# Chapter - I

# INTRODUCTION

## 1.1 The Backdrop

Industrial harmony and peace is a precondition for any developing economy. Industrial disputes and industrial unrests in the shape of strikes, lock-outs, go-slow etc. is symptomatic of a disease that needs cure and prevention rather than suppression. Industrial disputes need to be contained within a reasonable limit for industrial peace in any country. It affects every layer of the economy namely employers, workers as well as the general public. With the advancement of industrialisation and technology, new challenges in the arena of industrial relations are emerging. If appropriate remedial measures are not found and implemented effectively, the industrial development of India may be jeopardised. For an all-inclusive growth, the developing economies need a climate of industrial peace which can be achieved if there are harmony in Industrial relations with industrial disputes as less as possible.

After liberalisation and globalisation in 1991, the conditions of industrial relations in India as well as in West Bengal are going through a change. Faced with global competition the Indian industry has to focus on curtailing cost and increasing productivity. Apart from insisting on productivity clause in collective bargaining settlements, the Indian industry has also gone for wide spread casualization/ contractualization of labour. Within India, different states are vying with each other for attracting investment and offering industry friendly environment. Harmonious industrial relation is an essential part of an industry friendly environment.

In 1991, a series of industrial, fiscal and trade reforms were introduced by the Government which directly affected industrial peace and prosperity. The workers as well as the management still lack in awareness of the fact that industrial enterprise is

essentially a joint co-operative venture and continue to think in terms of their own interests being mutually conflicting and exclusive. On the one hand, employers are facing increased competition and adopting unfair labour practices. On the other hand, due to downsizing and contractualization of labour, the union's membership has been adversely affected. The role that the Government plays has also undergone change. Government, due to globalisation and liberalisation of the economy, is no longer in a position to continue its pro-labour policy.[1]

The conflicts between the management and the workers are common to almost all the developed and developing countries of the world. The development of capitalistic economy which means the control of the means of production by small entrepreneurial class has exposed the issue of conflict between labour and management all over the world (Bhagoliwal, 1976; 187-188). Industrialisation tends to create a distance between the workers and managements/employers, because of the reason that workers have no ownership over the means of production. (Bhangoo, 1995; 130). This hiatus has resulted in industrial conflicts, the consequences of which is industrial disputes, lockouts, strikes and other labour related problems. The actors of the scenario of Industrial relations i.e., government, employers, managements, trade unions and workers, try to achieve harmonious industrial relations. In this regard, the First National Commission on Labour has pointed out, " Economic progress is bound up with industrial harmony for the simple reason that industrial harmony inevitably leads to more cooperation between employers and employees, which results in more productivity and thereby contribute to all round prosperity of the country" (NCL, 1969: 53). The Second National Commission on Labour also opined that industrial relations also affect the social, economic, and

[1] Industrial Relations Scenario in Textile Industry in Tamil Nadu , N. Krishna Moorthy, 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

political goals of the state along with the interests of the two stakeholders, workers and management, (SNCL, 2003: 33-34). Industrial disputes can be considered as an index variable for understanding the situation of industrial relations in a country. India figures in the top in the world so far industrial unrest is concerned (ILO, 1997-1998: 253-254). Industrial unrest may take different forms like strikes, lockouts, pen-down strikes, go-slow, gheraos, token strikes, sympathetic strikes, hunger strikes, bandhs, etc.

To create conducive industrial relation climate, recent HR practices stress upon replacing adversarial relation between the workers and the trade unions representing them and the management by a collaborative relation. Again, in many new industries there are no trade unions. Thus the arena of industrial relation is undergoing a sea change.

### 1.2 Labour Policy in India

Labour is included in the concurrent list of the Constitution of India. Not only the central government but the state governments as well are empowered to enact laws for the benefit of the workers. In respect of labour policies, India was following the logic of maintaining industrial peace together with the concept of income protection but jumped into the logic of competition (Frenkel and Kuruvilla, 2002)[2] after the liberalisation of the economy. In addition to this radical shift, the labour participation has also undergone change. India took many policy measures to accelerate the development of non-agricultural sectors though India was predominantly an agrarian country. India's case is also an interesting one where the economy has jumped from

[2] Frenkel, S., and Kuruvilla, S. (2002). "Logics of Action, Globalization and Changing Employment Relations in China, India, Malaysia, and the Philippines." *Industrial and Labour Relations Review,* 55(3), 387-412.

agrarian to services with the stress on the manufacturing sector in contradiction to the examples of the developed countries.

In Asia the trade unions enjoy relatively less power to influence the decisions which makes policy in comparison to Europe. In Asia there is different combinations of factors such as increasing mobility of capital as well as labour, globalization, general resistance to unions by employers, structural change in employment, problem of immigration, and decreasing share of public employment influence the policy making decisions. In Europe the general explanations for the decline of trade union have been the decreasing share of public employment, diversity in work force, shift towards service sector, increasing labour mobility, collapse of sector wise bargaining, destruction of Ghent system and attitudinal change towards trade unions. Governments and international bodies like ILO try to ensure maintenance of minimum standards.

### 1.2.1 History of the labour policy

The history of Indian labour policy includes the aspects of trade unionism, collective bargaining, and the liberalization. There is a complex relationship between politics and trade unionism in India. Faced with the challenge of choosing between voluntary collective bargaining without state intervention and state-controlled collective bargaining India opted for the latter. The problem with organized labour in India is that it is too minuscule part of the total workforce, and besides it is fragmented into a lot of trade unions; the traditional AITUC became fragmented into AITUC, INTUC, UTUC and HMS between 1947-49. After independence, India needed improved productivity and self-sufficiency and thus industrial strife would lead to impediments in achieving these goals. This was the reason behind the emphasis on state-controlled bargaining and minimising strikes or lock outs to the maximum extent possible.

In view of the national goals, importance of labour and plight of the workers the government constituted two national labour commissions. The First National Labour Commission was set up in 1966 with Justice Gajendragadkar as the chairman which submitted their report in 1969. The commission observed the distinct shift from agrarian employment to other sectors which led to urbanization and had thrown up challenges of providing housing, transport, civic amenities and proper distribution of the food grains and other resources. They also noted the existing provisions of labour legislations without strict compliance for which they made certain recommendations such as appointment of welfare officers. The Second National Commission on Labour was formed in 1999 with Ravindra Varma as the chairman which submitted its report in 2002. Among other things they examined the issues of rationalization of labour legislations, provisions for flexibility, to come up with a unified legislation for minimum protection of the workers working in unorganized sector. One of the important recommendations that they made was to make the mechanism of collective bargaining stronger in India by making provisions for trade union recognition. Till today there is no central legislation which provides for trade union recognition except few states like Maharahstra, Bihar, West Bengal, Gujarat etc. which passed state amendments to make statutory provisions for the recognition of trade unions.

The governments resorted to soft methods of labour reforms by disinvesting rather than privatizing the public sector undertakings, reducing the interest rates of provident funds, restricting the labour inspection regime, special concessions to the special economic zones etc. (Sundar 2010)[3]. There was also a philosophical shift in the mindset of judiciary which was more protective of the working class in the pre-liberalization era

[3] Sundar, S. (2010). "Emerging Trends in Employment Relations in India." *Indian Journal of Industrial Relations,* 45(4), 585-595

delivered some significant judgements in post liberalization era related to the contract labour, the right to strike etc. which went against the perceived interests of the workers and their trade unions in general. The Supreme Court of India has upheld the independence of the executive in case of privatization, been critical of the employees right to protest/strike, imposed restraints on public protests (referred to as bandhs), endorsed the usage of the controversial Essential Services Maintenance Act and also reversed earlier judgements on making the contract labour permanent (Sundar, 2010; Dhal and Venkat Ratnam, 2017)[4]. [5]

### 1.2.2 The Current Scenario

In India, agriculture, manufacturing and education related industries are dominated by women as compared to their male counterparts. The overall labour force participation rate is 52.5% marginally improved from 50.9%, as per the latest employment survey. The unemployment situation has deteriorated slightly to 4.9% as of 2014-15 as compared to the earlier 4.7% and 3.8% in the previous employment surveys (source Ministry of labour and employment, GOI).

However, as of 2012, as per different government estimates there are around 16,000 registered trade unions in India with a membership of around 9 million (Ministry of labour and employment, ON678). Historically in India there is multiplicities of labour enactments partly because of the concurrent nature of the subject. India is also characterized by multiplicity of trade unions. In India the five major federations of trade unions are the All India Trade Union Congress (AITUC), the Indian National Trade Union Congress (INTUC), the Hind Mazdoor Sabha (HMS), the Bharatiya Mazdoor

[4] Sundar, S. (2010). "Emerging Trends in Employment Relations in India." *Indian Journal of Industrial Relations,* 45(4), 585-595

[5] Dhal, M. and Venkat Ratnam, C. S (2017). *Industrial Relations.* New Delhi: Oxford University Press

Sangh (BMS) and the Centre of Indian Trade Unions (CITU). The major national federations have a large presence in manufacturing and PSUs, but they are not much successful in organizing the workers in the emerging sectors such as Information Technology and Information Technology enabled Services (IT and ITeS). Apart from these federations, there are enterprise trade unions.

The current situation can be summed up as increased use of contract labour, outsourcing, job freeze in the public sector as well as in the private sector, the reform measures by stealth where the central government is passing on the responsibility of labour reforms on the respective state governments, illegal closures, prolonged lock outs, reduction in workforce by giving out golden handshakes or voluntary retirement and rapid automation (Bardhan, 2002[6]; Sundar, 2008, 2010). The share of contract labour in the employment which was about 14% in 1994-95 increased to 26% in 2005 and also showing a further increasing trend revealing a clear shift towards informal facets of employment instead of the formal employments.

Traditionally, there are three primary actors in industrial relations: workmen and their unions, managers/employers, and the government. After liberalization, consumers and the community have also started to assert themselves and play a significant role. The rights of consumers and the community are closely interlinked with the three actors of industrial relations. The judiciary also considered larger public good rather than the narrow self-interest of a minority. Workers and their trade unions are also expected to assert their rights without impinging on the rights of others, especially the consumers and the community. The rights of the consumers were also given preference by the Consumer Courts over the rights of the workers. In some cases, the trade unions were

[6] Bardhan, P. (2002). "The Political Economy of Reforms in India." In R. Mohan (Ed.), *Facets of Indian Economy*. New Delhi: Oxford University Press.

ordered to pay compensation for the loss caused by their actions which disrupted public life like strike, bandhs etc. Telecom unions in Orissa and Mathadi workers in Maharasthra were ordered to pay for the damage for disrupting the public utility services.

### 1.3 International Labour Standards

India is one of the founding members of the International Labour Organization and has ratified many of its conventions and recommendations. ILO has many conventions and recommendations in respect of industrial relations, industrial disputes prevention and settlement of industrial disputes. The most important ILO instrument relating to prevention of industrial dispute and its resolution is the Recommendation No. 92 of 1951. It states that to facilitate the efforts to prevent and resolve industrial disputes between the employers and the workers the facilities of voluntary conciliation should be available. It also states without denying the right to strike that the parties in industrial dispute should not resort to lockouts or strikes when conciliation or arbitration proceedings are going on.

Resolution of Industrial Dispute is further covered in the Convention No. 154 of 1981 regarding collective bargaining. It provides for the authorities or agencies and the procedures to be followed for settling industrial disputes. One of the aims of resolution of industrial dispute is to encourage the mutual settlement of dispute or differences between the employer and the worker and employers and also to encourage collective bargaining and the practice of negotiation at bipartite level. Recommendation No. 130 of 1967 regarding examination of grievances also covers resolution of industrial dispute at the level of the enterprise, including disputes relating to rights over alleged violations

of the provisions of collective settlements. There are eight conventions and eight recommendations of ILO which are relevant so far industrial relations are concerned.

### 1.4 Report of the Second National Commission on Labour

The Second National Commission on Labour in its report stressed on the need of 'international competitiveness' of our industry in the era of globalisation. It observed that the national development depends on agriculture as well as industry and the services to its citizens. Both quality and efficiency is important for international competitiveness and it has become a national imperative in the era of globalisation.

For attaining quality and efficiency credit, technology, managerial skills and other inputs are not sufficient but the contribution from the workers is a major factor too. The workers being one of the partners in production need to be involved in quality and productivity as well. But involvement happens when there is a sense of belonging, partnership and commonness of purpose. The workers will feel involved if they receive fair and adequate wages, a reasonable share of profits and incentives, and treated with dignity and respect.

The prosperity of industry is a must for fulfilling the necessities of the society. The survival of our workers and also of the employers is dependent on the continued existence of our industry and in a globalised world the survival of our industry depends on our ability to compete in the world market. If there is conflict among the human factors involved in industry, this competitiveness cannot be achieved.

In this globalised world it is impossible for us to remain in isolation and stagnation. Emerging paradigm of global village is making old mind-sets irrelevant. Earlier confrontational approach is no longer effective and there is a need to transform it to an

attitude of collaborative partnership. Competitiveness which is so essential for survival in this era of globalisation is weakened by internal conflict and competition. For creating the condition conducive of harmonious industrial relations, the state, the organisations of workers and employers, should work together.

The Commission in its report also analysed the data that in the pre-reform period (1981-90) 402.1 million mandays were lost against loss of 210 million mandays during the post reform period of 1991 to 2000. Apparently this is a reflection of better industrial relations. But if it is analysed further it will be revealed that more mandays were lost on account of lockouts than on account of strikes. During the period, 80.2 million mandays were lost because of strikes as against loss of 129 million mandays due to lockout. The commission observed that there was uncertainty in the conditions of work and workers were reluctant to go for any action like strike that may jeopardise their jobs. But the employers were more confident and were declaring lockouts frequently. The settlements of industrial disputes were also often in favour of the management. All these are reflection of a changed situation.

### 1.4.1 Industrial Relations Scenario:

In para 4.285 of the report the Second National Commission on Labour made the following remarks regarding the industrial relations scenario:

1. That because of the fear that a unit may get closed down due to strike, the trade unions do not usually go for strike.

2. Service sector workers are losing interest in trade union activities as they feel that they have become outsiders.

3. There is a tendency to settle major industrial disputes by way of negotiations at bipartite level. Changes can also be seen in the nature of industrial disputes and the

demands made by the trade unions. In place of asking for enhanced wages, allowances or other facilities, trade unions now look for security of job and many of them are also prepared to accept cuts in wage or freezing of wage in return for protection of job. Industrial Disputes on account of non-payment of wages and separation compensations are increasing.

4. There is also an apparent change in the approach of the Government regarding the employers and the workers, particularly of the Central Government. At present, approvals for closure of an undertaking or for retrenchment of workers are granted more easily.

5. The issues of the employers like productivity increase, reduction of cost, employers' financial problems, fluctuations in the market, market competition etc. are now eagerly considered by the machinery of conciliation. There is also lack of seriousness so far execution of the labour courts' awards are concerned that were awarded by the labour courts long back after time consuming litigation with the employers wherein regularisation or reinstatement of the workers were ordered.

6. In cases where the financial positions of the employers are very poor there is a lack of seriousness of the officials in the industrial relations machinery to pursue the proceeding of recovery of dues against the employers who could not make payment of huge dues of the workers.

7. There is more willingness from the labour adjudication machinery to consider the issues of concerns of industry.

### 1.4.2 Collective bargaining

In para 4.286 of the report, the Commission observed that Globalisation has its impact in collective bargaining too. Earlier in the public sector, the effort was to bring in greater

parity across sectors and to reduce the wage differential between the lowest and the highest paid employees. Now the gap is increasing. The pay has not been revised in more than 100 out of about 240 public sector companies since 1992. Efforts are being made towards decentralisation of collective bargaining in key sectors as well, which will diminish the power of the trade unions and make pay more aligned to organisational performance.

In para 4.287, the Commission observed that industrial conflicts appear to be on the decline. Majority of the long drawn strikes in the private sector apparently did not result in gains from the workers' point of view. Even the Government is also not deterred by the objections from the trade unions against privatisation.

A strike is the application of a fundamental right of the worker to withdraw co-operation from what he perceives as injustice being done to him. Strike stops production and adversely affects the economic interest of the employer which may compel him to consider the demands of the workers and work towards a compromise solution. Sometimes, strike can also be a reaction to the attitude or action of the employer by which the workers felt insulted or hurt emotionally or felt insecure.

**1.5 The Second Five Year Plan**

The Second Five Year Plan reviewed the performance of the conciliation machinery and highlighted the importance of "one union for an industry," and stressed the necessity to have effective mechanism for the settlement of industrial disputes so that direct action like strike becomes the last resort for the trade unions. It suggested a scheme of bilateral negotiations, voluntary arbitration, conciliation and adjudication. It felt that settlements should be able to gather workers' co-operation for implementing measures for higher productivity, for expansion as well as modernisation, and for

agreeing to the schemes of 'job evaluation.' It also wanted employers to recognise the desirability of measures "to associate employees in the management of industry" (page-574).

### 1.6 Causes, Consequences and Settlement of Industrial Disputes

Industrial Disputes Act, 1947 provides for machinery and mechanism for fair and equitable resolution and investigation of Industrial disputes through bipartite negotiation, tripartite conciliation and adjudication. The Act encourages measures for ensuring and maintaining good relations and amity between the partners in production i.e., employer and workers. It prohibits illegal lockouts and strikes, and provides for protection and compensation to the workers in th event of retrenchment and layoff. It also provides the base for collective bargaining to take place.

#### 1.6.1 Causes of Industrial Disputes

The reasons for industrial unrest are embedded in the existing industrial system. The essential characteristics of industry everywhere are that (a) it contains labour and its division; (b) it is an activity performed by a group; (c) it is performed under control. Broadly, the reasons of industrial disputes can be classified as: 1. Economic issues; 2. Managerial issues; and 3. Political issues.

#### 1.6.2 Impact/Effect/Consequences of Industrial Disputes

The Industrial Disputes Act, 1947 together with other related State legislations contain the provisions for the machinery and mechanism for controlling the rights of the employers as well as the workers to resort to lock-outs and strikes and facilitate investigation and settlement of industrial disputes in amicable and peaceful manner by providing for the opportunity of collective bargaining through negotiations by the disputing parties and conciliation with the active participation of the trade unions and

in case of failure of both collective bargaining and conciliation, through compulsory adjudication or voluntary arbitration by the bodies or authorities constituted under these legislations.

There are many consequences of Industrial disputes, some of which are:

(1) It disturbs the economic, political and social life of a nation: It damages economic welfare and interests of the nation suffer when lockout or strike make the workers and the machineries idle in the entire industry or in any part thereof.

(2) Loss of Output: There is loss of output in the undertaking which is directly involved in the industrial unrest. However, the loss of output is not limited to the establishment directly affected by the industrial unrest but other related industries are also adversely affected since strike or lockout in one industry impacts the linked activities of other establishments also.

(3) Negative impact on the demand for goods and services: If the undertaking in which industrial unrest or work stoppages has happened produce raw materials or semi-finished goods or services that are used as inputs in the production of goods or services in another industry then the demand for goods or services for that industry also get reduced as a consequence of strike or lockout.

(4) Loss for the workmen: There is irreplaceable loss to the workers since because of strike or lockout they lose not only work but also wages as well as time which can never be replaced.

(5) Increase in indebtedness: Lockout or strike increases the debts among the workers as they do not have any earnings during that time. At that time, they cannot repay the old debts and sometimes they need to take fresh debts to sustain themselves.

(6) Negative impact on the family members: The workers and their family members also suffer from loss of health – both mental and physical because of worries and anxieties resulting from loss of work and wages and the consequent uncertainties.

(7) Effect on consumers: Lockouts and Strikes have an adverse impact on the consumers also as the supplies of goods and services get affected and sometimes there is also rise in price.

(8) Loss to the management or employer: During strikes and lockouts, the machinery as well as the plant remain idle. However, the employer has to incur the fixed expenses even when there is no production. This is the reason why employer also suffers financial loss.

(9) Adverse effect on industrial relations: Lockouts and Strikes have a negative impact on the relation between the workmen and their employers and develops communication gap and distrust.

(10) Adversely affects economic growth: Strikes and lockouts halt production which in turn slow down the economic development of the country.

### 1.6.3 Forms and Causes of Industrial Disputes

Industrial disputes can be categorised into major or minor, collective or individual, limited to a specific establishment or covering many organisations. The reasons of the industrial disputes may also range from an industrial dispute involving the dismissal of an individual workman, to a grievance of a group of workers relating to unsafe or unhealthy working environment, to a strike by all workmen of an establishment for preventing them from forming a trade union.

## 1.7 Types of Disputes

Some disputes may involve individual worker, others may be collective; some disputes may be over rights, others disputes may be over interests. In individual dispute there is usually a difference of view between an individual workman and his employer, normally related to existing rights. Sometimes a number of workers may have difference with their employer regarding the same issue, but each worker may act as an individual.

In collective dispute there is a difference of views between a group of workers usually, but not necessarily, represented by one or more trade unions, and the employer or group of employers related to existing rights or future interests. In rights dispute there is a difference of view between a worker or workers and the management concerning violation of an existing right. These disputes usually start from a claim by the workers that they have not received as per their entitlements. Rights disputes may also be collective or individual.

In interest dispute there is a difference of view between the workers and the employer relating to future rights and obligations under the contract of employment. In practice most interest disputes are initiated by a charter of demand submitted by the trade unions before the employers. Interest disputes are normally collective in nature.

## 1.8 Industrial Dispute Management System

Industrial Dispute management systems provided by legislations vary from country to country. As per Article 1 of the ILO's Recommendation No. 92 regarding Voluntary Conciliation and Arbitration, industrial dispute management systems should be appropriate to the local conditions of a nation. This is essential to ensure the efficacy of the system and also for ensuring that it has the confidence and trust of the

stakeholders. In general, industrial dispute management systems can be divided into three major categories, as follows:

A. Where the responsibility of prevention and resolution of industrial disputes lies with the officials belonging to the government ministries or departments of labour and these labour administrators provided the services of conciliation and arbitration. However, there may be some small role of private bodies in some countries. This type of industrial dispute management system is dominant in many African, Asian, European, Arab and American countries.

B Where the function of preventing and resolving industrial disputes is carried out by state funded autonomous statutory independent bodies. These bodies are formed by legislations. These bodies usually encourage the private agencies to play a role in the industrial dispute resolution system. This type of system can be seen in the United States, United Kingdom, Ireland, South Africa, Ghana and Tanzania.

C Shared system where industrial dispute prevention and resolution is partly the duty of the labour administration and partly the responsibility of the independent body. Such a system is in operation in Cambodia and Spain. In Belgium, other social partners also play a role in preventing and settling collective disputes. If the workers' and employers' representatives fail to prevent a collective dispute, it is referred to a tri-partite committee of conciliation where a Government official act as the chairperson as well as the mediator. The Government official here act as an independent and neutral person.

Collective bargaining is a negotiating process where an employer or an employers' group or one more organisations of employers, and one or more organizations of workers, negotiate. The subject of the negotiations may be the conditions and the terms

of employment and the regulation of the relations between employers (and their organisations) and workers' organisations. The outcome of the negotiations is a settlement which is mutually agreed and legally binding. Collective bargaining is expected to result in cooperation between the employers and the workers and also in harmonious industrial relations.

It is natural in collective bargaining that in some cases it will not be possible for the disputing parties to reach a mutually agreed settlement. The dispute can be relating to the interpretation of existing provisions or the creation of new rights.

Many of these disputes are resolved within the organisation through the process of negotiation. Conflicting interests tends to get sorted out, compromises are reached, the interests of both the disputing parties are acknowledged and accommodated to certain extent by way of discussion, concession, and compromise, new rights and benefits are created, and the sharing of power. Negotiation is the method of consensus-based approaches to dispute resolution and in it the control of the dispute remains within the hands of the disputing parties. Industrial Dispute settlement through negotiation reflects a mature industrial relation.

However, some areas of differences may remain unsettled by the disputing parties in negotiation. Negotiations may also sometimes fail, deadlocks may occur, and such disputes may be referred to other external parties for settlement. In case of failure of negotiations, the disputing parties may take recourse to conciliation/ mediation, arbitration or adjudication, depending on the established procedures or the applicable statutory framework.

Conciliation/mediation by an independent neutral third party is recommended as the next effective step in dispute settlement when there is a failure of negotiations.

Conciliation/mediation is practically an extension of the process of negotiation since the conciliator/mediator does not have any direct power to decide the dispute. The conciliator/mediator basically facilitates the disputing parties to bridge their differences and reach a settlement which is mutually agreed.

When conciliation/mediation fails there may be an arbitration by an impartial and independent third party. In arbitration the resolution of dispute reaches a new level. In arbitration, the third party who is the arbitrator has the power to determine the dispute after hearing both the parties and the decision of the arbitrator is final and the parties are legally bound by it. Consensus based decision-making is being replaced by an award by the arbitrator on the basis of evidence adduced and arguments made during the arbitration hearing. The award of the arbitrator can settle the dispute but it is usually impossible to satisfy both the parties, and therefore, the dispute may be settled but may not be resolved. As a probable fall out, the relation between the disputing parties may further deteriorate and thereby create an environment that may not be conducive to consensus-based approaches to resolving disputes.[7]

### 1.9 Industrial Relations in India

Government plays a vital role in Industrial relations in India apart from the workers, trade union and management. However, the nature of industrial relations is transforming to bipartism with the growth of the service sector, especially the IT industry, since there is hardly any coverage of trade unions in this sector The changing roles of the actors involved in industrial relations are described below:

[7] LABOUR DISPUTE SYSTEMS Guidelines for improved performance, International Training Centre of the ILO, International Labour Organization

### 1.9.1 Trade Union

Trade unionism in India evolved as a part of India's freedom struggle and nationalist movement with support from the political parties. India experienced the fruit of Industrial revolution when the first cotton mill was established at Mumbai (then Bombay) in 1853 followed by the setting up of jute mill in Kolkata (then Calcutta) in 1855. As a result of industrialization there is movement of people from rural to urban areas. The objective to maximize production and the convenience of cheap labour ignorant of their rights, coupled with policy of *laissez-faire* of the government resulted in exploitation of workers. Prolonged hours of work, unhygienic work conditions, absence of safety as well as health measures, coupled with overcrowding made the workers' life miserable both outside and inside of the factory. The first organised strike happened in the Express Mills at Nagpur in 1877 where the workers demanded every Saturday as a day of rest, half hour's rest interval, working hours from 6:30 AM to sunset, wage payment within 15th of the month and payment of wages to the injured workmen till they recover.

Bhattacharjee (2001)[8] classified the growth of industrial relations in India into four different stages. The first stage of post-independence period from 1950 to mid-1960s was the period when the state led the industrialization with a strategy of import-substitution which resulted in the formation of large scale public sector and employment creation in the organized sector. The Labour movement was guided by the government the system of industrialisation was paternalistic. The second stage from mid-1960s to 1979 is characterised by a period of industrial stagnation, unequal trade terms between industry and agriculture, two oil price shocks, decline in employment

[8] Bhattacharjee, D. (2001). "The evolution of Indian industrial relations: A comparative perspective." *Industrial Relations Journal,* 32(3), 244-263

and decreasing productivity of labour. The number of work stoppages (lockouts and strikes), the number of workmen involved in these work stoppages, and also the number of mandays lost because of these work stoppages, increased drastically between 1966 to 1974. The third stage from 1980 to 1991 is marked by the balance of payment crisis and macroeconomic changes due to huge IMF loan. There was proliferation of independent trade unions and there was a shift in their objectives from rights to interest. The fourth phase from 1992 to 2000 characterised by the structural adjustment programmes and economic reforms facilitated creation of employment in all sectors. There was lesser intervention of the government in the process bargaining and fewer strikes. The strategy of import substitution together with the protectionism contributed to the growth of inefficient organizations and lack of statutory mechanism to recognise bargaining agent had made it difficult for the employers to negotiate strategy for cost control and reduction in workforce. The liberalization along with its advantages also had the disadvantage of loss of employment through voluntary retirement schemes for rationalizing the workforce. The liberalization developed government-business coalition in contrast to the earlier coalition of government-labour. After liberalization there is a steep decrease in the number of strikes which may indicate the situation that trade unions have shifted their strategy from rivalry to cooperation whereas the increase in the number of lock-out may reflect the growth of employer militancy. However, the overall number of industrial disputes shows a declining trend whereas the mandays lost and workmen involved in the industrial disputes continue to fluctuate.

Recession in 2008 resulted in huge loss of jobs among the workers in the industries especially in the tertiary sector. The government was compelled to accept a deregulated system after liberalization. The period of recession showed a development of precarious or non-standard employment, decline in influence and power of the trade unions,

downsizing, deregulation, inequity, and consequential intensification of work. Simultaneously, the necessity of trade union was felt also in information technology industry (IT) after it was affected by recession and downsizing and the first trade union in this sector was formed in Bangalore — Union for ITES Professionals (UNITES). (The Hindu, Jan. 26, 2006).

### 1.9.2 Management

The power of Management has increased over time as the trade unions have lost the track and pace of growth. Liberalisation has helped management to have more control over the workers. Though the statutory provisions did not permit to hire and fire the workers freely, yet management achieved the same objective by means of strategies like subcontracting, downsizing, and outsourcing in the liberalized era. Casualization and contractualisation of labour increased the insecurity among workers and they were pulled away from trade unions and statutory benefits. The trade unions lost members and became weak and indirectly made the management more powerful. Outsourcing the process of production to other subsidiary units has reduced the scale of production, and further decreased the workers' capacity to organize. As a result, small production units without trade unions have emerged, which helped the management to exercise more control over the workers. Thus, management is having an upper hand and emerged as the most powerful force in the present scenario of industrial relations.

### 1.9.3 Union Management Relationship

In India, there is adversarial relationship between the trade unions and the management (Ramaswamy, 1999)[9]. Management has resorted to voluntary retirement schemes, sub-contracting, and relocation to low-cost sites while the workers tried to resist voluntary

[9] Ramaswamy, E. A. (1999). "Changing economic structure and future of trade unions." *The Indian Journal of Labour Economics,* 42*,* 785-791

retirement, and asked for better packages for retirement. It was felt that a cooperative industrial relations climate would naturally lead to better union-management relationship. But it may not be always true (Mahadevan, 2001)[10]. Even today, the employer's attitude to a worker is that of a master to a servant (Mital, 2001)[11]. Usually employers are feudalistic, and organizational structures are stratified (Venkata Ratnam, 2001)[12].

### 1.9.4 Government

Before independence British government was looking after the interest of the business while ignoring the labour rights. However, after India gained independence, the government tried to protect the interests of the workers and the trade unions through different legislations. As a fallout of the socialist policy of the government there is growth of the public sector undertakings. Government intervention in labour matters increased the dependence of the private sector on it (Venkata Ratnam, 2001). However, the present industrial relations situation is mostly a consequence of liberalisation which forced the actors of industrial relations to adjust to the new market conditions. The role of the Government, which was playing a dominant role earlier, has also decreased. However, collective bargaining was not mandatory, and there was no statutory mechanism for giving recognition to the trade unions or bargaining agents except in a few states. Taking advantage of the new market situation and the attitude of the government, management has tried its best to disempower the trade unions and streamline their functions. Management looks after individual needs through better HR

[10] Mahadevan, H. (2001). "The role of trade unions." *Indian Journal of Industrial Relations,* 37, 160-175.
[11] Mital, R. A. (2001). "Role of trade unions: Some random thoughts." *Indian Journal of Industrial Relations,* 37, 176-180.
[12] Venkata Ratnam, C. S. (2001). *Globalization and labour-management relations: Dynamics of change.* New Delhi: Response Books

policies and practices for keeping the workers away from trade unions. The trade unions and workers became the victim of the new economic order (Sheth, 2001)[13]. But protection of workers' interest in the informal sector is yet to be realized as the informal and non-regular forms of employment are outside the ambit of legal system and poses a challenge to the government.

### 1.10 History of Industrial Disputes Resolution Mechanism

The history of legislation relating to industrial disputes starts from 1890. The first enactment in India relating to this was Bengal Regulation VII of 1819. Under this enactment the breach of contract was considered a criminal offence and the provision remained the same in Merchant Shipping Act (I of 1859) as well as the Workmen's Breach of Contract Act, 1860. Next important legislations in this regard are Employers and Workmens Disputes Act, 1860 which led to the present Industrial Dispute Act, 1947.

In 1859, there were conflicts and violent disturbances leading to one of the contractors' death on account of differences or disputes between European Railway Contractors and the workers employed by them in Bombay Presidency because of the failure and delay in wage payment. In this regard the Government of India legislated the Employers and Workmen s (Disputes) Act, 1860 which was requested by the Bombay Government. As an experimental measure, the Trade Disputes Act, 1929 was also enacted for five years. There was an amendment to the Act in 1932 which was made permanent by the enactment of Trade Disputes (Extending) Act, 1934. The provisions for conciliation officers for mediating and resolving disputes were introduced by the Trade Disputes

[13] Sheth, N. R. (2001). "Trade union in word and deed." *Indian Journal of Industrial Relations,* 37, 280-284

Amendment Act of 1938. The Act covered tramways and water transport under Public Utility Services and provided less restrictions regarding illegal lockouts and strikes.

The Second World War brought about substantial changes in the entire economic structure including the industrial relations. In August, 1942 promulgation was made of Essential Services Maintenance Ordinance which prohibited lockouts and strikes without previous notice of 14 days.

### 1.11 Dispute Resolution in the Indian Context

In the context of India, as industrial disputes are dealt with under the Industrial Disputes Act, 1947 the advent of the non-union establishments would not have any impact on the statutory framework of industrial dispute resolution comprising of conciliation, arbitration and adjudication except in some particular cases. Section 2A of the Industrial Disputes Act, 1947 provides that if there is any difference or dispute between an individual worker and his employer connected with, or arising out of, dismissal, discharge, termination or retrenchment it shall be considered as an industrial dispute even if no other worker nor any trade union becomes a party to it.

The conciliation machinery aims at amicable and fair settlement of dispute. The perceptions of fairness involve the three kinds of organizational justice; distributive justice which focuses on the fairness of distribution of outcomes, procedural justice, which is concerned about the fairness of the procedure by which outcomes are distributed, and interactional justice that deals with the fairness of interpersonal interactions and communications.

## 1.12 Settlement of Industrial Disputes

Preventing and resolving industrial disputes today is attracting focus, as the effective and efficient prevention as well as settlement of industrial disputes is a must for thorough and productive employment relations. The procedure of resolution of industrial disputes also offers an opportunity for collective bargaining to the disputing parties, and at the same time strengthen social partnerships. Developing an effective and efficient industrial dispute prevention and settlement mechanism is essential for minimizing the impact of workplace conflict particularly considering the fact that conflict is inherent to and inevitable in employment relationships.[14]

As industrial conflict is considered as inevitable in a market economy, it is necessary to prevent it from escalating into major disputes and should be settled amicably, minimising the necessity for adjudication through the courts. To achieve this objective, the dispute management system should provide a range of services to encourage both the parties i.e., the workers and the employers to take preventive measures through consensus-based mechanisms like works committee and collective bargaining, and simultaneously offer them the services of conciliation and arbitration in the cases where they are not able to prevent their differences from escalating into disputes necessitating the involvement of neutral third parties. Efficient and effective dispute management system decreases both the cost and time associated with disputes.

The control over the outcome of a dispute of the parties involved in the dispute decreases as they shift from consensus-based approaches like collective bargaining to external authorities like arbitration or adjudication.

[14] LABOUR DISPUTE SYSTEMS Guidelines for improved performance, International Training Centre of the ILO, International Labour Organization

The workers and employers, and their organizations, have both common as well as conflicting interests. The common interest is related to the production of goods and/or services, which results in earnings that enable an organization to survive, make profits, sustain and grow, and at the same time, provide the resources for the workers to earn wages and other benefits.

The conflicting interest relates to the distribution of share of earnings of the organization. Both the parties try to maximise their shares of the earnings of the organization. Workers try to increase their wages and other benefits and the employers try to maximise profits. The employers demand for discretion for hiring and firing and the workers concern for security is an example of conflict of interests.

Conflict between workers and their organizations and employers is considered inevitable in an industrial relations system controlled by market forces. Therefore, it is necessary to settle amicably the resulting disagreements and disputes between the parties. Industrial Disputes can be prevented and settled through consensus-based processes or, alternatively, through the involvement of third parties through the processes of conciliation and bargaining.

The necessity of State intervention and involvement in resolving industrial disputes, is now accepted by everyone. No country can hope to survive in this age, unless there is industrial development and technological progress. Economic advancement is dependent on industrial harmony for the simple reason that it results in greater co-operation between the employers and the employees which in turn results in higher productivity and all round national prosperity.

In India, the Constitution and the policies of Governments stress the need for industrial peace for economic progress. Industrial peace depends on satisfactory settlement of industrial disputes.

For creating industrial peace, it is important to settle the industrial disputes amicably. Depending on the context, they may be settled through collective bargaining, conciliation, arbitration or adjudication. In collective bargaining both the representatives of the workmen and the Management sit across the table and negotiate the settlement of the disputes through discussion. Conciliation involves a third-party intervention. The third party or the conciliation officer assists the disputing parties concerned i.e., the management and workers and their trade unions to reach a settlement. But in the case of arbitration and adjudication, the third party settles the disputes through an order or decision on the basis of the merits of the case. There are three methods used by the Government for settling industrial disputes: 1. Conciliation, 2. Arbitration and 3. Adjudication.

### 1.13 Effectiveness of the Industrial Relation Machinery

The whole purpose of creating the industrials machinery under the Industrial Disputes Act, 1947 has been the prevention and settlement of disputes between the workers and the employers so that harmonious industrial relations are maintained. In accordance with the stated purpose a reference to the officials of the industrial relations machinery can be made either of the parties in dispute, individually or jointly, or by the Government itself.

Once an industrial dispute is referred for adjudication and is pending, strikes, and lockouts are illegal. It is, thus, possible that legal strikes and lockouts may be difficult

to take place if the Government is sufficiently vigilant to intervene in all disputes that may have occurred or have been apprehended.

### 1.14 State Intervention in Industrial Relations in India

The history of the intervention of the government in the industrial relations can be divided into three distinct phases. In the first phase (1875 to 1928) state action was mainly restricted to protective legislation regulating employment and working conditions in factories, mines and plantations. In the second phase (1929 to 194 7) the state's role changed due to industrial unrest resulting from depression and intensification of national struggle in this period. During the third phase, which began with India becoming independent on August 15, 1947, the state became more active in matters affecting industrial relations and labour welfare. This intervention was aimed at establishing an egalitarian society and to raise the standard of living by means of maximization of industrial production. State policy has evolved from passive interest to comprehensive intervention during these three periods.

#### 1.14.1 Adjudication

Adjudication by a court or tribunal is the most formal and legalistic approach to the settlement of industrial dispute. Both the parties in dispute here find themselves before a neutral third party who is not chosen by them but who has the power to decide the dispute. The process is also formal, legalistic, expensive and frequently delayed. Further, there is a possibility that the outcome may not satisfy any of the parties. Like arbitration in adjudication too, the dispute may be settled but not necessarily resolved.[15]

[15] LABOUR DISPUTE SYSTEMS Guidelines for improved performance, International Training Centre of the ILO, International Labour Organization

### 1.14.2 Compulsory Adjudication in India

In the field of resolution of industrial disputes, India is using a labour control model of compulsory adjudication through the enactment of the Industrial Disputes Act 1947 (IDA) for processing of both interest as well as rights disputes. Its working has witnessed pointers to these projections when the Bombay Textile Strike in 1982 was crushed with the help of the over - arching state control of the industrial relations system, the success of which would have sent reverse signals to the international capital which had just begun pouring in. (Bhattacherjee, 1988: 231)[16].

The source of the Indian model of compulsory adjudication of industrial disputes originates from the Rule 81-A of the Defence of India Rules (DIR). The promulgation of this Rule was made by the British Indian Government at the time of Second World War in 1942. Through this rule, the Government restricted lockouts and strikes with the purpose of maintaining industrial harmony and peace, which was especially important during the War. Even though compulsory adjudication was initially intended to be only a temporary war measure, the Government incorporated it in a more comprehensive form in the IDA. The IDA provides for investigation and settlement of both collective and individual industrial disputes—both interest as well as rights disputes—through state-created conciliation and adjudication machinery. The adjudication machinery is consisted of labour courts and industrial tribunals.

Industrial tribunals, broadly, have the power to decide interest as well as rights disputes; labour courts, on the other hand, have the power to decide mainly disputes relating to rights. The disputing parties cannot directly approach these authorities for adjudication; the appropriate government has the choice of referring or not referring industrial

[16] Bhattacherjee, D (1988). '*Unions, State and Capital in Western India: Structural Determinants of the 1982 Bombay Textile Strike*', in Roger Southall (ed.), 1988.

disputes for adjudication to these authorities. Lockouts and Strikes are prohibited during the period when the awards of these authorities are in operation. The state also has the power to prohibit continuance of lockouts and strikes connected with the dispute which has been referred for adjudication. In most states, labour department officers, who are responsible for administering various labour laws, are also given the powers of conciliation under the IDA. They have discretionary powers to intervene in an industrial dispute on their own, or on being requested, in existing or even anticipated industrial disputes in non-public utility services.

After three years of the enactment of the IDA, Indian attempted to put in place the collective bargaining model similar to the Wagner Act 1935 of the USA by replacing the compulsory adjudication model. Necessary changes regarding the recognition of trade unions and definition of unfair labour practices of the disputant parties and the like, had already been proposed in the Trade Unions Act by way of an amendment in 1947; but they were never notified by the government and so never became effective. Again, in 1950 two bills on industrial relations and trade unions were proposed, which were supported by the then Labour Minister V.V.Giri (later President of India). However, the Gandhians in the then Central Government succeeded in projecting the collective bargaining model as "the law of the jungle" (Johri, 1989: 51)[17] and eulogized the appropriateness of compulsory adjudication in the Indian context. It was apprehended that industrial unrest would flare up if the system of compulsory adjudication was abolished.

With the passage of time, the framework of IDA has become fully entrenched in the Indian Industrial Relations system; and no serious attempt was made a to change it,

[17] Johri, C.K. (1989). 'India' in R.Blanpain (ed.), *International Encyclopaedia of Labour Law And Industrial Relations* (Vol.6). The Netherlands: Kluwer

except some half-hearted attempts in 1978 and 1988. Some changes in the law were deliberated on the basis of the Ramanujam Committee Report in 1992, to implement the concept of 'Industrial Relations Commission' as originally suggested by the National Commission on Labour (1969).

The IDA model had its genesis in India even prior to the induction of Rule 81-A of the DIR in 1942. It was already there in a Bombay State legislation. According to some opinion the Father of the Nation, Mahatma Gandhi, played a vital role in formalization of this industrial relations framework in India (Patel, 1987)[18]. A natural consequence of this industrial policy framework of India is that there is tremendous increase in the Government's power in industrial relations. (Morris, 1955)[19].

### 1.14.3 Government's Discretion in the Reference of Industrial Disputes for Adjudication

Initially, the government did not have the power of discretion in referring industrial disputes for adjudication. During the Second World War this power was given to the Central government under Rule 81-A of the Defence of India Rules as a measure during war-time with the objective of ensuring smooth industrial production and to prevent undesired industrial unrest during the period of war. This measure was successful in achieving its objective and as a result, the government wanted to continue with this discretionary power even after the war was over. Thus, Rule 81-A which was to expire on 1st October 1946 was kept alive for some more time with the help of the Emergency Power (Continuance) Ordinance, 1946. Ultimately, the fundamental elements of Rule 81-A were incorporated in the Industrial Disputes Act, 1947, and as such the

[18] Patel, Sujata (1987). *The Making of Industrial Relations-The Ahmedabad Textile Industry 1918-1939.* Delhi: Oxford University Press.
[19] Morris, D.M. (1955). 'Labour Discipline, Trade Unions and the State in India', 33, *Journal of Political Economy,* 293.

government continued with the power of discretionary reference of industrial disputes for adjudication. This situation has remained the same till to date.[20]

Under Sec. 10(1) of the Industrial Disputes, Act, 1947, the government enjoys the power of discretion regarding reference of industrial disputes for adjudication. The appropriate government may make a reference of an industrial dispute for adjudication not only when there is actually an industrial dispute but also when there is an apprehension of industrial dispute. It is mandatory for the industrial tribunal or a labour court to which the industrial dispute has been referred for adjudication to confine within the parameters of points or issues specified in the order of reference. Sec. 12(5) of the Industrial Disputes Act, 1947 states the provisions of referring of those industrial disputes to labour court or industrial tribunal for adjudication where the conciliation proceedings have failed. Under this sub-section, it does not become mandatory for the government to make a reference of the industrial dispute to a labour court or industrial tribunal for adjudication even when it has been recommended by the conciliation officer in his report.[21]

[20] Government's Discretion to Refer Industrial Disputes for Adjudication, Santokh Ram, Indian Journal of Industrial Relations, Vol. 15, No. 2 (Oct., 1979), pp. 307-322

[21] Government's Discretion to Refer Industrial Disputes for Adjudication, Santokh Ram, Indian Journal of Industrial Relations, Vol. 15, No. 2 (Oct., 1979), pp. 307-322