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# UNIT 19 REGULATORY MECHANISMS IN INDUSTRIAL RELATIONS

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## Objectives

After completion of the unit, you should be able to:

- 1 familiarise yourself about different mechanisms for settlement of Industrial Disputes;
- 1 familiarise yourself about the voluntary mechanisms for settlement of Industrial Disputes; and
- 1 be aware of the new trends in this area.

## Structure

- 19.1 Introduction
- 19.2 Statutory Machinery
- 19.3 Voluntary Machinery
- 19.4 Mediation and Litigation
- 19.5 Lok Adalats
- 19.6 Summary
- 19.7 Self-Assessment Questions
- 19.8 Further Readings

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## 19.1 INTRODUCTION

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Traditionally, labour laws had a protective function consisting of established standards both to protect workers in their workplace and to provide them a basic minimum level of living conditions. Because of changing industrial and economic scenario, along with statutory machineries, voluntary machineries come into existence. Hence, regulatory mechanisms for prevention and settlement of industrial disputes comprises of statutory and voluntary machinery. In this unit, we will be discussing on these machineries and also concept of lok adalats.

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## 19.2 STATUTORY MACHINERY

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The Industrial disputes Act, 1947 provides the mechanics of dispute- resolution and set-up the necessary structure so as to create congenial climate.

### What is an ‘Industrial Dispute’?

An ‘Industrial dispute’ means any dispute or difference between employers and employees, or between employers and workmen, or between workmen and workmen, which is connected with the terms and conditions of employment of any person.

### Who can raise a Dispute?

A dispute is said to have arisen when some demand is made by workmen and it is rejected by the management or vice versa and the demand is relating to the

employment. A workman can raise a dispute. However, it is pertinent to note that a dispute between an employer and single workman does not fall within the definition of industrial dispute, but if the workmen as a body or a considerable section of them make a common cause with the individual workman then such a dispute would be an industrial dispute.

However, certain individual disputes relating to dismissal, discharge, retrenchment or termination of services of a workman, are also covered. The Act implies even to industrial establishments employing a single workman. But dispute in relation to a person who is not a 'workman' within the meaning of the Act is not an industrial dispute under Section 2(k).

The Industrial Disputes Act, 1947 provide for creation of different authorities to preserve industrial harmony, prevention and settlement of industrial disputes. These are as follows:

1) ***Works Committee***

In establishments where hundred or more workers are employed:

- a) The appropriate government may require the employer to set-up works committee.
- b) It is composed of equal number of representatives of workmen and management who are chosen with consultation of the trade union.
- c) Its functions are to preserve amity and establish cordial relations and to resolve differences of opinion on matters of common interest.

2) ***Conciliation Officer***

- a) The conciliation officer may be appointed by the government for specified area or specified industries.
- b) Duty of conciliation officer is to mediate in and promote the settlement of industrial disputes. Where industrial dispute exists or is apprehended and relates to public utility, conciliation officer shall hold conciliation proceedings and it is mandatory. In such cases conciliation officer will investigate the dispute and induce the parties to come to amicable settlement. However, he cannot take the decision, he has to send report of settlement to his government. If no settlement is reached then also he has to report to the government giving reasons on account of which settlement could not be reached. Conciliation officer to normally submit report within 14 days of commencement of conciliation proceedings. Duty of the conciliation officer is administrative and not judicial in nature.

If an agreement is reached by the parties, it is binding on both the parties.

3) ***Board of Conciliation***

The government may notify constitution of board of conciliation for promoting settlement of an industrial dispute. Its role is also consultative, like conciliation officer.

4) ***Court of Enquiry***

The government may constitute a court of enquiry to enquire into any matter connected with an industrial dispute. In the case of board of conciliation the object is to promote settlement of an industrial dispute. But in the case of a court of enquiry object is to enquire into and reveal the causes of an industrial dispute.

### 5) *Voluntary Arbitration*

It is voluntary method of resolving individual disputes if dispute is not settled by negotiating parties. Here both parties are willing to go to an arbitrator of their choice and submit to his decision. Arbitrators are named by the parties in the written agreement.

The number of arbitrators can be one or even more than one. Legal sanctity to this mode of settlement of industrial disputes was given in 1956 when Section IOA was introduced in Industrial Dispute Act.

### 6) *Adjudication*

The Industrial Disputes Act provides for three-tier system of adjudication of industrial disputes. The cases either may be referred by government to court after the receipt of failure report from conciliation officer or directly by any party. Labour courts and industrial tribunal may be constituted by the state government while national tribunal is constituted by the central government.

i) ***Labour Courts:*** Functions of labour courts are relating to matters as under:

- 1) Legality of an order passed by an employer under the standing order,
- 2) Application and interpretation of standing orders,
- 3) Discharge or dismissal of workman,
- 4) Withdrawal of any customary concession or privilege,
- 5) Illegality or otherwise of a strike or lock-out, and
- 6) All matters (not specified for industrial court).

ii) ***Industrial Tribunals:*** The functions of industrial tribunals are as follows:

- 1) All matters within jurisdiction of labour courts,
- 2) Wages,
- 3) Compensatory and other allowances,
- 4) Hours of work and rest intervals,
- 5) Leave with wages and holidays,
- 6) Bonus, Provident Fund and Gratuity,
- 7) Shift Working,
- 8) Classification of grades,
- 9) Rules of Disciplines, and
- 10) Retrenchment and closure of establishment.

iii) ***National Tribunal:*** The national tribunal shall be constituted by the Central government (only) when undertakings in more than one stage is affected by such industrial dispute and is of 'national importance' and matters relate to functioning of labour and industrial courts.

### 7) *Grievance Settlement Authority*

It is to be set-up enterprises where 50 or more workers are employed. This for settling of individual grievances of employees. Individual disputes are to be referred to the courts when not settled at grievances authority level.

### 8) *Welfare Officer*

Another preventive measure is under the Factories Act, 1948, i.e., the appointment of welfare officer in the organisation if workers are 500 or more.

**9) *Standing Orders***

Another preventive measure is certification of standing orders by enterprises under the Industrial Employment Standing Orders Act, 1946. These standing orders require enterprises to lay down uniform terms and conditions of employment of workers.

**10) *Central and State Industrial Relations Machinery***

Central Industrial Relations Machinery consists of the Chief Labour Commissioner and Regional Labour Commissioner together with Labour Enforcement Officers. The machinery has regional Offices. Their main functions are:

- i) prevention, investigation and settlement of industrial disputes in industries, or enforcement of labour laws and awards,
- ii) verification of union membership,
- iii) fixation of minimum wages, etc., and
- iv) central implementation and evaluation machinery ensures implementation of code of discipline, labour laws, awards and settlements, take preventive action by settling disputes, evaluates major strikes and lock-outs, evaluates labour laws and policy decision and suggests measures to improve them.

**11) *Other Preventive Measures***

Some other provisions laid down in Industrial disputes Act, 1947 which discourage disputes are as under:

- a) According to Sec. 9 A of Industrial Disputes Act, an employer cannot make any change in conditions of service without giving to the workers a 21-days' notice and follow the prescribed procedure for changing them.
- b) Defining of unfair labour practices on part of employees/unions and employers which have deterrent affect as penalties are provided under [Section 2(ra)] of Industrial Disputes Act, 1947.
- c) Provisions of laws relating to lay-off, retrenchment and closure and also regarding lock -out and strikes which imposes restrictions on the employers and employees.

In nutshell, statutory preventive and settlement machinery can be summarised in the Table 1.

**Table 1: Statutory Machineries**

1) Works Committee	(for consultation)
2) Conciliation Officer	(for conciliation)
3) Board of Conciliation	(for conciliation)
4) Court of Enquiry	(for enquiry)
5) Voluntary Arbitration	(for arbitration)
6) (a) Labour Courts (b) Industrial Tribunals (c) National Tribunal	(for adjudication)
7) Grievance Settlement	(Settling individual grievances)
8) Welfare Officers	
9) Standing Orders	
10) Centre and State Industrial Relations Machinery	
11) Other Preventive Measures	

Voluntary machinery for settlement of industrial disputes is based on Code of Discipline announced in 1958. The code was approved by all central organisations of workers and employers in 16th Indian Labour Conference at the initiative of the then Labour Minister, Shri G.L. Nanda.

### 1) *Code of Discipline, 1958*

The code reflects the policy of the government to build up an industrial democracy on voluntary basis and is the sheet anchor of Mahatma Gandhi's philosophy of industrial relations. It aims at preserving industrial peace with the help of employers and employees. It represents a voluntary moral commitment and is not a legal document. The code, which aims at providing an alternative to conflict for the resolution of disputes, worked very well for some time after its adoption.

The issue of discipline in industry was discussed in the Indian Labour Conference and the code of discipline was framed and introduced by that tripartite body in 1958. Discipline in the relationship between workers and employers can better be enforced if both the parties accept their responsibilities and show a willingness to discharge them. In the absence of any statutory provision at the all-India level for the recognition of trade union, the provision in this regard has been incorporated in the Code of Discipline.

The main elements of the code are:

- i) The two parties agree to utilise the existing machinery for the settlement of industrial disputes.
- ii) The parties shall not resort to strikes and lock-outs without first exploring all avenues of settlement
- iii) The parties accept that the disputes not settled mutually shall be referred to voluntary arbitration.
- iv) The code specifies the criteria for the recognition of trade union and creates an obligation on employers to recognise the majority union in an establishment or industry.
- v) The two parties shall not resort to the unfair labour practices detailed out in the code.
- vi) Managements and trade unions agree to establish grievance procedure on a mutually agreed basis.

Initially by the end of March, 1962, the code was accepted voluntarily by about 900 independent employers and trade unions. The number increased to around 3000 by the end of 1967. Over the years, however, the willingness and enthusiasm of the parties to observe the code has declined, and they have developed an attitude of indifference to the code. It has proved to be difficult for them to abide by self-imposed discipline in terms of obligations backed only by moral sanctions.

Industrial Truce Resolution, 1962. With the Chinese attack in October 1962, an emergency was declared in the country, and it was realised that production should not be jeopardised in any way. Employers' and workers' representatives, in a joint meeting of their organisations held on November 3, 1962 at New Delhi, passed a resolution, saying that the emerging method of dispute resolution which is speedy, less costly and which ends in win-win situation.

### 2) *Code of Conduct*

The other code adopted in May 1958 was the code of conduct. The representatives of the four central trade union organisations - the INTUC, AITUC, HMS and UTUC -

agreed to observe certain principles with a view to maintaining harmonious inter-union relations. Inter-union and intra-union rivalries emerge out of certain weakness of Indian trade unions such as fragmentation and multiplicity. The code was formulated to curb these evils. But it has remained mainly on paper, for trade unions seem to have forgotten that it exists.

### 3) *Tripartite Bodies*

The other tripartite bodies which came into existence were:

- a) Indian Labour Conference,
  - b) Standing Labour Committee,
  - c) Industrial Committees, and
  - d) Tripartite Committee on International Labour Organisation Conventions, 1954.
- 4) *Formation of Joint Consultative Machinery* for Central Government Employees (JCM), this is also a three-tier machinery.
  - 5) *Collective Bargaining* was encouraged.
  - 6) *Workers' Participation in Management Scheme* was introduced through Formation of Shop Councils and Plant Council.

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## **19.4 MEDIATION AND LITIGATION**

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Mediation is very much a part of Indian culture. Litigation, on the other hand, was introduced by the colonial masters as a top down model. It is alien to Indian culture and never got imbibed into the Indian culture. Respectable and elderly people acting as mediators or functioning as Panchayat members is integral to Indian culture. In the past it was these respectable and elderly people who used to help in resolving disputes through mediation or mediation-cum-arbitration in Panchayats. Even now mediation as a method of dispute resolution is quite common in India. Mediation is an informal process where the mediator, who is a neutral third party, assists the disputing parties in the pursuit organization finding a solution to their dispute. What happens in Lok Adalats is only mediation in a formal way. When mediation is done in a formal way it is called conciliation.

### **Limitations of Litigation**

There are many limitations associated with litigation. Litigation involves lot of delay. It is expensive. In India, the adversary method of dispute resolution is used in litigation. The adversary method is one which gives the parties and their lawyers a great deal of control over the way in which the facts are collected and presented. Each party will present the evidence to the Court in a way most favourable to its own version of the facts and adverse to that of the other party. The role of the judge is limited to that of an umpire, ensuring that the evidence is presented in accordance with certain ground rules. The adversary method of dispute resolution promotes game theory of dispute resolution. Persons with good resources are likely to win the game. Winning the game in an adversary system does not necessarily mean justice is done or there is peaceful solution to the dispute is found. It only means that the dispute is resolved. This is not a good way of resolving disputes in situations such as family relations or industrial relations where no effort shall be spared to achieve maximum production, and management and workers will strive to collaborate in all possible ways to promote the defence efforts of the country.

As a result of the acceptance of this Resolution, there was a sharp decline in the number of disputes and in the number of mandays lost. Workers not only worked for

extra hours but also contributed to the National Defence Fund. Emergency Production Committees were set-up, both at the Centre and in the states to improve production and productivity. But the Resolution lost its importance when prices rose sharply and disputes erupted once again.

### **Advantages of Mediation**

In view of the limitations of the adversary method of dispute resolution in areas where human emotions are also involved, the advantages of mediation as a method of dispute resolution have been seriously considered. Mediation as a method of dispute resolution has many advantages in situations where human emotions are involved. Unlike a court which gives a judgment with respect to the particular claim or charge before it, mediators assist the disputants to explore their differences and to develop a mutually acceptable formula for future co-existence. Moreover mediation is cheap and quick in resolution of disputes. For mediation has to be successful, the mediator needs to normalise the strained relations between the disputing parties. In order to achieve this, a mediator must to be a good counselor who can comprehend the emotional issues associated with the problem. In the process of helping the parties give vent to their emotions, all the minor differences which culminated in the dispute are also addressed. Once the emotional and ego-related aspects associated with the dispute are soothed, the disputing parties are able to negotiate in a reasonable way. Once they are reasonable in negotiating, it becomes easy to find solution to their problems.

Mediation addresses the interests and not the positions taken by the disputing parties. It is easy to address the interests and once that is done, it ends up in a win-win situation. There are many ways of addressing interests. In a mediation there can be one or more mediators. The role of mediator includes facilitating communication between the parties, assisting in identifying interests and generating options for settlement.

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## **19.5 LOK ADALATS**

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Lok Adalats is product of judicial activism and is a recent phenomenon. In fast changing industrial scenario, institutions like Lok-Adalats are likely to be more popular for speedy settlement / prevention of Industrial disputes. The term Lok Adalat literally means Peoples' Court. This literal meaning is misleading because of the word 'court'. Court is popularly understood to be a place where disputes are resolved through decisions made by a judicial authority. Court exercises the sovereign power of the State. Sovereign power and Peoples' Court cannot go together. Functionally, Lok Adalat means mass mediation of disputes. Lok Adalat involves assembling of persons having disputes in the presence of experienced conciliators and the conciliators persuading the disputing parties to find amicable settlements for their disputes. Disputing parties negotiate in person or through their Advocates. The conciliators using their experience assist parties in the negotiation process and help them find amicable solutions to their problems. Here mediation and conciliation are used to mean the same, as there is not much difference between the two. A conciliator mediates and persuades the parties to reach a settlement.

### **Development of Lok Adalats**

The concept of the Lok Adalat was developed to revive and institutionalise the mediation process. It was developed as a mechanism for providing quick solutions to disputes with practically no expenditure involved for the parties. Incidentally, Lok Adalats also help in reducing backlog of cases pending before Courts and Tribunals. The Legal Services Authorities Act, 1987 has institutionalised the organising of Lok Adalats. Though enacted in 1987, this Act came into effect only from 1996. Prior to its operationalisation, Lok Adalats used to be organised by the Committee for

Implementing Legal Aid Schemes (CILAS). The settlements reached in the Lok Adalats organised by CILAS had no legal sanctity per se. To confer legal sanctity on them these settlements would be sent back to the Court/Tribunal from where they were referred to the Lok Adalat. The Court/Tribunal would convert the settlement reached in a Lok Adalat to a compromise judgment. Such compromise judgments became enforceable by the Court/Tribunal. The compromise judgment being an amicable settlement, parties to the settlement would voluntarily honour them. It was only as an abundant caution that they would be converted into a compromise judgment. Also, through this the Court/Tribunal can show in its records that the case is disposed. Such judgment being a compromise judgment there is no appeal or writ petition against them. The only remote possibility is challenging such settlement as a settlement obtained by fraud. The settlements reached in Lok Adalat must fulfil the requirements of a contract. The conciliator in a Lok Adalat is guided by the principles of fairness, equity and justice.

### **Lok Adalats as a Body to Conduct Mediation**

What happens in Lok Adalats is essentially mediation. The mediators encourage the disputing parties to compromise their demands and reach an amicable settlement. Mediation is voluntary, the parties cannot be coerced to go for mediation generally. In the mediation if the parties are not satisfied about the solutions coming forth, they can walk out of the mediation. In India after the 2002 amendment to the Civil Procedure Code, parties can be compelled to go to the Lok Adalat or for conciliation. Conciliation is compulsory under the Industrial Disputes Act, 1947. However, it is not compulsory that parties must settle their disputes in Lok Adalats or through conciliation. Conciliation is mediation in a formal way. Though there is voluntariness in settling the disputes in Lok Adalats, the parties will not be able to take Lok Adalats lightly. There is lot of seriousness built into the functioning of Lok Adalats. The conciliators in Lok Adalat have been vested with powers of the Civil Court with respect to collection of all relevant information necessary to resolve the dispute. When the conciliator collects the information or facilitates the parties to collect information from each other the information is furnished under oath. If false information is given it will attract the consequences of giving false information. The Lok Adalats are adequately empowered to collect as well as facilitate collection of complete information necessary for helping the resolution of the dispute. The Legal Services Authorities Act also has provisions as mentioned earlier to see that the mediators behave responsibly. Hence, Lok Adalat is more than simple mediation process. There are adequate provisions to make all players behave responsibly in the Lok Adalat proceedings. The Lok Adalat proceedings are to be guided by the principles of justice, equity, fair play and other legal principles. So the settlement of a Lok Adalat is guarded against exploitation, though being a settlement there are compromises, to some extent.

### **Lok Adalats and the Industrial Disputes Act, 1947**

The Lok Adalat process is similar to conciliation in the Industrial Disputes Act, 1947 (I.D. Act). In I.D. Act, conciliation is compulsory. Only when conciliation fails, does the Appropriate Government body refer the dispute for adjudication. However, some State Governments have made amendments to allow termination disputes to go for adjudication before labour court directly. When there is conciliation facility available under the I.D. Act why are we talking about Lok Adalats for resolution of industrial disputes which is again conciliation.

The need for Lok Adalats in industrial disputes, inspite of conciliation being available under the I.D. Act is because of the emotional quotient in human behaviour. When a

dispute arises, emotions run very high. When the emotions are high, reasoning is at its lowest level. In this kind of mental framework, if the parties go for conciliation, the conciliation will, in all probability, be a failure. This is clearly visible in termination disputes. After failure of conciliation, the State Government refers the dispute for compulsory adjudication. This takes some time, giving the parties an opportunity to introspect. Then there is delay in the Labour Court/Tribunal. This gives more time for introspection. As time passes, the emotion level is likely to come down and reason prevails. At this stage, if conciliation facilities are made available, the chances of reaching an amicable settlement are greater. Here the Lok Adalat can act as a 'face saver' for the parties to reach a compromise. Often, the parties badly need this 'face saving' because they have refused to compromise in the conciliation process held under the I.D. Act. In situations where the termination disputes go before Labour Courts/Tribunals directly, the parties must have some encouragement to settle the dispute outside the Tribunal.

A study was conducted on the working of labour courts in Bangalore reveals how parties to a termination dispute can compromise when the dispute is pending before the labour court. The study sample comprised 142 that were disposed off termination cases during the period 1980-1990. These 142 cases were chosen at random. Out of this, 36 cases, i.e. 25 per cent of the total cases, were settled outside the Court and settlements were converted into compromise awards. The study reveals that these compromises were reached at different stages of the proceedings in different cases. In some cases compromise was reached on the first day of appearance by the parties, while in some compromise was reached at the stage of arguments. It may be noted here that the Presiding Officers did not play any role in promoting these settlements. These 25 per cent settlements were reached entirely at the parties or their lawyers initiative. If the presiding officers of the labour court play a pro-active role, the rate of out-of-court settlements is likely to be higher.

The I.D. Act, 1947 does not contain any provision specifically authorising an industrial adjudicator to record a compromise settlement and pass an award. The Civil Procedure Code Order 23, Rule 3 provides for converting out-of-court settlement into compromise judgment decree. The same principle is used by the Labour Court and Industrial Tribunals to convert an out-of- Tribunal settlement into an award. Section 11 of the J.D. Act gives much wider powers to the Labour Court and Industrial Tribunal to follow such procedures as the authority thinks fit. In *Workmen of Government Silk Weaving Factory, Mysore vs. Industrial Tribunal* (1973) 2 LLJ 144 S.C., the Supreme Court upheld the validity of the Industrial Tribunal passing an award on the basis of a compromise settlement. The validation of the same conclusion and converting it into an award requires the presiding officer of the Tribunal to show that there has been some application of mind in the process.

Lok Adalat Settlements are out of Tribunal Settlements. While promoting a settlement a Lok Adalat is required to follow the principles of justice, equity and fair play. The conciliators in the Lok Adalats are serving or retired judges. Hence if an industrial dispute is settled in a Lok Adalat it can be straightaway converted into an award. Section 33C of the I.D. Act is a very powerful mechanism for enforcement of awards/settlements. Section 29 of the I.D. Act provides for punishment for breach of any term of any settlement or award. The Schedule on Unfair Labour Practices to the I.D. Act considers failure to implement an award, settlement or agreement as an unfair labour practice, which is punishable under Section 25 U of the I.D. Act. Hence; an appropriate blend of I.D. Act and Lok Adalats should help in resolving most of the industrial disputes amicably.

Lok Adalats are now catching on. Through it is attempted all over India, but it is very popular in Punjab and Haryana where thousands of cases are settled through Lok Adalats.

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## 19.6 SUMMARY

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To sum up, we have observed the statutory and voluntary machineries in setting standards to protect and further the working and employment conditions of workers, regulate industrial relations and provide for a measure of social security. We have also briefly made an overview on latest developments of mediating mechanisms like Lok Adalats.

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## 19.7 SELF-ASSESSMENT QUESTIONS

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- 1) What is the role of I.D. Act, 1947 in statutory mechanisms in industrial relations?
- 2) Write short notes on:
  - a) Litigation
  - b) Mediation
- 3) What are the voluntary machineries available for settling industrial disputes?
- 4) Write a brief note on Lok adalats and its functions.

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## 19.8 FURTHER READINGS

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Singh, B.D. (2004). *Industrial Relations: Emerging Paradigms*, Excel Books, New Delhi.

Industrial Disputes Act, 1947.

Indian Labour Journals.

Labour Gazette.