Chapter III

REVIEW OF LITERATURE

3.1 Review of Literature

Here an endeavour has been made to provide an overview of various aspects and issues related to this research work through the review of studies already carried out. The review of literature usually leads to some significant conclusions and serve as a guide mark for this study. It also helps to identify the gaps that exist in the area of research. The studies reviewed here are divided into four themes depending on the contents of the studies viz., Strike and Lockout, Conciliation, Adjudication and General.

3.1.1 Strikes and Lockouts

The review of the studies that focused on strikes and lockouts are given below:

Datta Chaudhuri and Bhattacherjee (1994)[1] in their paper tests a simultaneous-equation model to understand the feedback effects between strikes and nominal wages in Indian industry during the time period from 1960 to 1986. The model examines the fundamental elements of determination of wages under the process of collective bargaining and also takes into consideration the role of inflationary expectations by the means of wage indexation specifications and includes a structural shift (or regime shift) variable. The assumption was that wages and strikes are simultaneously determined by worker expectations regarding price inflation, the condition of labour market as proxied by the rate of unemployment, and by the power of trade unions to enforce wage agreements. An industrial relations regime shift was also included by using a dummy variable. More particularly, strike activity was modelled as a function of the nominal wage inflation rate, which were, in turn, a function of current and earlier price inflation

[1] Datta Chaudhuri, Tamal and Bhattacherjee, Debashish (1994), "A Structural Model of Strikes and Wages in Indian Industry, 1960-86", Indian Journal of Industrial Relations, Vol. 30, No. 2 (Oct., 1994), pp. 144-155 Published by: Shri Ram Centre for Industrial Relations and Human Resources

rates, the increase in the productivity of labour, and the rate of unemployment. Both functions included an industrial relations regime shift variable. Two reduced form equations were estimated for obtaining predicted values of strike activity and nominal changes of wage, and these fitted values were used in the initial structural equations to obtain estimates purged of simultaneity bias. The results indicate that during the time period from 1960 to 1986 in Indian Industry, strikes affected wages but strike activity was not affected by wages. The results also reflect the depressing effect of the regime shift variable on wages as well as on strike activity.

Saha and Pan (1994)[2] in their research paper identified some of the factors of industrial disputes (both lockouts and strikes) by developing an econometric model using data related to industrial disputes for nineteen industries spanning a period of seven years from 1980 to 1986. The dependent variable of the model was industry-wise mandays lost per employee from industrial disputes and independent variables were the degree of trade unionisation, average size of factory and average monthly earnings of an employee. It was observed that in more unionised industries, mandays lost from industrial disputes were likely to be less in comparison with less unionised industries. In contrast, industries with larger average size of factory would have more mandays lost. Employees' monthly earnings seemed to be a weak variable having ambiguous and almost insignificant impacts on mandays lost. While trade unions had been found to have exerted a declining pressure on disputes, large factories were seen to be prone to much longer disputes. However, the model excluded some important variables such as employers' unions and market demand. They also had not distinguished between industrial disputes in the private and the public sectors. For more satisfactory modelling

[2] Saha, B. and Pan, I. (1994), "Industrial Disputes in India: An Empirical Analysis", Economic and Political Weekly, Vol. 29, No. 18 (Apr. 30, 1994), pp. 1081-1087

one should not only include such variables, but also look at strikes and lock-outs data separately. It did not focus on industrial disputes resolution machinery.

Shyam Sundar (2004)[3] tries quantitative analysis of data relating to lockout for examining the incidence of lockouts in India. The incidence of lockouts has gone up over the years and the data need to be improved on the classification as well as reasons of work stoppages to show the realities better.

The general perception is that employers are on the offensive in recent times and the trade unions along with the workers are on the defensive. The increasing lockouts, layoffs and closures, and decline of collective bargaining give credence to the employer militancy view. The author observed that though number of lockouts has gone up over the years, the extent of increase is dependent upon the statistical measure we choose. The most significant feature of lockout over the years is its duration: durations of lockouts have increased in recent times. Also, the lockouts lasted longer than the strikes. However, frequency of lockouts was less and involved less number of workers than that of the strikes. In short, employers stop work less frequently and involve less workers, but lockouts once declared last longer and result in more loss of workdays.

The author observed that whenever strikes flourish. the employers urge for a ban on strikes. It need to be appreciated that strikes and lockouts are important instruments to put on pressure on the opposite parties which many times help in settlements. Any restriction in this regard is destructive of the institution of bipartism unless it is socially determined and legally coded following International Labour Organisation (ILO) norms and principles. Employers should also realise that the lockout is essential in collective bargaining but should not be used for other purposes like closures in disguise.

[3] Shyam Sundar, K.R. (2004), "Lockouts in India, 1961-2001", Economic and Political Weekly, Vol. 39, No. 39 (Sep. 25 - Oct. 1, 2004), pp. 4377-4385 Published by: Economic and Political Weekly

The Labour Bureau could introduce a new classification of work stoppages where work stoppages are classified into three categories: pure lockouts, pure strikes, and mixed work stoppages.

Venkata Ramana (2011)[4] in his doctoral thesis studied the role of the strikes in industrial relations with special reference to the Andhra Bank strikes. The study focussed on the central enactments and the judicial response and a critical appraisal of the judicial process through examination of some of the judgments of the Apex Court. The new realities demanded a closer perspective of the nature and magnitude of the effects of strike activity on economic development. The workers at the time of resorting to industrial action usually do not think about the pros and cons of their action There is a necessity to develop prompt and effective mechanism to resolve cases of strikes. Neither the industrial adjudication nor industrial law has evolved a rational synthesis between the conflicting claims of the employees and the employers to resolve impasse and avert strikes and lock-outs, undue delay in resolving industrial disputes by the courts was another discouraging factor which needed to be considered. There was a necessity to settle the industrial disputes outside the courts i.e., at the bargaining table so that time and money are saved and bitterness and mistrust be avoided. During the last few years, the character of strikes has' perceptibly changed. New innovations in this field have tended to restrict their length and size-in conformity with changing atmosphere. The strike as an effective weapon of collective bargaining is gradually losing its utility. The trade unions have also modified their traditional techniques of struggle. Now strikes are more like demonstrations than wars. The innovations include intermittent strikes walk-outs and protest strikes of short durations. Thus Strike has

[4] Venkata Ramana, P. "The Role of the Strikes In Industrial Relations A Study With Special Reference To The Andhra Bank Strikes" PhD Thesis, Acharya Nagarjuna University, 2011

become a strategic weapon. These considerations lead us to conclude that a change in the basis of conflict is more a change of levels in the context of conflict than a shift towards its disappearance. Strong trade unions have always preferred to resolve strikes at the bargaining table than in the Court-rooms. Litigation, whoever wins or loses is often the funeral of both. We are a developing economy and require techniques of maximizing conciliatory approach as effective process even where there is litigation.

3.1.2 Conciliation

The studies focused on conciliation is reviewed below:

Kumar (1966)[5], studied the functioning of the Conciliation Machinery in Rajasthan and concluded that it did not function effectively. The study identified two reasons for its lack of effectiveness viz., the lack of impartiality among the conciliation officers and the involvement of the political party in power in the state in a particular trade union. The author contended that if these contributing factors were remedied, the conciliation machinery would be able to effectively contribute to the maintenance of harmonious industrial relations in the State. In the paper the development of statutory provisions had also been traced; factors accounting for the ineffectiveness of conciliation had been highlighted; and some inter-State comparisons had been made. In conclusion, the necessity for an independent conciliation machinery, free from external political pressures, with qualified personnel, had been suggested. While the machinery of conciliation in Rajasthan was functioning well compared to that in other States, yet it is not satisfactory. The percentage of disputes successfully settled by the machinery of conciliation was not high. Furthermore, the percentage of such cases of successfully

[5] Kumar, P. (1966), "The Working of the Conciliation Machinery in Rajasthan", Indian Journal of Industrial Relations, Vol. 2, No. 1 (Jul., 1966), pp. 34-49Published by: Shri Ram Centre for Industrial Relations and Human Resources

settling the disputes had been on the decline. At the same time the number and percentage of cases where the conciliation machinery failed to settle the dispute was rising. More and more cases were being withdrawn during continuation of conciliation proceedings. A further indication of the inefficiency of the conciliation machinery was the fact that the number of pending cases of disputes had been increasing. In short, the machinery of conciliation was not performing as it should. However, the study was based on secondary data and descriptive statistics, was done long ago and was restricted to the working of the machinery of conciliation in Rajasthan.

Patil (1973)[6] studied the working of the machinery of conciliation and its effectiveness in Karnataka. The conclusion of this Study was that conciliation was ineffective. It was ineffective mainly because of the inability of the third party to provide an efficient and effective conciliation machinery to assist the negotiations between the labour and the managements, poor performance and competence of the conciliation Officers, an insincere approach of all the three parties involved in the process, and the incompatibility of quasi-compulsory conciliation system and compulsory adjudication; and to a little extent due to the employers' preference for compulsory adjudication, a large number of the disputes involving the terminations of service of employees, the existence of multiple trade unions and the lack of the relationship of collective bargaining between the workers and the employers. These factors and parties together had been responsible for the ineffectiveness of conciliation. It was at times difficult to isolate the factors' and the parties and say that they had been responsible for the ineffectiveness of conciliation. Therefore, when the attempts to improve the effectiveness of conciliation were made all the factors and parties had to be taken into

[6] Patil, B. R. (1973) "Conciliation - A Study into Its Functioning And Effectiveness (With Special Reference to Karnatak)" PhD Thesis, TISS, 1973

account and the necessary measures may be undertaken to enhance the performance of the conciliation machinery.

Patil (1975)[7] in his paper attempted to measure and analyze the time lapse between the date on which conciliation was sought and the date on which the conciliation proceedings was concluded i.e., the dispute was either referred or not referred for adjudication. The study was done in Karnataka. The study showed that at each stage there was inordinate delay. The Industrial Disputes Act, 1947 requires the conciliation officers to conclude conciliation within fourteen days from the date of commencement of the proceedings. It also requires them to investigate the dispute without delay and to submit the (failure) report immediately after concluding the conciliation proceedings so that the government can refer the dispute for adjudication. But the data analyzed in this paper showed that the proceedings of conciliation had been time consuming. The conciliation officers, for avoiding the recording of delay on their part, initiate the conciliation proceedings after a few joint meetings, which were convened after time-consuming correspondence to investigate the dispute. The time spent in investigating the dispute and in joint meetings was not taken into account as time spent to promote settlements through their intervention as the conciliation proceedings had not been formally initiated during that time. The preliminaries are time-consuming partly because of the statutory provision to investigate the dispute through correspondence and partly because of the convention to have a few joint meetings before issuing the notice of conciliation. The delay caused due to the investigation of the dispute through correspondence could have been avoided if they either investigate the dispute through

[7] Patil, B. R. (1975), "Time Limit in Dispute Settlement", Indian Journal of Industrial Relations, Vol. 10, No. 4 (Apr., 1975), pp. 541-559 Published by: Shri Ram Centre for Industrial Relations and Human Resources

personal visits or convene the joint meetings soon after they receive an application for their intervention.

Patil (1976)[8] studied the performance and efficacy of the machinery of conciliation in Karnataka. The study was done on the basis of secondary data collected during 1972-1973 from employers, trade union leaders, and the conciliation officers in Karnataka for his Ph.D. thesis supplemented by fresh data collection in 1974 for its revision. The analysis of the data revealed that collective bargaining was more common among bigger employers particularly in the private sector and the majority of them took recourse to conciliation for converting collective bargaining agreements into tripartite settlements under the Industrial Disputes Act, 1947 which made the settlements binding on all. The trade unions affiliated to the AITUC as well as the independent ones were involved in this practice more than the unions affiliated to other federations. The practice of converting collective bargaining agreements into tripartite settlements was found in all the industrially developed regions; and fifty per cent employers and more than forty-five per cent trade unions had been party to it. About forty-five per cent of the tripartite settlements of the economic disputes claimed to have been settled by the conciliation officers were in fact bipartite collective bargaining agreements. Another feature of collective bargaining as well as conciliation in India was that many employers, usually who do not face the problems of multiple trade unionism and inter-union rivalry (or where rival trade unions were weak), settle the disputes through bipartite collective bargaining and forward a copy of the agreement to the conciliation officer with a request to register it as a settlement under the Industrial Disputes Act, 1947. Such settlements were found to be about thirty-five per cent of the total

[8] B. R. Patil , "Collective Bargaining and Conciliation in India" Indian Journal of Industrial Relations, Vol. 12, No. 1 (Jul., 1976), pp. 41-60 Published by: Shri Ram Centre for Industrial Relations and Human Resources

settlements of the collective disputes registered by the conciliation officers during a given period. Finally, in the case of the "orthodox and the recalcitrant employers" and the non-recognized trade unions, conciliation often acts as a stimulant to bipartite collective bargaining and the parties to a dispute follow the advice of the conciliation officer and go to the bargaining table and in course of time establish bargaining relationships between themselves. The author observed that collective bargaining in India was widely prevalent, but it was over-shadowed by conciliation since the Industrial Disputes Act, 1947, does not provide a legal status to collective bargaining agreements. Usually collective bargaining ends in conciliation, for the agreements are either registered as settlements or are converted into settlements under the Industrial Disputes Act, 1947. Conciliation, however, acts as a stimulant to collective bargaining, at least in some cases, and strengthens it to strengthen itself. Thus, conciliation in India was occasionally an extension of bipartite collective bargaining, but more commonly an over-shadowing end process and a stimulant to collective bargaining.

Khan (1981)[9] in his paper examined the industrial relations machinery in India and found that its efficacy is not encouraging. He studied the anatomy of the industrial relations machinery, conciliation machinery, arbitration, collective bargaining, Government's power regarding industrial disputes and the working of the courts. He studied the data related to central industrial relations machinery during 1976. The author observed that the efficacy of conciliation depends on the open minded discussions freely entered into between the parties. But the possibility of adjudication prevents the parties to enter the discussions with an open mind. The chance of the other party to cause the dispute to be taken for adjudication and the possibility that any

[9] Khan, Ahmedullah (1981), "Settlement of Industrial Disputes" Journal of the Indian Law Institute, Vol. 23, No. 3 (July-September 1981), pp. 446-463 Published by: Indian Law Institute

concession offered during conciliation may prejudice their case afterwards, are strong enough reasons to prevent any genuine open minded negotiation. The author found that effectiveness of arbitration as a means for resolving industrial disputes has been discouraging. The author observed that multiplicity of trade unions which results in intra and inter union rivalry, is an impediment in the way of collective bargaining. This requires immediate modification of labour legislation to provide for mandatory recognition of trade unions as bargaining agent. To start with, one union for one factory /mill/plant may be provided for to achieve the ultimate goal of one union for one industry.

Saini (1992)[10] in his paper tried to show that the opinions and perceptions research could not satisfactorily explain the reasons of failure of conciliation. More satisfactory explanations are needed in this regard which can be explored by examining the experiences and the attitudes of the disputing parties as also from the analysis of role dispensation of different representatives who take part in the conciliation process. Thus, it is not proper to depend only on the perceptions of the parties involved but facts need to be established objectively and independently. To overcome this limitation of perceptions research, the paper sought to corroborate the perceived factors with the facts by reconstructing real life industrial disputes. The study was done on the collectively espoused industrial disputes of the private sector located at the Faridabad Industrial Complex in Haryana, and conducted over a period of 29 months - from September 1984 to February 1987 - with intermittent intervals. The study revealed that the system of conciliation had been structured in such a way that the employers' used it to avoid workers' collectives as interest groups on equal footings. They, usually, look

[10] Debi S. Saini, "Failure of Conciliation: Perceptions and Realities" Indian Journal of Industrial Relations, Vol. 28, No. 2 (Oct., 1992), pp. 105-122 Published by: Shri Ram Centre for Industrial Relations and Human Resources

for different means of tackling the labour power, which involved softer options rather than genuine sharing of industrial gains and discussing actual issues at the negotiation table. Thus, the attitude of making unrealistic demands by the workers, lack of commitment of the conciliation officers, and the authoritarianism of the employers were the external manifestations of a deeper systemic malaise. In fact, the structure of the conciliation system in its existing form is not appropriate to promote functioning of genuine conciliation and negotiations of disputes.

Nandakumar (1993)[11] in his paper examined the working of the machinery of conciliation in Maharashtra and concluded that it was not performing very effectively. The percentage of disputes settled had been less than twenty-five percent, the failure of settlement had been more common and there is no adherence to the statutory time limit. The study analyzed the data pertaining to the period from 1989 to 1991. The analysis of data showed that even the failure of the conciliation to settle the dispute was considered as a type of settlement. In fact, the most effective way of ending the conciliation proceedings seemed to be through "failure"(forty-five percent and above), and only less than twenty percent of the industrial disputes were actually settled by means of the process of conciliation. The next most effective method of resolution of industrial disputes seemed to be by the process of transferring of the industrial dispute itself (eleven percent). Yet another effective method of resolution of industrial disputes seemed to be the closing of the files on account of lack of cooperation of any of the disputing parties. In fact, this category of resolution of disputes seemed to be constantly increasing from 4.5 percent in 1989 to 8.9 percent in 1991. During the same time the data revealed an interesting trend regarding the number of cases of withdrawals of

[11] Nandakumar, P. (1993), "Conciliation Machinery in Maharashtra - An Enquiry into its Effectiveness", Indian Journal of Industrial Relations, Vol. 28, No. 3 (Jan., 1993), pp. 274-282 Published by: Shri Ram Centre for Industrial Relations and Human Resources

industrial disputes. This trend also showed a declining movement from 4.1 percent in 1989 to 3.7 percent in 1991. Withdrawal of industrial disputes could be either because of mutual settlement by the disputing parties or one of the parties losing interest in midcourse to continue with the case further. In any situation, less withdrawals reflect more faith in conciliation. To meet the various challenges emanating out of the dynamically changing environment and to offer an effective solution to various disputes, there was an urgent need to tone up the service provided by conciliation machinery. Through some radical revamping and reorientation of the conciliation mechanism the efficacy of conciliation could be enhanced. It was only then that one can expect the conciliation machinery system play a positive role in bringing about harmony and peace in industrial relations.

Malaisamy (1999)[12] studied conciliation in resolution of industrial disputes in Tamilnadu during the time period ranging from 1989 to 1998. In the study, the efficiency of the conciliation mechanism appeared to be neither increasingly better nor bad; but it was average. A new syndrome of "otherwise settled" cases were on the increase when compared to settlements, which may not be a healthy practice in conciliation. The study identified nine variables, such as work load, nature of job, the employers' attitude, conciliation perceived as a complex and thankless job, skill and professional tactics, syndrome of non-acceptance, non-acceptance of suggestions, non-cooperation of the disputants, constraints on the time duration and restraints in administrative processes were the important hindrances in disputes settlement. The study further revealed that only forty per cent of the respondents wanted administrative modifications in the conciliation procedure, rest (60 %) of them were found to be

[12] Malaisamy K. "Conciliation in Settlement of Industrial Conflicts: An Empirical Study in Tamil Nadu", Ph.D. Thesis, Madras University, 1999

comfortable with the existing system, even though there were various constraints and restraints in disputes settlement. Though the programmes of the Department of Labour aimed to provide better conciliation services, the procedural delays, negative mind set of the parties, lack of professionalism in conciliation, outdated legal frame work and administrative set- up stood as obstacles and affected the efficiency of conciliation services.

Kumar (2010)[13], studied organisation and functioning of the labour department (Punjab) in labour-management Relations. The study showed that the rate of settlements in Industrial disputes was abysmally low. It remained between 4.5% to 8.6% throughout the study period. Field study showed that in Punjab majority of the cases before conciliation were under S.2-A of Industrial Disputes Act, 1947 and settlement rate was quite discouraging. Moreover, from 2002 onwards a declining trend of cases before Conciliation was noted. There was an urgent need to review the industrial resolution system in the context of the policy of economic liberalisation and restructuring. The changes taking place due to market- driven economy demanded that the primary approach should be voluntary resolution of the industrial disputes rather than the legalistic approach of Courts settling the disputes. The work place cooperation between the workers and the employers should be enhanced and focus should be on bipartite consultation, building of trust by information sharing at enterprise level and voluntary arbitration rather than resolution of disputes through adjudication. Labour Department could play a decisive role by facilitating a framework for voluntary dispute settlement. For this first and foremost requirement was put in place a system of recognition of negotiating agent on the statute. Once this system is in place, it would be

[13] Kumar, J.," Organisation And Working Of Department Of Labour (Punjab) In Labour-Management Relations", PhD Thesis, Guru Nanak Dev University, 2010

convenient for employer to negotiate with recognized negotiating agent or negotiating council. The responsibility of conducting verification of trade unions membership for recognition purposes should be vested with State level departments. This will require necessary amendments in The Trade Unions Act, 1926 in this regard.

Basu (2012)[14] in his study reviews the efficacy of the mechanism of conciliation through which industrial disputes are resolved in India. The mechanism of conciliation in its existing form suffers from delays and is generally not effective in settlement of industrial disputes because of which often the industrial disputes were referred for adjudication, which is, also highly time consuming. The paper proposed to combine the process of adjudication and conciliation and suggested a model based on the approach of game theory to provide for more efficient resolution of industrial disputes. The author observes that if the conciliation officer knows beforehand about the endings of disputes similar in nature, can influence the parties to the industrial dispute to agree at her desired offer. As the results depend on the principles of give some and get some concept and to minimize the losses, both the disputing parties are in a win – win situation. It is, therefore, suggested that the conciliation officer should keep himself updated on the results of adjudication of disputes similar in nature so that the passive communication of such outcomes to the parties in dispute can positively affect the outcomes of new disputes and may lead to amicable settlements. The government should also ensure availability of sufficient resources and relevant information to the conciliation officer so that she may transmit the same to the disputants. While the conciliation proceedings is going on it should also be made compulsory to maintain a record of the information so communicated to the parties in writing.

[14] Basu, Shubhabrata, "A Game Theoretic Approach to Conciliation-Adjudication Model", The Indian Journal of Industrial Relations, Vol. 47, No. 3, January 2012

3.1.3 Adjudication

The review of the studies conducted on adjudication are given below:

Ram (1979)[15] in his paper examined the consequences of the power of discretion of the government to make reference of industrial disputes for adjudication under the provisions of the Industrial Disputes Act, 1947. The study was done on the basis of data collected from the State of Jammu & Kashmir. Initially, this power of discretion to make reference of industrial disputes for adjudication was not with the government under the statute. This power was given under Rule 81-A of the Defense of India Rules during the Second World War as an emergency measure. The purpose was to ensure that industrial production was not hampered during war and to check undesired industrial strife during the period of war. This measure was successful in fulfilling its objective and as such the Rule 81-A which was going to lapse on 1 October 1946 was continued for some more time by using the Emergency Power (Continuance) Ordinance, 1946. Ultimately, the essence of Rule 81-A was included in the Industrial Disputes Act, 1947, and the government continued to have the power of discretion while referring industrial disputes for adjudication with it. Under Sec. 10(1) of the Industrial Disputes, Act, 1947, the government may or may not send an industrial dispute for adjudication and as such its power of discretion regarding reference of industrial disputes for adjudication remained. However, when a dispute concerns a public utility service, and notice under Sec. 22 of the Act has been given, it is mandatory for the government to send the dispute for adjudication. Thus, the power of discretion of the government is restricted in case of public utility services.

[15] Ram, Santokh (1979), "Government's Discretion to Refer Industrial Disputes for Adjudication", Indian Journal of Industrial Relations, Vol. 15, No. 2 (Oct., 1979), pp. 307-322, Published by: Shri Ram Centre for Industrial Relations and Human Resources

The author concluded that there remains a possibility of the government to misuse this discretionary power. Secondly, it unduly prolongs the time-lag for the beginning of the adjudicatory proceedings in an industrial dispute. Time spent by the government in considering and referring a dispute for adjudication can be better utilized by the labour courts or tribunals for adjudication if the disputant parties are directly allowed to take the disputes to them. Thirdly, after the failure report is submitted by the conciliation officer and before the government refers the dispute for adjudication there is no prohibition on strike or lock-out. Author felt that the control of the government over industrial relations would not get weakened in absence of the power of discretion of making reference of industrial disputes for adjudication. If the government removes its reference-making discretion, it will enhance the dignity and the impartiality of the government in general.

Wadegaonkar (1983)[16] attempted to assess the working of the machinery for industrial adjudication in India by examining the discretion of the government to refer an existing or an apprehended dispute, Government's refusal to refer and direction by High Court to reconsider whether reference possible and power to prohibit strike or lockout during pendency of a reference in light of judgments of different higher courts. The author observed that the power of discretion of the government to send an industrial dispute for adjudication originates from the notion of compulsory adjudication and governmental interference in industrial relations which was earlier governed by the contract of service which was difficult to enforce. The author suggested to do away with prerogative of the government to make reference of industrial disputes for industrial adjudication. A central legislation in this regard should be enacted to enable

[16] Wadegaonkar, Damodar (1983), "Industrial Adjudication As A Modality For Restoration Of Industrial Peace: Evaluation Of The Operation Of Adjudication In India", Journal of the Indian Law Institute, Vol. 25, No. 3 (July-September 1983), pp. 317-358, Published by: Indian Law Institute

the parties to directly approach the adjudicating machinery. The labour court or industrial tribunal should have inherent jurisdiction to adjudicate all disputes under all labour enactments. This will make sure that industrial disputes are promptly disposed. A uniform labour code consisting of substantive and procedural provisions should also be evolved.

Nadagoudar (2006)[17] studied adjudication of industrial disputes by analysing the working of the industrial tribunal and the labour courts at hubli during the time period from 1999 to 2004. It was noticed that there were abnormal delays in the adjudication process. There were delays at the pre-adjudication stage (conciliation and reference), actual adjudication stage and at the post -adjudication stage (judicial review of awards). On an average adjudication takes about 4-5 years' time to finally settle an industrial dispute. The delays in adjudication had already resulted in the loss of confidence in the system among the working class, which suffered most form the delay. The main causes for delays in adjudication of disputes were: i) Delay in conciliation proceedings, ii) Delay by the Government in making reference and misuse of Governments reference power and lack of access iii) huge pendency of cases, iv) appointment of non-specialist Presiding Officers, v) granting of unlimited adjournments, vi) procedural technicalities and court formalities, vii) Inadequate number of L.Cs./ I.Trs., viii) Government's failure to fill the vacancies in time, ix) Inadequate infrastructure facilities, x) Non-compliance with the time schedules provided in the Rules, xi) The delaying tactics used by the parties, xii) Non utilising the power of granting interim relief by the Tribunals and the Labour Courts, xiii) lack of provisions to make compromise or pre-hearing assessment procedures, xiv) Stay orders by the High Courts, xv) delay in publication of

[17] Suresh V. Nadagoudar (2006), "A Critical Study Of Adjudication Of Industrial Disputes With Special Reference To Working Of Labour Courts And Industrial Tribunal At Hubli" Doctoral Thesis under Karnatak University

awards, xv) Delays in higher judiciary. Apart from these defects, the adjudication system suffered from various problems such as: i) juridification of Industrial Relations, ii) it encouraged litigation, iii) it was expensive; iv) there was a Problems of implementation of awards. Considering the above defects and limitations in the system and the draw backs in its operation, it may be derived that the adjudication system was not effective and efficient in its functioning. This analysis of data collected from Labour Courts/Industrial Tribunal and opinion survey clearly indicated that the adjudication system was not effective and efficient and its deficiencies and drawbacks were to be rectified to make sure prompt disposal of cases.

Banerjee, Supurna and Mahmood, Zaad (2017)[18] studied adjudication of industrial disputes through both quantitative and qualitative analysis of court judgments. The paper examines the nature of judicial intervention at different levels. Data collected confirms the sticky nature of industrial disputes as well as the time consuming pace of procedure of judicial dispute settlement. The study indicate that adjudication in industrial dispute actually prolongs the industrial dispute. Disaggregated analysis of reasons of irreconcilable industrial disputes reveals that adjudication is chosen, not for the interest of collective bargaining or to establish rights, but as the last resort at the disposal of the workers when the very relation is at stake. 94% of these cases were appeals against the awards of Industrial Tribunal/Labour Court. Only 6% of the cases were directly filed before the High Court. Out of the seventy-four cases of appeals, the High Court reversed the decision in fifty percent of the cases while upholding thirty-nine percent of the awards of the industrial tribunals. This is significant as the interpretation of statutory provisions and industrial dispute seems to differ considerably

[18] Banerjee, Supurna and Mahmood, Zaad (2017), "Judicial Intervention and Industrial Relations: Exploring Industrial Disputes Cases in West Bengal", Industrial Law Journal, Vol. 46, No. 3, September 2017, Industrial Law Society

among the two hierarchy of the judiciary. Again of the seven cases that went on appeal to the Apex Court, the High Court's judgments were upheld only in two cases and reversed in rest of the five cases. The rate of reversal of judgment on appeal is quite high between different layers of judiciary on the issues involved in industrial disputes.

In the High Court, forty cases were disposed in favour of the employers' accounting for 54.05% of the total cases studied in comparison with only 29 cases being disposed in favour of the trade unions accounting for 39.18% of the total cases studied. In the case of Supreme Court, four cases were favourably disposed for the employers and in three cases the judgments were in favour of the trade unions and the workers. As the number of cases is small, this does not reveal any particular trend. Of the 40 cases in which the award of the industrial tribunal favoured the trade union, the High Court reversed the decision in 24 (60%) cases. In the twenty-nine cases in which the awards of the industrial tribunal were in favour of the employer, the High Court upheld the awards in over nineteen (65%) of the cases and reversed the awards in only ten (around 34%) cases. The analysis of the authors indicates that industrial tribunals are more in favour of the workers than the High Courts.

The authors suggest that adjudication is usually located where industrial relations may break down. Cases of charters of demand and wages, which are the central issues of collective bargaining, constitute negligible number of the total cases. The authors observe that decline in the militancy of the trade unions in West Bengal did not show a simultaneous increase in resorting to adjudication for industrial dispute resolution. The institutional bottlenecks like long delays in dispute resolution and costs of legal procedure act as a hindrance to judicial recourse. Though the industrial tribunals seem to be more in favour of the workers and interventionist in nature, the High Court appears to be much more in favour of the employers and concerned with procedural side of the

law. The consequence of this is that there is a wide difference in the judgments pronounced by the judiciaries at different layers of hierarchy. The Supreme Court mainly limits its judgment to seeing whether the judgment of the High Court is commensurate with the available evidence and sticks to the applicable laws. At the level of industrial tribunals, adjudication is seen as a function of the executive arm of the state and therefore somewhat get influenced by the realm of politics. The authors argue that at this stage, the manner of judicial understanding of industrial dispute and interpretation of statutory provisions is organic as it is located and connected to the realities of the industrial condition. Their awards are, in many cases, not just procedural but interventionist, concerned with probable consequences of various controversial notions. The High Court judgment shows an approach of insulation regarding industrial relations. The High Courts with their formal and impersonal approach to industrial relations, time-taking systems and costs become advantageous for the employers. The authors observed that the High Court has a greater inclination to reverse awards which is not in favour of the employer and uphold the awards which is not in favour of the trade unions. This trend apparently suggests that the higher judiciary, ie, the High Court, is not in favour of the workers. Different layers of the judiciary differ in their interpretation of the very same law, that is, the Industrial Disputes Act, 1947. Judicial interventions try to reconcile two inherently discordant objectives. On the one hand, they attempt to govern industrial relations by resolving immediate disputes. On the other, they often have to go beyond the letter of the statute to promote shar ed regulation of industrial relations.

3.1.4 General

There are several studies that covered the industrial dispute resolution machinery as a whole or more than one aspects of it. These studies are reviewed below:

Lansing and Kuruvilla (1987)[19] in their paper described and studied the Industrial Disputes Resolution system in India based on national data and descriptive statistics. They found that though the law empowered appropriate governments to make a reference for adjudication at any stage of conciliation, but that was rarely used, since adjudication was normally used as a last resort. Both the disputing parties are reluctant to go for adjudication because they will lose their power of achieving their objective through direct action. The involvement of an external third party was also not acceptable. Furthermore, adjudication required substantial time, and waiting for an adjudicated decision might adversely affect the situation at the factory. As a result, both the parties tend to depend more on the process of conciliation. The disadvantage of conciliation was that it was time consuming, and may go on for months. However, the fact that conciliation proceedings were in progress acts as a deterrent to workers from taking any direct action to gain their ends. The data collected in the study made it clear that the increase in industrial conflicts had in fact been more than proportionate to the increase in industrial employment. The continuous escalation of conflict did not speak well for the efficiency of India's dispute resolution system. In fact, the system had not been successful in preventing lockouts and strikes, although that was the intended objective of the Industrial Disputes Act,1947. The system had been more efficient in expeditiously terminating disputes once a strike had already broken out. The study did not focus on relative efficacy of different methods of disputes resolution and was based on secondary data.

[19] Lansing, P. and Kuruvilla, S. (1987), "Industrial Dispute Resolution in India in Theory and Practice", 9 Loy. L.A. Int'l & Comp. L. Rev. 345 1(1987)

Rath, Giri and Parida (1991)[20], attempted to study the industrial relations trends in Orissa since 1980, based on the parameters like role of community in industrial relations, growth of unionism; settlement of disputes, work-stoppages; working of the joint forums at plant level; collective bargaining; and the role of government in sick units and unorganised sector. It was found that in many industrial establishments both in the private and the co-operative sector, the employers and unions had realized the need to decide the conditions and terms of employment in Orissa through mutual negotiations or collective bargaining. It may also be said to the credit of the unions that, despite their ideological differences and affiliations they had avoided confrontation, behaved themselves and allowed the recognised unions to have bargaining relations with their respective employers. The performance of the machinery of conciliation was disappointing in Orissa. The percentage of industrial disputes resolved at the stage of conciliation since 1983 had been around 39 per cent for the three years 1983-85, while the failures had been more than 54 per cent. The settlements registered also include the agreements signed as settlements for the benefits under Sec. 18(3) of the Industrial Disputes Act, 1947. The government's adjudication machinery made undue delay in disposing of some disputes that were referred to it; again, the influence of the political factors in such cases was not ruled out. Undoubtedly, such delays had largely contributed to the industrial unrest in the State.

Patil (1998)[21], studied Contemporary scenario of Industrial Relations in India with reference to Karnataka. Industrial relations in India were changing quite rapidly since

[20] G. C. Rath, D. V. Giri and S. C. Parida, "Industrial Relations in Orissa "Indian Journal of Industrial Relations, Vol. 27, No. 2 (Oct., 1991), pp. 43-51 Published by: Shri Ram Centre for Industrial Relations and Human Resources

[21] B. R. Patil (1998), "A Contemporary Industrial Relations Scenario in India: With Reference to Karnataka" Indian Journal of Industrial Relations, Vol. 33, No. 3 (Jan., 1998), pp. 289-312 Published by: Shri Ram Centre for Industrial Relations and Human Resources

1991-92. There had been an almost universal perception among the managers, trade union leaders and activists, and the students of industrial relations that the scenario of industrial relations in Indian industries were going through a sea change. But there had been lack of efforts to empirically study these perceptions. Hence, a survey of the scenario of Industrial Relations in Karnataka was undertaken during the period from 1995 to 1997. The survey showed that the organizations and the workers in traditional industries were slow to respond to the fast paced environmental changes. The industrial undertakings in emerging industries like the information technology and other high-tech industries were responding well to the changes with the help of the contemporary ideas of HRM and development techniques and appropriate interventions. There was considerable change in the mind sets of the trade unions and also that of the managements. The trade unions were extending cooperation to the employers, and the seemingly divergent interests were converging into common grounds. Simultaneously, the role that the Government was playing in resolving industrial disputes was also going through a change. It was becoming more evenly poised. As a result, the employers had been able to gain a lot so far their prerogatives to manage the work and the organisation are concerned. However, it could not be concluded positively that the scenario of industrial relations had been changed entirely. The author observed that it was still on a rough landscape. But with the proportion of the knowledge workers in the labour force increasing, a change of attitude of the management and also of the trade unions and the emergence of internal leadership in trade unions, industrial relations were likely to undergo more change enabling the industrial and business organisations to become competitive globally. During the last few years the role of the machinery of conciliation in promoting settlements was much reduced. Firstly, the industrial conflict had almost come to a naught and more and more organisations and trade unions prefer to register

their agreements as settlements under Section 2(p) and 18 of the Industrial Disputes Act,1947. Secondly, the number of withdrawals and failures were much more than the so called settlements. This only substantiated the observation that collective bargaining was a much preferred procedure for settling the issues and conciliation was sought only to give legal status to the agreements or to have adjudication. In sum, it may be stated that the scenario of industrial relations was going through a change. Cooperation between labour and managements was becoming more common rather than conflict; HRM and development was fast replacing personnel management, and labour relations were changing to employee relations. At the same time, industrial relations in organisations with traditions of good industrial relations continued to be good. Similarly, the managements who were quick to respond to the changing environment had been able to retain their competitive position in the market.

Sen Gupta and Sett (2000)[22] examines the controversy on labour reforms in India necessary to supplement its economic reform programme. Analysing the state's intervention in industrial relations, it concluded that the emphasis of the labour reforms should be on recognition of trade union and promotion of an independent industrial dispute settlement authority which is not dependent on the state executive. According to the authors, there are three important areas: the necessity to promote bipartism and encourage collective bargaining, the need for relaxing the rigidities relating to employment security, and the necessity for an independent authority for industrial disputes settlement without state intervention. The authors feel that there is consensus on three fundamental points – statutory union recognition, a structural framework to

[22] Sengupta, A.K. and Sett, P.K. (2000), "Industrial Relations Law, Employment Security and Collective Bargaining in India: Myths, Realities and Hopes", Industrial Relations Journal, 31(2) : 144-153

facilitate collective bargaining and intervention of third party only by an autonomous independent agency.

There is no apparent consensus on the provisions relating to employment security but there is some unanimity on the necessity to form an independent authority like Industrial Relations Commission. Data reveals that permanent workers have been substituted by casual and contractual workers in all types of industries. The authors observed that democratically elected governments using their discretionary powers under the statutes subverted the functioning of the machinery for settlement of industrial dispute and the power of a union is measured by its influence over the political party in power and not by its influence over the workers. Even though there are statutory provisions for employment security, the employers in India successfully pushed through labour restructuring schemes and the trade unions failed to successfully confront the situation. The authors came to the conclusion that the constitution of Industrial Relations Commission with the power to conciliate and adjudicate industrial disputes and also to grant recognition of unions for the purpose of collective bargaining is the only hope to induce a fundamental change in the industrial relations scenario.

Krishna Moorthy (2005)[23] studied the changes that have happened in the scenario of industrial relations in the textile industry of Tamil Nadu after the economic reforms of the nineties came into being. He observed that the number of industrial disputes as well as the number of workers involved in those disputes have decreased gradually in the post reforms period in Tamil Nadu. But simultaneously the loss of mandays because of lockouts and strikes went up in the same period. It was also revealed that the workload before the adjudicating authorities has gone down and the conciliation machinery

[23] Krishna Moorthy, N., (2005), "Industrial Relations Scenario in Textile Industry in Tamil Nadu", Indian Journal of Industrial Relations, Vol. 40, No. 4 (Apr., 2005), pp. 470-481, Published by: Shri Ram Centre for Industrial Relations and Human Resources

efficiently discharged its functions. The study comes to conclude that industrial relations in the textile industry in Tamil Nadu was affected by economic reforms since industrial disputes showed a declining trend. The prevailing situation of labour unrest may be because of indiscipline by both a section of trade unions and some employers.

The proportion of lockouts and strikes to total number of industrial disputes has decreased in the period following the economic reforms. This may be due to a greater awareness of employees' social responsibilities for creating a healthy environment or change in the pattern of employment, i.e. permanent workers being replaced by temporary workers or increase in job insecurity for the workers. The decrease in the number of industrial disputes can be because of the role of the Labour department and the government in sustaining a harmonious relation between the employers and labour to create an atmosphere favourable for attaining growth and prosperity. The percentage of industrial disputes resolved by conciliating authorities has increased during the post reform period which reflects that the conciliation machinery effectively discharged its functions which also resulted in decreasing number of references for adjudication. It shows that the machinery for industrial relations was efficient in disposing cases.

Venugopalan (2007)[24] studied the Industrial Relations in the Private and Public Enterprises in Kerala. The study analysed the causes and nature of industrial disputes, the involvement and role of employees, trade union leaders and management personnel in disputes, union management relations, involvement of employees in trade union activities and the working of the settlement machinery. The study covered a decade from 1996 to 2005. Both primary as well as secondary data were used for analysing the study. The primary data were collected from trade union leaders, employees and from

[24] Venugopalan K.V., "Industrial Relations In The Public And Private Enterprises In Kerala" PhD Thesis, Mahatma Gandhi University, 2007

management personnel based on structured interview schedule. The secondary data used in the study were collected from a sample of units, books, reports and periodicals. The collected data were classified and analysed appropriately keeping in mind the purpose of the study. From the findings of the study, it was concluded that the economic benefits, viz. wages, allowances and bonus provided to employees in the private as well as public sector enterprises in Kerala were insufficient which cause disputes in these sectors. The work load was another reason of industrial disputes. Violation of agreement was a major reason of industrial disputes in the public sector. 'Reasonable demand' and 'unity of workers' were the major reasons for the success of strikes. Employees and trade union leaders 'always' consider the purity of strikes before joining it. The attitude of management towards the strikers was found to be 'strict' or 'very strict' in the private enterprises. 'Job security', 'protection against victimisation' and 'unity of workers' were the main reasons for employees joining unions. The existing union- management relationship was found to be moderate. The management did not take the employees and unions into confidence for the settlement of industrial disputes. 'Conciliation' and 'negotiation' were the most preferred and mostly used method of resolution of industrial dispute in both the private as well as public sectors. Further, the resolution of dispute was usually made by the middle level management and the top level management.

Bhangoo (2008)[25], studied the Regional Pattern of Industrial Disputes in India with special reference to Punjab (1967-2003). The study examined the trends in the scenario of industrial relations of Punjab which spanned over a period of thirty-seven years (1967- 2003). The study had been carried out by sub-dividing the entire period into

[25] Bhangoo, K. S. (2008), "Regional Pattern of Industrial Disputes in India: A Study of Re-Organised Punjab (1967-2003)", Indian Journal of Industrial Relations, Vol. 43, No. 4 (Apr., 2008), pp. 603-632

three stages, i.e., period I, period II and period III. This paper attempted a detailed examination of the forms, nature, extent, causes, volume and duration of industrial disputes and work stoppages. It also undertook a comparative analysis of lockouts and strike and examined the performance of industrial relations mechanism. The comparison of lockouts and strikes suggested the incidence of rising and emerging lockouts, which began its appearance in the industrial relations scenario of the state. The paper found out that the proportion of personnel matters in causing disputes was going up though economic reasons dominated over the period. The study also found out the poor performance and inefficiency of the State's industrial relations machinery. Therefore, there was an urgent necessity to reorganise, reorient and restructure this industrial relations machinery to keep pace with the needs of the present. An attempt was made to identify the main methods of dispute settlement and to assess the performance of the industrial disputes resolution machinery under the framework of the Industrial Disputes Act, 1947. The data revealed that during the time period (1967-2003) adjudication remained the dominating method of dispute settlement, followed by conciliation, and as far as arbitration was concerned it remained the least preferred method of dispute settlement in the state. This clearly showed increasing ineffectiveness and inefficiency of the machinery of conciliation and that its functioning was not up to the mark. It was a clear indicator of the poor functioning of the adjudication machinery of the State. It was found out that the average social intensity of lockouts and the average social intensity of strikes remained close to each other during period I. But during period II, period III and over the whole period of study the average social intensity of lockouts increased more than the average social intensity of strikes. From this it can be deduced that lockouts during the pre-reforms period and the post reforms periods became more intensive and this was also supported by the relative

social intensity of lockouts over strikes during the same periods. From the above discussion and analysis, it was evident and can be concluded that the relative intensity of lockouts over strike had continued to be high for the individual worker as well as for the society. In case of individuals it caused personal hardships to the workers involved and in case of society hardships to general public and economy due to loss of production. The study of the methods of disputes settlement revealed that adjudication remained the dominating method of dispute settlement followed by conciliation. Arbitration remained the least preferred method of dispute settlement. All the indicators used to evaluate the functioning and efficacy of the conciliation machinery clearly showed its increasing ineffectiveness, inefficiency and poor performance over the period of study. It revealed that during the period of study adjudication settled annually on an average 29.59 percent of the industrial disputes. Analysis revealed that throughout the period of study 1967-2003 and over the three periods the percentage of industrial disputes pending at the end of the year at the adjudication level remained not only more than the disputes settled but also remained quite high and increased during the period of study. It was a clear indicator of the poor functioning of the adjudication machinery of the state.

Sen (2009)[26], studied the evolution as well as the present status of industrial relations in West Bengal to providing an understanding into workers' and employers' organizations in the sub-region, coverage and trends of collective bargaining, dispute resolution and the existing mechanisms to resolve them, and recent tripartism and social dialogue practices. The paper also examined the extent to which collective bargaining is able to provide a framework for effectively governing collective labour–management relations at different levels. She observed that there had been a definite decline in the

[26] Sen, R. (2009), "The Evolution of Industrial Relations in West Bengal", ILO, 2009

number of industrial disputes being referred for conciliation, presumably with a corresponding increase in bipartite solutions. The primary cause of strikes was management's refusal to accept or even discuss the charter of demands of unions for improvement in working conditions and wages, which led to unions going on strike. Two factors primarily accounted for over ninety per cent of the lockouts. The first factor included uneconomic running, technological obsolescence, loss of economic viability and management's intention to reduce the workforce. The second was alleged indiscipline, which means that management claimed, when declaring the lockout, that workers had violated discipline and forced management to close the establishment. This has very often been found to be a ruse used by management to close the unit rather than incur losses when running it. In the jute industry there was ample evidence that management deliberately provoked workers to abuse a manager or even assault one, and then used it as grounds for declaring a lockout. The usual causes of wages or working conditions do not figure in the reasons of strikes and lockouts, except in a very few instances. Between 1995 and 2006, the number of disputes handled each year had been declining steadily. The number of disputes disposed of has shown an even sharper decline (from approximately fifty per cent to less than twenty-five per cent). The picture was the same for number of industrial disputes resolved by conciliation and also through bipartite negotiations. Figures are not available for resolution of disputes through voluntary arbitration, but for many years now this method of dispute resolution has contributed negligibly to reduction of disputes. The number of disputes 'otherwise disposed of' is substantial. In fact, on average, the majority of disputes seem to be 'otherwise disposed of'. The term was really a euphemism for lapsed conciliation proceedings, which have not been pursued by either party. This could mean that the dispute was solved by the lapse of time or left without a solution. There was no

registered bipartite solution either since then the agreement would have been sent to the government. The bipartite settlements referred to above are those where the settlement copy was sent to the government. The percentage in this case is not more than 10 per cent. The study was based on secondary data and unstructured interview with the stakeholders and only descriptive statistics was used. Further, it did not study the effectiveness of adjudication.

Venugopalan (2011)[27] made a study to assess the performance of the machinery for industrial dispute prevention and settlement in Kerala during the time period from 2000-01 to 2009-10. The evaluation was done on the basis of some well-defined variables, viz. industrial disputes handled and resolved, most probable form of machinery for dispute resolution, resolving of disputes by different machinery of resolution, method of machinery for resolution of disputes used, level of management involved in dispute settlement, level of satisfaction in the functioning of machinery for resolution of disputes in Kerala. He found that conciliation and voluntary negotiation were the most commonly used methods of disputes settlement in Kerala. Further, these two methods were the most likely forms of dispute resolution perceived by the employees in the private as well as public enterprises in Kerala. In spite of some differences among the respondents most of them opined that top and middle level management were largely involved in the dispute settlement. So also, the role of unions and management in dispute settlement was very significant. In the case of public sector, fifty percent of the employees expressed the opinion that the capability of the management in resolution of disputes as moderate whereas majority (53.1%) of the private sector employees opined that the capability of the management in resolution of

[27] K.V. Venugopalan (2011), "Settlement Machinery in Public & Private Enterprises in Kerala" Indian Journal of Industrial Relations, Vol. 47, No. 2 (October 2011), pp. 380-386 Published by: Shri Ram Centre for Industrial Relations and Human Resources

disputes was high. Majority of the respondents in both the sectors were satisfied with the performance of the machinery of settlement disputes.

Joseph (2014)[28] examined industrial disputes and disputes resolution in employer employee relations and attempted to address the question related to the nature of reforms in this important area of stakeholder engagement. The author observed that so long there is an employer and employee, and there are terms of employment, there will be differences, conflicts over interests and rights, contrast between what the employee is expected to deliver and what the employee gets in return from the employer. Industrial disputes cannot be get rid of through legal reforms and greater labour market flexibility. The employers usually deal with the discontent of the workers regarding conditions of work and wages with suspensions and terminations particularly when there is an effort to mobilize and collectivize demanding enhancement of wages or regularization. Another tactic is to threaten closure. In light of these disputes resolution system needs to be strengthened for protecting the vulnerable employee as well as for the survival of the organizations which provide livelihoods for the employees. According to the author the question is identifying the changes needed to create a fair industrial disputes resolution system. When disputes go into the system of statutory procedures, they move around endlessly with negative livelihood and work life consequences for the vulnerable employees with increasing frustration and anger. The author proposes to replace works committee with an organizational Ombudperson or Ombud Committee consisting of representative of the management, trade union or elected worker representative and a neutral mutually acceptable third party as the convenor. Then he proposes shifting from Government run disputes resolution

[28] Joseph, Jerome (2014), "Quo Vadis, Industrial Relations Disputes Resolution...?", Indian Journal of Industrial Relations, Vol. 50, No. 1, Special Issue on Labor Law Reforms In India (JULY 2014), pp. 75-88, Published by: Shri Ram Centre for Industrial Relations and Human Resources

machinery to a professionally run disputes resolution machinery. The third proposal of the author is regarding the power of discretion of the government for making reference of a dispute for adjudication. The author also identified some skills and competencies of an effective conciliator.

Arputharaj, M.J. and Gayatri, R. (2014)[29] in their paper classified the causes of industrial disputes as: 1) Economic causes; 2. Management causes; 3. Political causes. Economic causes have questions relating to bonus, wages, allowances and retrenching of workers by the management, rationalisation and automation, defective system of retrenchment, leave etc. Less wages when the prices are rising, demand for an increase in D.A., miserable living and working conditions, hours of work, etc. are some other economic reasons that caused a number of strikes in India. The workmen related factors responsible for industrial unrest have been: (1) Inter union rivalries, (2) Economic and political environment that adversely affects workers' mind sets, and (3) Lack of discipline amongst workmen. Managerial causes are basically rooted in management's attitude towards the labour and Industrial disputes are partly political too. The authors identified ten major consequences of industrial disputes like disturbance in the social, economic and political life of a country, loss of output, declining demand, loss of workers, indebtedness, loss of health of workers' families, loss to the employer etc.

Barhate (2015)[30] in his doctoral dissertation studied Industrial disputes and the alternate system of resolution of dispute under the Industrial Disputes Act, 1947. One of the most important objectives of this research work was to study various alternate

[29] Arputharaj, M.J. and Gayatri, R. (2014), "A critical analysis on efficacy of mechanism to industrial disputes resolution in India", Intrnational Journal of Current Research and Academic Review, Volume – 2, Number – 8,(August – 2014)p.p. 328-344, Excellent Publishers

[30] Shital Sureshrao Barhate, "Industrial Disputes And The Alternate Dispute Resolution System Under The Industrial Disputes Act, 1947: A Critical Study" PhD Thesis, Dr. Babasaheb Ambedkar Marathwada University, 2015

dispute resolution methods under the Industrial Disputes Act, 1947 and critically analysing the functioning of these machineries. As far as conciliation was concerned, it was found that both workers and employers were not satisfied with the working of this machinery. Near about 40% of the workers and employers were of the view that conciliation officers were inexperienced in this field and majority of them were not labour law experts. When researcher asked them their choice of dispute resolution method in case of industrial disputes, then only 10% of respondents opted for conciliation, 48% said that they will prefer adjudication and 36% answered for arbitration. Hence, it was observed that regarding the choice of the settlement method, most of the respondents preferred adjudication and negotiations methods and not the conciliation. With regard to Arbitration method, it was found that neither the workers nor the management utilised this method frequently. It was seen that arbitration is hardly used in settling industrial disputes. It was found that, the Industrial Disputes Act contended a good system of alternate dispute resolution by way of collective bargaining, conciliation, Board of conciliation, Courts of Enquiry and Arbitration. However, as far as actual working of these machineries were concerned they provide only a lip service in the settlement of Industrial Disputes. It was found when researcher asked conciliation officers regarding their settlement and failure ratio, majority of them had excess of failure rate than settlement. It is important to note that, two Assistant Labour Commissioners clearly mentioned that, 70% failure were there in the Conciliation proceedings and only 30% settlement was found.

Sapkal (2015)[31] in his study examined the relevance of method of conciliation in the settlement of industrial disputes and examined the impact of mandatory and non-

[31] Sapkal, R. S. (2015), "To conciliate or not to conciliate: Empirical Evidence from Labour Disputes in India", February, 2015

mandatory conciliation mechanisms on the negotiated settlement and dispute resolution time. Findings from the study indicated that, at an aggregate level, industrial disputes resolved through the mandatory conciliation process are less time consuming than the disputes in the labour courts. The study used a dataset consisting of samples of industrial disputes filed between 2008 and 2011 in two Central Government Industrial Tribunal-cum-Labour Courts (known as CGIT's) – namely -New Delhi and Mumbai. The study analysed the time taken for disposal of disputes and analyzed the data related to Central Industrial Relations Machinery.

Findings from the study show that overall cases settled through mandatory process of conciliation tend to take less time than the cases before the labour courts. The study also shows that the process of conciliation is more successful in decreasing the differences in final compensation received by the workers and in improving their rates of settlement. The study also takes into consideration the amendment to the industrial Dispute Act of 1947, that permits direct access to labour courts by the worker. Results obtained at the disaggregate level, indicates that disputes resolved in the pre reform period experience reduction in total time of disposition. However, the study does not find any significant effect in differences in final payments and settlement rates. The overall finding suggests that, the conciliation machinery is playing a pivotal role in the Indian industrial dispute resolution system and it is an efficient and effective method of resolving labour disputes as compared to adjudication.

3.2 Research Gap

The above review of literature reveals that most of the studies are based on secondary data and descriptive statistics and the efficacy of work stoppages has never been studied. Further, there is no comparative study between conciliation and adjudication

as mechanisms of industrial disputes resolution. No study has covered the entire post liberalization period and there is hardly any study on West Bengal. The study by Sen (2009) is perhaps the only study on West Bengal which was based more on perception of the stakeholders and descriptive data on industrial disputes and it did not cover adjudication machinery.
