applications	1268	240	315	94
Labour Court-VIII	Disputes	1347	69	49	64
	Applications	2140	113	104	78
Labour Court-IX	Disputes	1939	80	45	473
	Applications	7	4	-	-
Labour Court-X	Disputes	2302	312	380	560
	Applications	920	71	115	513
TOTAL	Disputes	19842	2380	2158	2888
	Applications	15900	2166	1838	2401

3. Tamil Nadu

As on 31.12.2000, 63 cases were pending in CGIT-cum-Labour Court, Chennai in Tamil Nadu and 25328 (13280 under Industrial Disputes Act and 12048 Claim Petitions) were pending in the State Labour Courts of Tamil Nadu. The CGIT-cum-Labour Court, Chennai has started functioning with effect from 15.03.2000. No case more than five years old is pending in the CGIT-cum-Labour Court, Chennai.[75]

The conciliation machinery of the Tamil Nadu Labour Department had handled and settled a broad spectrum of labour disputes ranging from alleged violation of working hours to serious misconducts. During the year 1999, out of a total of 11,816 disputes 6910 disputes were settled. In almost 18 industries, major issues were involved and were solved by the Conciliation Officers of the Labour Department. [76]

4. Punjab

The State of Punjab is divided into 23 zones/circles depending upon the density/dispersion of industrial units. Each circle is headed by Labour Conciliation Officers (LCOs)/Assistant Labour Commissioners (ALC) assisted by Labour Inspector Grade-I and Labour Inspector Grade-II in the implementation/enforcement of labour legislations. Adjudication machinery consists of one Industrial tribunal at Chandigarh and six labour courts one each at Jalandhar, Ludhiana, Amritsar, Patiala, Bathinda and Gurdaspur. [77]

The following table tabulates number of industrial disputes raised and settled through conciliation, withdrawn by workers/unions, rejected and referred to industrial tribunal in Punjab during 1996.

Number of Industrial Disputes-in state of Punjab in 1996:[78]

Raised	Settled through conciliation	Withdrawn by workers / unions	Rejected/filled	Referred to Industrial tribunal
7,820	1,439	2,498	716	2,827

[75] Government of India, Ministry of Labour, Rajya Sabha Starred Question No 107, Answered On 01.03.2001, *Cases Pending In Labour Courts In Tamil Nadu*; See http://164.100.24.219/rsq/quest.asp?qref=44874

[76] http://www.tidco.com/tn_policies/tn_policies/labour_policy1.asp

[77] http://www.mgsipap.org/tna/labour.htm

[78] http://punjabgovt.nic.in/government/government.htm

The following table provides the status in regard to Implementation of awards / settlements in 1998 in the state of Punjab[79]

	Pending	Received	Disposed	Pending
Awards Under Section 10	305	598	624	279
Order U/s33 (2	78	260	269	69
Settlements	7	83	81	9

Prosecutions launched under *various* labour lawsin 1998 in the state of Punjab[80] are given below:

Number	Disposed	Amount of fine imposed
7,620	6,039	Rs.14,89,180

Labour department of Punjab had conducted a total number of 7405 inspections during the year 1995. By virtue of these inspections, which is a regular feature, the rate of accidents in the State has come down from 2.96 in the year 1994 to 2.80 in the year 1995 per one thousand workers. To monitor the health of the workers 7887 medical examination of the workers were conducted and 493 suspected cases having symptoms of occupational diseases were detected.[81]

Removal of Grievances Department of state of Punjab[82]: During the year 2000, the progress of disposal of complaints by the removal of grievances department of Punjab is as follows:-

Complaints received from	No. of complaints received	No. of complaints disposed off.
Administrative Departments.	418	343
Heads of Departments	81014	79002
Deputy Commissioners	17906	17269

[79] *Ibid.*
[80] *Ibid.*
[81] *Ibid.*
[82] *Ibid.*

5. Karnataka:

There are about 15,000 labour cases pending in the labour courts and tribunals in the State of Karnataka. [83]

6. Himachal Pradesh:

The following table tablulates the cases pending before Labour court/ Industrial tribunal in Shimla in the year 1999-2000[84] :

S.NO	ITEM	REFERENCE	APPLICATION	TOTAL
1.	Pending Cases as on 1.4.99	460	424	884
2.	Cases received during 1.4.99-31.3.2000	140	187	327
3.	Cases dealt with during 1.4.99-31.3.200	140	209	349
4.	Pending cases as on 31.3.2000	460	402	862

The inspections carried by the Labour Wing in the year 1999-2000 are detailed hereunder[85]:

Name Of The Act	Inspections From 1.4.99- 31.3.2000	Challans Lodged In Courts	Cases Decided By Courts	Fines Imposed (Rs).
Shops & Commercial Act, 1969	7,822	2,455	2,171	3,29,339
Payment of Wages Act, 1936	2,565	21	5	5,400
Minimum Wages Act, 1948	3,530	235	124	69,540
Factories Act, 1948	665	9	1	3,000
Contractual Labour Act, 1979	387	13	7	9,000
Equal Remuneration	166	-	-	-

[83] *Supra* note 30.
[84] http://himachal.nic.in/labemp/court.htm
[85] *Ibid.*

Act, 1976				
Payment of Bonus Act, 1965	267	-	-	-
Upadan Payment Act, 1972	449	-	-	1,000
Delivery Benefit Act, 1961	81	-	-	-
HP Industrial Establishment (national, casual and sickness Holidays) Act,1969	592	-	-	-
Tea Plantation Act,1951	28	-	-	-
Inter State Migrant Workers Act, 1979	54	9	5	5,100
Child Labour (Prohibition) Act,1986	2963	13	-	-
IDA, 1947	6	-	-	-

4. Institutional Routes from the Outbreak to the Resolution of Disputes

Under the Industrial Disputes Act, 1947 the following steps must be taken for dispute resolution.

1. The parties to an industrial dispute may apply to the appropriate government, in the prescribed manner, whether jointly or separately, for a reference of the dispute to a Board, Labour court, Labour Court, Tribunal or National Tribunal.[86]

[86] IDA,1947, Section 68.

2. If the government forms the opinion that any industrial dispute exists, it may at any time, by order in writing-

(a) refer the dispute to a Board for promoting a settlement thereof; or
(b) refer any matter appearing to be connected with or relevant to the dispute to a court for inquiry; or Labour Court for adjudication; or to a Tribunal for adjudication or to a National Tribunal for adjudication.

3. An order referring an industrial dispute to a Labour Court, Tribunal or National Tribunal has to specify the period within which such Labour Court, Tribunal or National Tribunal shall submit its award.[87]

4. Where any industrial dispute exists or is apprehended and the employer and the workman agree to refer the dispute to arbitration, they may, by a written agreement, refer the dispute to arbitration and the reference shall be to such person or persons as an arbitrator or arbitrators as may be specified in the arbitration agreement. [88]

5. The arbitrator or arbitrators shall investigate the dispute and submit the arbitration award signed by the arbitrator or all the arbitrators, to the appropriate government.[89]

6. Governmental Intervention in Voluntary Labour Arbitration - Even though under the IDA, the government has no role to play in the choice of dispute settlement machinery after the receipt of a copy of valid arbitration agreement under section 10A, it is empowered to regulate the process of settlement of industrial dispute by voluntary arbitration in the following manner: Publication of arbitration agreement; Issuance of notification under section 10A(3A); Prohibition of continuance of strikes and lock-outs during arbitration proceedings; Publication of arbitration award; Operation of arbitration award; Enforcement of arbitration award.

7. No reference can be made under the Act to Boards of Concilliation, Labour courts or Industrial tribunals, unless the dispute has first been the subject of a decision of a Grievance Settlement Authority.[90]

[87] *Id.*, Section 29(2A).
[88] *Id.*, Section 10 A.
[89] *Id.*, Section 10A(4).
[90] http://www.ilo.org/public/english/employment/gems/eeo/law/india/c_all.htm

5. Choices of Routes for Dispute Resolution

In India the parties may choose the following modes for resolution of industrial dispute:

(i) Bipartite settlement

(ii) Settlement through intervention of conciliation officer and Board of Conciliation

(iii) Voluntary Arbitration

(iv) Compulsory Adjudication

in one of the following forums

(a) Labour Court

(b) Tribunal

(c) National Tribunal

Factors that influence the choices

Problems in operation of Conciliation Machinery

A survey of the conciliation personnel in Centre as well as states and union territories reveals that the number of conciliation personnel varies from state to state. Further, the conciliation machinery is not adequately staffed.

The statistics of the working of the conciliation machinery, from the past decade, reveals that it has made no remarkable success in India. Several factors may be accounted for the same:

(i) failure of conciliation proceeding may lead to the reference to adjudicating authorities under the IDA;

(ii) lack of proper personnel, inadequate training and low status enjoyed by conciliation officers and too frequent transfer;

(iii) undue emphasis on legal and formal requirements also lead to the failure of conciliation.

(iv) considerable delay in conclusion of conciliation proceedings also makes the conciliation machinery ineffective.

(v) lack of adequate powers of conciliation authorities.

(vi) in some states the conciliation officers have also been entrusted with enforcement of labour laws in their respective jurisdiction.[91]

Problems in operation of Labour Adjudication and Arbitration Machinery

The response to arbitration machinery under section 10A is not encouraging. Some of the factors, which are responsible for this trend, are:

(i) the lack of proper atmosphere

(ii) the reluctant of the parties to resort to arbitration machinery

(iii) lack of persons who enjoy the confidence of both the parties, and

(iv) the question of bearing the cost of arbitration.

Despite setting up of conciliation machinery and other number of alternatives for resolution of labour disputes, the number of cases is increasing day by day in the Labour courts and the Industrial tribunal.[92] Many reasons can be attributed for the same:

Quality of Personnel

The practice of appointing retired personnel or which are likely to be retired or who are uninterested in adjudication of labour disputes or who have no aptitude or background of labour legislation are some of the reasons accounted for the undue delay in disposal of cases.

Procedural delay

The complicated procedure laid down under the IDA is responsible for the delay in the labour adjudication.

Interference by the High courts and stay of Proceedings

A survey of reported cases reveals that generally delay exceeding more than one year (and particularly the delay exceeding three years) occurs due to stay order of the high court through its writ jurisdiction. With the pace of industrialization, numerous Labour courts and Industrial tribunals had to be set up throughout the country. Inherent in the situation was the conflict in the awards, decisions, and approaches of these adjudicatory authorities. High courts, inter se differ and no finality is attached to the adjudication of any important question relating to the labour jurisprudence until the matter was taken to the Supreme

[91] S.C.Srivastava, *Industrial Relations Machinery*, 25. (1983, Deep & Deep, New Delhi) and S.C. Srivastava, *Industrial Relations and Labour Laws*, Vikas Publishing House, (2000).

[92] *Supra* note 20.

Court. This exercise proves to be expensive and time consuming.[93] Till the time, the high courts continue to have writ jurisdiction against decisions of such ultimate forums there would be no finality and the present malaise of huge errors would continue to exist. [94]

Attitude of the Parties

The unhelpful attitude of the parties towards adjudication and the delay in producing witnesses and documents also affect the speedy disposal of the case.

Problem of adjournments

Another factor for delay is indiscriminate adjournment, granted by the Presiding Officer of Labour court or Tribunal. This is so because the IDA does not prescribe the number of adjournments which may be granted.

Constraints of Enforcements Machinery:

Through the industrial activity and the volume of trade and business as also the number of laws on the statute book have increased considerably, the enforcement machinery has not kept pace with the same. Numerically, the enforcement machinery is too inadequate. There are 125-130 Labour Enforcement Officers effectively available at a given point of time for enforcement work. They (along with few inspections each every month by Assistant Labour Commissioners) are able to carry out about 30,000 to 33,000 inspections in a year. They are provided with very poor infrastructural back up e.g. no vehicle or modern communication system though each LEO is required to cover 5 to 6 districts. They have been assigned multifarious functions e.g. conciliation work (in some of the cases), verification of membership of trade unions and enquiries into complaints, representations, VIP references etc. The problems gets compounded as after the inspections they are also required to file as well as conduct the prosecution/claim cases before the appropriate courts/authorities. There are several instances where cases in courts situated in different directions were fixed for hearing on the same day and cases were dismissed in default on account of non-appearance of Inspecting Officer. Inspite of the observations and advice of the apex court in various cases that the judicial magistrate should take the labour cases more seriously, these cases continue to get least priority. Inspecting Officers are summoned

[93] para 8.41, chapter 8, Report of the Arrears Committee, (GOI 1989-1990), p. 105
[94] *Ibid.*

for producing evidence even after they are transferred to other places or after their superannuation/retirement from service.

In most of cases the punishment prescribed for infringements of labour legislation are fines and that too are very low. All this does not create any deterrent effect and only emboldens the offending employers to continue to violate the provisions of law, as complying with the same is costlier alternative than paying a paltry sum as fine.[95]

It is generally conceded that works committees have failed to deliver the goods. Several factors are responsible for the same. In the absence of strong industry-wide labour organizations, the politically oriented plant trade unions consider works committee to be just another rival. Although the courts have time and again favoured the decisions of the works committees, the fact remains that there is no machinery to enforce the decisions of these committees and there is nothing to prevent by-passing works committees.[96]

6. Case Study

Pendency of Conciliation proceedings and inordinate delay in disposal of case

In *Sapan Kumar Pandit v. U.P. SEB*[97], the appellant was appointed as a clerk under the U.P. State Electricity Board on 1.1.1974. His services together with 10 others were terminated on 17.7.1975. The union raised the dispute of the termination of the said 10 workmen, which was later referred by the state government to the industrial tribunal. Although the appellant had not raised any industrial dispute by then, the Board assured him that if the 10 workmen won, their case, the same benefit would be extended to him. However, the Board reabsorbed two of them and the rest 8, although did not succeed fully before industrial tribunal, were directed by the high court to be reinstated. The high court's decision dated 28.4.1988 was upheld by the Supreme Court in 1989. Relying on the Board's assurance, the appellant requested the Board to treat him on a par with the 8 workmen but his turn was rejected. The appellant applied for condonation of the delay in initiating the conciliation

[95] *Supra* note 14, p. 20-21.
[96] S.C.Srivastava, *Industrial Relations Machinery,*. (1983, Deep & Deep, New Delhi). 30.
[97] (2001) 6 SCC 222.

proceedings. However, on 28.1.1992 the Deputy Labour Commissioner condoned the delay and the conciliation proceedings were revived. Thereafter, the state government made the reference for adjudication on 29.3.1993. The high court quashed the reference on account of 15 years' delay in making it. The appellant then went to the Supreme Court. The Supreme Court allowed the appeal and held it is of no consequence that conciliation proceedings were commenced after a long period. But such conciliation proceedings are evidence of the existence of the industrial dispute. Admittedly, on the date of reference, the conciliation proceedings were not concluded. If so, it cannot be said that the dispute did not exist on that day. The High Court has obviously gone wrong in axing down the order of reference made by the government for adjudication. The appellant got justice, in the form of decision of the Supreme Court on 24.7.2001, almost, after 26 years from the date on which cause of action arose, i.e., 17.7.1995.

Conciliation proceedings on holiday

In *National Engg. Industries Ltd. v. State of Rajasthan*[98], the appellant was a company having its registered office at Calcutta. One of its factories was located at Jaipur in Rajasthan. There were three unions of its workers: (1) National Engineering Industries Labour Union (for short "the Labour Union"); (2) National Engineering Staff Union (for short "the Staff Union"); and (3) the National Engineering Industries Workers' Union (for short " the Workers' Union"). The Labour Union had majority of the workers on its roll, was recognized, and was registered as a representative union under the provisions of the Industrial Disputes Act (IDA). A settlement, in respect of the demands of union raised in 1983 operated till September 1986. All the three unions made fresh charters of demands in 1986, which were identical in almost all respects. Conciliation proceedings were initiated and the Conciliation Officer in respect of the proceedings regarding the Workers' Union submitted the failure report. Conciliation settlement was arrived at with the Labour Union and the Staff Union. It was to be in operation for a period of three years ending 30.9.1989. All the employees of the appellant including the members of the Workers' Union filed a writ petition in the high court seeking the state government to refer their disputes to the

[98] (2000) 1 SCC 371

industrial tribunal. By its judgment dated 23.3.1989 the Rajasthan High Court directed the state government to take a decision within the specified time, after hearing the parties, on the question whether to make or not to make a reference. However, just about a week before the High Court's decision the State Government issued a notification on 17.3.1989 for reference of the disputes relating to the demands raised by the Workers Union to the Industrial Tribunal but failed to bring this fact to the notice of the High Court. The appellant, thereafter unsuccessfully made a representation to the State Government to withdraw the said notification and take a fresh decision after hearing the appellant. After unsuccessfully challenging the validity of the said notification before the High Court, the appellant filed the instant appeal. The appellant contended that in view of the tripartite settlement and the workers' union itself having taken the advantage of the benefits, there was no dispute pending which could be the subject-matter of reference and therefore the State Government had no jurisdiction to make the reference. The Workers Union on the other hand contended, inter alia, that the tripartite settlement, having been entered into on a Sunday, was invalid. Supreme Court allowing the appeal held a settlement arrived at in the course of conciliation proceedings with a recognized majority union will be binding on all workmen of the establishment, even those who belong to the minority union which had objected to the same. When a settlement is arrived at during the conciliation proceedings it is binding on the members of the Workers' Union as laid down by Section 18 (3) (d) of the Act. It would *ipso facto* bind all the existing workmen who are all parties to the industrial dispute and who may not be members of unions that are signatories to such settlement under Section 12 (3) of the Act. The Act is based on the principle of collective bargaining for resolving industrial disputes and for maintaining industrial peace. The court even went to the extent of holding that there is no bar in having conciliation proceedings on a holiday and to arrive at a settlement. A holiday atmosphere is rather more relaxed.

This case shows the extent to which conciliation proceedings are given finality by the courts.

Binding nature of Conciliation proceedings

In *Virudhachalam v. Lotus Mills*[99], a textile mill run by the respondent remained closed from 8.8.1976 to 31.1.1978. The matter was referred to the conciliation officer who held negotiations. Different unions representing various categories of workmen took part in the said negotiations. Ultimately a settlement was arrived at during the conciliation proceedings as per Section 12 (3) of the IDA. Four out of the five unions signed the settlement but the union representing the appellants refused to do so. The appellants did not belong to any category of workmen excluded from the purview of the settlement. However, on the ground of their union's refusal to sign the settlement, they filed an application under Section 33-C(2) of the Act for computing the appropriate lay-off compensation payable to them as per Section 25-C of the Act. The High Court held the settlement under Section 12(3) to be binding under Section 18 (3) even on the applicants. Therefore, holding them to be disentitled to relief under Section 25-C, dismissed their application under Section 33-C(2). Before the Supreme Court the appellants contended that Section 25-C, being in Chapter V-A of the ID Act, was a complete code in itself and could not be whittled down except by an agreement entered into between the workmen concerned and the employer as provided by the first proviso to Section 25-C. that such an agreement was independent of any settlement contemplated under Section 12(3) which could have any binding effect under Section 18(3). That in view of Section 25-J, any inconsistent provision found in any other law including in any other part of the Act itself would not whittle down the workman's right to lay-off compensation under Section 25-C. Supreme Court rejected these contentions and dismissed the appeal, in 1998, almost 20 years after the cause of action arose. It ruled out that the IDA is based on the principle of collective bargaining for resolving industrial disputes and for maintaining industrial peace. In all these negotiations based on collective bargaining the individual workman necessarily recedes to the background. Consequently, settlements arrived at by the unions with management would bind at least their members and if such settlement is arrived at during conciliation proceedings, it would bind even non-members.

The above case is also proof of the extent to which settlements arrived between the parties are given recognition by the highest court of the land.

[99] (1998) 1 SCC 650

Date of the commencement of the award

In *Sarva Shramik Sangh v. Indian Hume Pipe Co. Ltd*[100], the demand of appellant union for payment of dearness allowance to the daily-wage workmen employed by the respondent's factory at the same rate as paid to monthly-rated employees w.e.f. January 1, 1964 was placed before the Conciliation Officer on November 15, 1965 and thereafter before the Conciliation Board. The Conciliation Board submitted its failure report. On April 26, 1968 the appellant-union submitted a memorandum before the Government reiterating the said demand and claiming the benefit w.e.f. November 15, 1965. On July 5, 1968 the Government referred the said dispute to Industrial Tribunal. The respondent challenged the validity of the order of reference by filing a writ petition before High Court in November 1968. The High Court passed an order setting aside the order of reference by consent without prejudice to the rights of the Government 'to refer fresh dispute in respect of the same demands according to law'. On March 19, 1973 the appellant submitted a demand to the management claiming the very same relief w.e.f. November 15, 1965. On that basis the Government made a reference to the Industrial Tribunal on March 26, 1973. The Tribunal made an award on January 3, 1977 directing that all the daily-rated workmen of the respondent's factory should be paid DA at the rate of 15% of the revised textile rate w.e.f. January 1, 1968. Allowing the appeal of the Labour Union Supreme Court decided in 1993 that the Industrial Tribunal/Labour Court has jurisdiction to grant relief from a date anterior to the date on which the dispute is raised if it is found to be warranted by the facts and circumstances of the case. The Industrial/Labour Court is not bound by technical rules of procedure which bind the civil court. Therefore, the order of the High Court cannot be read as imposing or implying any restriction upon the workmen to limit the benefit claimed by them only from the date of the raising of the fresh demand. It was perfectly open to them to raise a demand, subsequent to the said order, claiming the benefit with effect from a date anterior to the date of raising the demand.

The above mentioned decision goes to prove that highest court of the land does give value to the decisions of the labour courts and industrial tribunals.

[100] (1993) 2 SCC 386

The Supreme Court in *Bharat Bank Ltd. v. Employees*[101] is an epoch-making judgment on the nature of industrial tribunal. In this case, Kania, C.J., decided that the functions and duties of the industrial tribunal are very much like those of a body discharging judicial functions, although it is not a court and Justice Mahajan, held :

> "The Industrial Tribunal has all the necessary attributes of a Court of justice. It has no other function except that of adjudicating on a dispute. It is not doubt true that by reason of the nature of the dispute that they have to adjudicate the law gives them wider powers than are possessed by ordinary Court of law, but powers of such a nature do not effect the question that they are exercising judicial power. Statutes like the Relief of Indebtedness Act, or the Encumbered Estates Act have conferred powers on Courts which are not ordinarily known to law and which effect contractual rights. That circumstance does not make them anything else but Tribunals exercising judicial power of the State though in a degree different from the ordinary Courts and to an extent which is also different from that enjoyed by an ordinary Courts of law. They may rightly be described as quasi-judicial bodies because they are out of the hierarchy of the ordinary judicial system but that circumstance cannot affect the question of their being within the ambit of Art. 136. The Fact that the Government has to make a declaration after the final decision of the Tribunal is not in any way inconsistent with the view that the Tribunal acts judicially. It may also be pointed out that within the statute itself a clue has been provided which shows that the circumstance that that the award has to be declared by an order of Government to be binding does not affect the question of its appealability."

[101] AIR 1950 SC 188.