GOVERNMENT OF INDIA

NATIONAL COMMISSION ON LABOUR

Settlement of Industrial Disputes in Australia and India

GOVERNMENT OF INDIA

NATIONAL COMMISSION ON LABOUR

Settlement of Industrial Disputes

in

Australia and India

C O N T E N T S

		Page
Part-I	The Australian System	1
Part-II	The Indian System - A Comparative View-point	34
	References	48
	Issues for Consideration	51

.....

SETTLEMENT OF INDUSTRIAL DISPUTES IN AUSTRALIA AND INDIA

P A R T - I

The Australian System

The Commonwealth Conciliation and Arbitration Act, 1904 provides for compulsory conciliation and arbitration of industrial disputes. Prior to the amendment of 1956 the Act vested both legislative (arbitral) and judicial (enforcement) powers in the same body viz. Commonwealth Court of Conciliation and Arbitration. On grounds of some legal objection raised by the High Court the two powers had to be separated and the Amendment Act of 1956 provided for two distinct federal authorities :

1. Commonwealth Conciliation and Arbitration Commission entrusted with conciliation and arbitration functions.

2. Commonwealth Industrial Court empowered to enforce judicially the awards of the Commission.

Besides these two bodies the former Commonwealth Court of Conciliation and Arbitration also continues to exist and is entrusted with judicial functions under the Act.

These bodies function independently in the sense that one does not entertain an appeal against the decision of the other.

The Commonwealth Conciliation and Arbitration Commission :

The Commission is constituted by the Governor General. It consists of the following members :

1. A President
2. At least two Deputy Presidents
3. A Senior Commissioner
4. A minimum of five Commissioners.

Besides these members, the Commission has on it a number of Conciliators to assist the Commissioners in a subordinate capacity. The Act does not lay down any legal qualifications for Commissioners and the Conciliators while the President and the Deputy Presidents (called presidential members) are persons of the rank of a justice of the Commonwealth Court of Conciliation and Arbitration, barrister or solicitor of the High Court or Supreme Court of a State of at least 5 years standing. The President assigns an industry or a group of industries to each of the Commissioners who are supposed to deal with the disputes occurring in their industries. The President can also ask a Deputy President or a Commissioner to deal with a particular dispute. The duty of the Senior Commissioner is to organise and allocate the work of the Commissioners and Conciliators in accordance of the Presidential assignment.

Conciliation :

Under the Act a Commissioner is required to ascertain the parties to a dispute and the issues involved therein as soon as he comes to know of the existence or likely occurrence of an industrial dispute. The Commissioner is authorised to refer a dispute for conciliation or even arbitration if he thinks the former may not succeed. The Act makes it obligatory on the parties to the dispute also to notify their disputes to the Commissioner or the Industrial Registrar. A Minister is also entitled to similarly notify an industrial dispute. A Commissioner may call certain high rank representatives of the parties to a compulsory conference presided by a Commissioner or a Conciliator if he thinks it desirable in the interest of a settlement. Any lapse in attending this conference is

punishable under the Act. A Commissioner may also arrange in consultation with the Senior Commissioner a Conciliator to help the parties in reaching a settlement or to determine part of the dispute on request of the parties. The Conciliator makes the report of the conciliation proceedings to the Commissioner. If a settlement is reached by the parties the same can be enforced as an award if it is certified by the Commission. The latter is free to refuse to certify on technical grounds or in public interest.

Reference of a dispute to the Commission :

On request of a party to an industrial dispute for referring the dispute to the Commission in Presidential Session on grounds of public interest, the Commissioner concerned informally consults the President of the Commission about the desirability of such reference. The President gives the necessary directions if the determination of the dispute is considered desirable in public interest. The Commission in Presidential Session is constituted of at least three members nominated by the President, one of whom has to be a Presidential member. The Commissioner concerned is also generally made a member of this Commission. Such a Commission alone is authorised to make an award or to certify an agreement relating to hours of work, basic wages and long service leave with pay. Disputes relating to jurisdiction of this Commission are decided by the Presidential Commission itself, while those of a Commission constituted of a Commissioner are decided by the President of the Commission. The full bench thus constituted can refer back a part of dispute to the Commissioner concerned for his determination and make its award on the remaining part. A Commissioner or a Conciliator can also be asked to investigate into a particular matter related to the dispute under reference.

Duration of the Award :

The award of a Commission constituted of a Commissioner comes into effect after 21 days of the announcement of the award unless otherwise agreed by all the parties to the dispute or otherwise directed by the Commission. This is to enable the parties to file an appeal to the Commission against the award of a Commissioner. No such limitation is imposed on the award of the Commission in Presidential Session. The period of the duration of the award is specified in the award, subject to a ceiling of five years.

Appeal to the Commission :

An appeal against an award or a decision of the Commission constituted of a Commissioner can be filed to the Commission by the aggrieved party within 14 days of the making of such award or decision. The Commission for the purpose of considering such an appeal is constituted of not less than three of its members, two of whom have to be presidential members. In making its decision the Commission can admit further evidence and can take the assistance of a Commissioner or Conciliator.

Procedure of the Commission :

In hearing and determination of a dispute or any other proceeding the Commission is not bound to act in a formal manner and is neither bound by any rules of evidence. The Commission is only obliged to act according to equity, good conscience and substantial merits of a case. Uniformity in service conditions is also a guiding principle for the Commission.

The Commission can take evidence on oath or affirmation, make an interim award, fix penalties for breach of any of the terms of the award subject to the limits prescribed under the Act. The Commission can dismiss a dispute or part of the dispute if it thinks it is trivial in nature or can be more appropriately dealt with by an State Industrial Authority. The Commission is empowered to summon the parties to the dispute and can compel them to submit the relevant papers and documents. The Commission is empowered to implead or strike off a party to the dispute before it. Its awards are binding on all the parties.

The Commission seized of a reference can solicit a ruling on a point of law from the Commonwealth Industrial Court.

The Commission may refer an industrial dispute before it, to a Local Board (constituted of a conciliator, State Industrial Authority or equal number of a representative of employers and employees and a Chairman appointed by the Commission) for investigation and make its award on the basis of such report without any further hearing. The Commission is empowered to revoke this reference any time it so desires.

Board of Reference :

The Commission is authorised to constitute a Board of Reference consisting of or including a Commissioner or Conciliator under the terms of the award or on application from a party to the award, to deal with matters which under the award need be looked into from time to time.

Powers of the Commission :

1. A member of the Commission and a person authorised by the Commission or the Industrial Registrar can at any time inspect a place of work and its documents in respect of which a dispute is raised. Any obstruction presented by a person is punishable with fine under the Act.

2. The Commission in Presidential Session is empowered to order for ascertaining the views of the different members of an organisation on a matter through secret ballot votes.

3. The Commission can declare in the interest of industrial peace any term of an award to operate as a common rule in the industry concerned.

4. The Commission is empowered to vary or set aside an award or part thereof in order to remove any ambiguity or uncertainty. But this power is rarely availed by the Commission.

5. The Commission is authorised to suspend or cancel an award or any of its items applying to an organisation if it is found guilty of breach of any of the terms of the award or if a substantial number of members of that organisation refuse to work on terms offered by the award.

The Commonwealth Industrial Court :

The Court consists of the following members each to be appointed by the Governor-General :

1. Chief Judge
2. Two member judges at the maximum.

In order to be qualified for appointment to this Court a person must be a judge of the Commonwealth Court of Conciliation and Arbitration; a presidential member of the Commission or he must be or have been a barrister or solicitor of the High Court or the Supreme Court of a State of at least five years standing.

The Court is empowered to decide disputes relating to interpretation of an award, victimization of an employee in contravention of provisions of the Act, rules and membership of employers' and employees' organisations, cancellation of union registration and election of union office-bearers. The Court also determines any point of law referred to it by the Commission, or the Industrial Registrar. The Court enjoys the same power as possessed by a High Court to punish any contempt of its power and authority. The Court is empowered to order compliance with an award and punish with fine persons or organisations for non-compliance of the award. The decisions of the Court are final and not appealable in a High Court.

Industrial Agreements :

Besides the settlement of industrial disputes through conciliation and arbitration, the Act makes provision for an agreement between any two organisations of employers and employees. Such agreement is to be made persuant to the Act and is to be registered with the Industrial Registrar. The agreement is binding on all the parties and any contravention is punishable under the term of the agreement or within the limits prescribed under the Act. The period for which the agreement is to remain in force is mentioned in the agreement subject to a ceiling of 5 years. The agreement may be varied or rescinded by another agreement between the same

parties. On an application of an organisation the Commission can vary the agreement so that it falls in line with any common rule declared by the Commission. The agreement cannot be extended to organisations which were not parties to it.

Nature of Awards :

The awards in Australia extensively lay down the service conditions of workers covering wages, hours of work, overtime, shift-work, annual leave, sick leave, training and remunerations of apprentices, rights of entry of union officials, weekly hiring clause, sometimes union security rights. They, however, do not cover matters such as retirement, pension and group insurance. A grievance procedure is also not provided in Australian awards.

It is often claimed that a major portion of an award in Australia is more frequently in terms of settlement reached either out of court or at conciliation and as such it is not as authoritarian as it sounds to be in the context of compulsory arbitration system.

"Many a dispute is settled at the conciliation stage. Moreover, the awards itself represents a compulsive court adjudication only to a small degree. To understand this, it is necessary to realize that the term 'award' means something very different in Australia from what it does in the United States. It is not an incidental decision on the administration of a collective bargaining contract nor is it an addition to a contract. There is no prior contract; the award is the contract or at least does the work which the contract does in the United States. The typical Australian award is something in the nature of a code of employer and employee collective obligations of general application within the particular industry or craft. Juridically, it is of a

legislative and not an interpretative or judicial nature though the process by which it is arrived at is judicial in form. Sometimes the whole award is made by consent; more frequently its basic provisions are the product of agreement with a small 'fought over' area where the Court or Commission hands down a decision. .....

..... The Australian award is a product of three sided bargaining between management, union, and the court, carried through the conciliation and the arbitration stages."[1]

The awards lay down minimum benefits and quite frequently labour is successful in obtaining over award payments through bargaining. To make them legally enforceable the unions and management process their agreements through Arbitration Commission by creating a formal dispute.

An award cannot go beyond its 'ambit' i.e. the limits of the dispute. The benefits granted in the award are not to exceed the maximum demanded in the log of claims. Applications for amendment of the existing awards which the tribunals have to consider more frequently, can be made without going through the expensive process of making a fresh reference of a dispute only, if the modifications sought are within the ambit of the award, The trade unions therefore make it a point to put high demands in their first log of claims.[2]

An award is legally binding on the parties to the dispute only. To secure a wide coverage of an award the trade unions serve the log of claims on a registered country-wide organisation of employers if one exists in the particular industry. Where such organisations do not exist, it is quite cumbersome and expensive process to serve the log on each individual employer. Such a situation generally does not arise as the employers are by and large organised into

country-wide associations registered under the Arbitration Act. The federal arbitration Commission generally avoids making a 'common rule' through its awards. The State awards do not suffer from these limitations. The awards there are frequently made a 'common rule' for the particular area of industry involved.[3]

Administration of Award :

A party to an award can apply for variation in the award if it is within the ambit of the award. Such an application is considered on its own merits if it is substantiated that certain facts were overlooked or certain circumstantial change has occured justifying a revision. If creation of new rights is not involved, then three different bodies are provided under the Act to deal with the matter according to the nature of issues involved. An application for an interpretation of the award is to be dealt by the Industrial Court. If a matter of fact is involved then it is to be referred to a Board of Reference. The use of this body is limited to fact finding since it does not have judicial powers to decide a disputed issue of fact. If the complaint is regarding enforcement of awards, legal proceeding with regard to it can be held in the Commonwealth Industrial Court which has judicial powers. The Court can punish the defaulter with fine or imprisonment.

In the federal jurisdiction if the variation sought does not fall within the ambit of award then a fresh dispute is to be created. No such limitation exists in the States sphere.

"Whilst the State arbitration machinery, particularly in New South Wales, has proved fairly adequate to cope with matters arising in connection with the administration of awards,

the federal system has suffered from the allocation of issues to different sets of tribunals and the legalistic distinction between the arbitral function and the judicial function."4

Right to Strike :

The right to strike is not totally curbed in the Australian system of compulsory arbitration.

"However, we do live in a world dominated by logic, and the Australian system has managed to function notwithstanding a very considerable exercise of the right to strike. Moreover the actual form which award making has taken lends no support to the view that there is any inherent legal prohibition on strike implied from the very existence of the system. Awards have taken the form of codes of employer and not employee obligations. An obligation either to accept work or continue work on the lines of award remuneration has not been spelled out. In fact Mr. Justice Higgins at an early stage characterised any such view as being a 'most paralyzing conclusion and a fit beginning for the regime of a servile State!'58'5

A strike is made illegal either by statutory prohibition or by an anti-strike clause in an award. In the federal legislation there has been no anti-strike provision since 1930. The States legislation however has got such provision with the exception of Victoria. But they are not invoked in all the States uniformly.

"However, whilst there is considerable sporadic prosecution activity in New South Wales and Queensland, the whole picture is one of inactivity. The Draconian provisions of the South Australian and Western Australian statutes which are tantamount to a complete veto on strikes are very rarely invoked though the threat of their invocation may be of some importance."6

"58 Water side Workers' Federation v. Commonwealth Steamship Owners' Association (No:1)(1916)10 Commonwealth A.R.429 at 436."

While the State awards do not contain any clause to ban the strike activity, the federal awards mostly carry such a clause since 1951. This is called 'anti-ban' clause meaning thereby that no organisation, party to the award shall be directly or indirectly concerned in any ban on work in accordance with the award. This is inserted in the case of most of the industries which are strike prone. This can be inserted at a later stage also on an application, and is not subject to doctrine of ambit. The breach of an anti-strike clause is a breach of the award which is punishable as contempt of Court under Section 111 of the Commonwealth Conciliation and Arbitration Act. Unions have often found it harsh to pay the fine which is generally equal to the maximum amount prescribed under Section 111.[7] In the absence of any direct provisions in the Act on strikes, this method of penalizing strikes as contempt of Court is considered to be circuitous. "The method of penalizing strikes now commonly employed in the Commonwealth system is an important one. Instead of treating strikes as straight out breaches of law or of an award, and dealing with them with due regard to the seriousness of breach and to the whole of circumstances, a circuitous and artificial process is gone through to cover the strike into a contempt of the Commonwealth Industrial Court. A clause prohibiting strikes must first be in the relevant award made by the Commonwealth Arbitration Commission. Then, if there is a strike or threatened strike in breach of the award, application is made to the Commonwealth Industrial Court for an order enjoining the union from committing or continuing the breach. This Court is in no way concerned with the merits of a dispute which is purely a matter for the Commission. ..... If the strike continues after the Court order, subsequent proceedings take place in this artificial atmosphere of contempt of Court. The

merits of dispute are quite irrelevant - the only issue is what efforts the union has made to get its members back to work. This unreal atmosphere does no good either to industrial relations or to respect for the motion of contempt of court, which it is important not to have belittled. The interpretation of the Constitution adopted by the High Court in the Boilermakers Case certainly places some difficulties in the way of handling strikes in the Commonwealth system by the traditional combination of arbitral and judicial activity. However, it need not rule out all flexibility and certainly it does not necessitate the use of contempt of court as a means of penalizing strikes."[8]

"The separation of the arbitral and judicial functions cannot be regarded as involving a very healthy situation so far as enforcement of anti-strike law is concerned. It is the Arbitration Commission which decides whether to insert an anti-ban clause; it is the Industrial Court, which, remote from the factors which have gone into the processes of building up the awards, decides whether and to what extent to punish a breach."[9]

It is said that with increasing use of anti-ban clauses, the federal Court has made little resort to administrative sanctions against militant unions. After the repeal of anti-strike provisions in the federal Act in 1930 the Court utilized the provision for de-registration against the striking union. But very soon it realised that it was more against its own interest to deregister a union and thus loose control on it. The technique of de-registration is said to have not been used for some years. The penalty of cancellation of award was tried during the war years but was sparingly used later. Administrative sanctions against unions are not found to be useful.

"By and large, it cannot be said that the use of administrative sanctions has been successful. The same characterisation may be made of the attitude, sometimes adopted by the tribunals that they will not hear a union application for benefits whilst a substantial part of its membership remains on strike."[10]

Discharge of an employee :

The right to hire and fire if properly exercised is regarded as employers' prerogative in Australia. The arbitration awards lay down the notice period for discharging an employee. If an employer discharges an employee after giving him such prior notice his motives generally cannot be questioned unless the discharge is prompted by anti-union reasons in which case it would be a statutory offence. In New South Wales, the industrial tribunals are empowered to order reinstatement if the dismissal is harsh or meant to victimise an employee even though it has no anti-union motives. The federal tribunals have stated their disability in exercising such jurisdiction.[11]

Registered Organisations :

There is no separate federal law on trade unions in Australia. The Commonwealth Conciliation and Arbitration Act 1904 however makes extensive provisions regarding registration of organisation, election of their office bearers, conduct of the office bearer, conduct of the registered organisations, deregistration of the defaultering organisations and inquiry into elections in case of a complaint. The Act also lays down a procedure for determination of disputes relating to registered employers 'and employees' organisations. The minimum membership limit of an employees' organisation to be registered under the Act is 100 working members. The

Act allows outside members in an organisation who are its office bearers. An employer or association of employers in an industry is qualified for registration if employing on an average 100 workers per month during the last preceding six months. The Act enjoins upon a registered organisation to provide for election by secret ballot and to make elaborate rules regarding such election. The rules of a registered organisation should not in any manner impede the operation of an award or any provision of the Act. An office bearer should not during the pendency of an award advise, encourage or incite a member of the organisation to defy any of the terms of the award. It is noteworthy that the Act debars the office bearers from encouraging the members during the period an award is in operation, to resort to any tactics which hamper the normal progress of work and restrict the production. The Act enjoins that a rule of a registered organisation shall not be contrary to provisions of the Act or an award and shall not prevent the members from abiding by the law or an award. The rules should not put before the applicants for membership any conditions or obligations which are unjust in the context of the scheme of the Act. A person employed in an industry is entitled to become a member of the union in that industry if he is willing to pay the membership subscription and is not a bad character. Any dispute relating to such entitlement of a person can be decided by the Industrial Court. A registered organisation has to maintain an upto-date register of its members and office bearers, containing the names and addresses. The organisation is also required to keep duplicate of the union ticket issued to its members showing their names, addresses and places of their permanent and temporary residence.

The Act provides that the registration of an organisation can be cancelled by the Industrial Court if a case is made out before it by any organisation or interested person or the Registrar. An organisation can be deregistered if its rules are in contravention of the Act or Award, rules are not observed or are administered in a menner repugnant to the Act or if the organisation is charged of any contravention of the Act, non-compliance with the award on wilful neglect of an order of the Industrial Court. The Court if not convinced of the gravity of the offence may not cancel its registration and only declare a rule to be void if it is in contravention of any of the provisions of the Act or an award or order compliance with its rules in case the latter are not observed by the organisation. In case an organisation is deregistered, its members would no longer remain beneficiaries of the award which would cease to apply to them. A deregistered organisation is not entitled to refer a dispute to the Commission/Court.

Registration of Unions in Commonwealth and States Jurisdiction :

The registration of unions in the federal and State jurisdiction is regulated by different legal provisions which has at times led to an anomalous situation. There is no registration of trade unions and employers associations in the Wages Boards System of Victoria. Often the same union is registered under different regulations and accordingly has different sets of rules and different office bearers.

"At present the Commonwealth and several of the States each have entirely unrelated systems of registration (of unions) with different requirements. This leads to the difficulties where two different unions are recognised in the commonwealth and a State system as the sole representative of a particular class of workers. But more importantly it

leads in New South Wales at least, to most complex problems when the same body of unionists is registered under both the State law and the Commonwealth law, thereby acquiring perhaps two legal personalities. Certainly many unions have ended up with two different and sometimes irreconcilable sets of rules and some have ended up with two hostile sets of officers, each elected under a different set of rules but each claiming to control the same office, property and bank accounts and to be the authentic voice of the same body of members. This is a situation which can be of advantage to no one except lawyers and orally defeated union leaders seeking to escape the judgment of their rank and file. To the average unionist it is so perplexing that he goes up trying to understand his rights, much less entice them."[12]

"The real need, however, is that the State and the Commonwealth systems of registering unions should be integrated by cooperative legislation so that where one group of members actually exists it should have only one legal personality and no conflicting or differing set of rules or legal requirements applicable to it."[13]

Registration of more than one union in an industry :

Section 142 of the Commonwealth Conciliation and Arbitration Act discourages registration of more than one union in an industry. It gives discretionary powers to the Registrar to refuse registration of a union if a union to which the members of the applicant union can conveniently become the members, is already registered. Registration to another union is granted if it is in the industrial interests of some of the members to dissociate themselves from certain policies of the already registered union; or if the interests of certain members run the risk of being submerged or neglected by the existing union; or if a separate union is necessitated due to supervisory nature of

duties of certain members which cannot be smoothly discharged if they are to remain loyal members of the same union along with other workers; or any other consideration justifying more than one union in an industry. The industrial tribunals are said to have been sensitive to the undesirability, of permitting more than one union in an industrial sphere for fear of competing claims and activities of rival unions jeopardising industrial peace. Still it is not considered always wise to refuse registration of a union under Section 142 and keep a group of workers unorganised in an industry. "To avoid this, it is better to have more than one organisation in an industry; practical difficulties may thereby arise, but they can be suitably coped with by the Court."[14] (Vide National Union of Railwaymen of Australia case - Dethridge C.J.)

"It is but comparatively rare however that an application for registration of a second union has been refused. ..... The result has been that although a general principle against double representation has been proclaimed, there is considerable overlapping of union coverage and a consequent duplication of Court awards."[15]

Trade Union Growth :

It is estimated that in Australia the proportion of trade union members to the total wage and salary earners is over 59% as against 45% in U.K. and 30% in U.S. and Canada taken together.[16] An opinion expressed on Australian trade unions and their acceptance of the system is as follows :

"Like any body, which directly affects a lot of people, the Commission is constantly under criticism. However, when a conservative government tried in 1929, to surrender its

powers to the States, it was swept from office in an electoral landslide. The trade unions regularly criticise the system, but many of them owe their existence, and their continued power to registration with the tribunal.

..... There are 347 unions in Australia, many of which are small, craft unions with low membership fees and little strength, which would not survive in the arena of collective bargaining, without a compulsory arbitration system to impose awards and police the employers' observance of them. Union officials are generally poorly paid and over-worked. Their ambition frequently run to political appointments, in which they are helped by the frequent affiliation of unions with the labour parties. As the old, dedicated union officials retire, there is danger that the leadership will fall to mediocre men or Marxist ideologues."16-A

It remains to be ascertained to what extent and in what manner the growth of trade unionism is promoted or hampered by the working of compulsory conciliation and arbitration system.

Industrial Unionism in Australia :

The trade unions in Australia are said to have preferred to organise on industry basis and there have been a number of successful amalgamations also. But they have not much succeeded in building one union all over an industry. Despite the legal provisions discouraging registration of more than one union in an industry backed by unions' desire to get registered under the Commonwealth Arbitration Legislation to be able to obtain inter-state awards, it is observed that industrial unions have not succeeded in enrolling skilled workmen who are more attracted to join their craft unions. "There are few, if any, industries in which only one union operates."17

"Despite the avowed object of the Australian Council of Trade Unions (A.C.T.U.) since its formation in 1927 to promote the closer organisations of the workers by the transformation of the Australian trade union movement from the craft to industrial basis, by grouping all unions in their respective industries and by the establishment of one union in each industry, the move towards industrial form has made little progress. The distribution of forms of unions organisation prevailing in 1927 has remained substantially unaltered. The explanation for this rigidity of form structure is to be found basically in the same reasons as above for the large number of small unions. Once the structure of union organisation is established and its continued existence assured by the protection, the force of vested interest resists any drastic change. And there is no reason to suppose that the situation will be much altered in the forseeable future.

However, the device of a loosely knit inter-union body has been used wherever expedient to overcome the draw-back of many unions in an industry acting independently of each other."[18]

Union Security Provisions :

Union security provisions incorporated in the Australian legislation or those awarded by the tribunals can be broadly grouped in two categories - preferential treatment; and compulsory unionism inclusive of both closed shop and union shop. Preferential treatment to union members is extended with regard to recruitment, continuation of employment. The success of the Australian trade unions in obtaining security provisions in the awards is limited by the varying powers enjoyed and attitudes adopted by the tribunals in this regard.

The Industrial Court of South Australia, Wages Boards of Victoria and Tasmania are statutorily debarred from making any union security provisions. The New South Wales legislation directly provides for union shop and precludes the matter from the jurisdiction of Industrial Commission. But this was replaced by a provision for 'absolute' preference under which employment of non-unionist is permissible only if a unionist is not available. Only the Commonwealth Arbitration Commission, the Queensland Industrial Commission and the Western Arbitration Court are authorised by the relevant legislations to deal with claims for union security provisions. The Commonwealth Arbitration Commission (C.A.C.) has no powers to award compulsory unionism unless agreed between the disputant parties. It is authorised to grant preference treatment only. The Western Australian Tribunal is empowered to impose compulsory unionism but it avoids exercising this power in cases of disputed security claims. Unfair discrimination is generally the pre-requisite for union security awards. The Queensland Industrial Commission more often awards compulsory unionism on consideration that it provides stronger incentive to unions to abide by the arbitration award than does mere preferential treatment to unions.[19] This has secured highest level of unionisation in Queensland - 74% in 1957 as against 62% in New South Wales.[20]

Composition of Tribunals in different States of Australia :

The composition of Tribunals varies from State to State in Australia. While the federal tribunals are composed of both legal and lay members the New South Wales Industrial Commission is constituted of all legal members and the Queensland and Western Australia have altered the membership composition of their arbitration bodies to allow all laymen

members. The Wages Boards of Victoria and Tasmania consist of equal representative of labour and employer with an independent Chairman. South Australia has a mixed system of Wages Boards on the lines of Wages Boards in Victoria and Tasmania and an industrial court composed of legal judges.[21]

With the separation of arbitral and judicial functions under the federal arbitration legislation, two of the States viz. Queensland and Western Australia also constituted in 1961 and 1963 respectively two different bodies of laymen and judges to separately exercise arbitral and judicial functions.[22]

Industrial Relations Machinery in Australian States :

Wages Boards System of Victoria

The Labour and Industry Act regulates industrial matters in Victoria. It provides for setting up of Wages Boards and Industrial Appeal Courts. A Wages Board is constituted either for a specific trade or a group of trades. A General Wages Board exists to function for trades which have no Wage Board of their own.

A Wage Board is constituted of an independent Chairman and four to six members equally representing labour and management. The number of members can be increased to ten with the consent of the Minister. Meetings of the Wages Boards are held in an informal atmosphere. Subjects for issues for determination are introduced by motions, and decisions are taken by votes. The Chairman as a member of the Board has a deliberative vote and as a Chairman is also empowered to decide an issue over which the members do not reach an agreement. In the latter event his decision is however restricted to a choice between the two alternatives proposed by the employer and employee representatives at the Board. The consumers interests are not adequately

represented at the Board in so far as the Chairman's vote is made ineffective when the employer and employees members of the Board agree on a particular course of action which may adversely affect the consumers.

There is no provision for the registration of trade unions or employers associations in Victoria. The decisions of the Wages Boards apply by common rule as minimum standards, to all establishments within the particular trade. Wages Boards are not used generally for settling disputes with individual employers. The decisions are enforced as a rule of law and the inspectors of Ministry of Labour and Industry are incharge of enforcement.

A Wages Board is empowered to appoint a Board of Reference consisting of the Chairman of the Wage Board, at least two representatives each of employers and employees of which one of each side should be a member of the Wages Board. The Board of Reference is authorised to determine questions of fact relating to the application of Wages Boards decisions without amending the decision itself. Provisions exists in the Victorian System for appeal against a decision of a Wage Board or Board of Reference to Industrial Appeals Court which consists of a President - a judge of the status of County Court, and two lay members. An appeal can be filed within 14 days of a decision by a majority of employer or employees representatives of the Wages Board or by an association of employers or employees. The decision of the Appeals Court is final. The number of appeals heard by the Court is said to be very low - approximately 3% of total Decisions of the Boards, during 1959-63. This is explained by the fact that a large number of decisions of the Wages Boards are made to incorporate the changes necessitated by federal awards. The parties are also said to have an attitude of tolerance and

willingness to try even a slightly bad decision. This is because of the ease with which a Wages Board's meeting can be convened and a matter re-opened.[23]

Though strikes incidence has been less in Victoria as compared to other States, it cannot necessarily be ascribed to the functioning of the Wages Boards system. There are other factors such as lower incidence of State awards, coverage of small scale industries and lesser unionisation in workers which are responsible for lesser strike activity in Victoria.

"These estimates of the coverage of State determinations reinforce knowledge gained from observation that the wages boards as a generalisation cover small scale, localised industry and the service trades. That is, the wages boards operate to a marked extent in those areas where the nature of the industry, and of the work force, implies a low degree of strike power. The sectors covered by wages boards are characterised by scattered and small employment units, by a high proportion of female labour, and of white collar labour. In many instances the small scale of activity enables a close employer-employee relationship to exist. Each of these factors tends to minimise the propensity for conflict. The importance of the existence of wages board as an explanation of the degree of conflict is thereby reduced. .....

The industry groups in which the wages boards predominate are also the industry groups where the level of trade union membership is relatively low. ..... Furthermore, the more militant unions in Victoria, for example, the A.E.U., and the Transport Workers, operate under Federal Awards and on an inter-state basis, and even where a section of the union operates under a wages board determination, there is a strong tendency for gains to be first sought in the Federal sphere or through disputes in other States..."[24]

New South Wales :

A Conciliation Committee representing equally employers and employees is provided in New South Wales for each industry or group of industries. Excepting apprenticeship the Committee has jurisdiction over all range of industrial matters. Disputes are first heard by this Committee which is empowered to make its award. An appeal against its award can be filed in the Industrial Commission. In practice the Committee makes its award only if the parties reach an agreement otherwise the matter is referred to the Commission. The Industrial Commission consists of six justices. It can vary or cancel an award in public interest on its own initiative.

Statutory registration of unions and employers association is provided in the system. The New South Wales Tribunals like other State Tribunals can make a 'common rule' for the entire industry.[25]

South Australia :

South Australian industrial relations system consists of Board of Industry, Industrial Board for various industries and the Industrial Court.

The Board of Industry consists of a President, two Commissioners representing each employers and employees. The President is the President or Deputy President of the Industrial Court. The Board is in charge of all Industrial Boards and makes recommendations to the Minister for Labour for appointment or dissolution of Industrial Board to particular industry or group of industries.

Industrial Board consists of four to eight members representing equally employees and employers.

The Industrial Court is constituted of a President who is of the rank of a judge of Supreme Court. The President can be assisted by two assessors who must have industrial experience. The Court is empowered to mediate in a dispute either on its own initiative or on reference by a Board, Minister or a party in appeal against the Board's decision. The Court can make a 'common rule' and is not bound by the doctrine of 'ambit' applicable on the Commonwealth Arbitration Commission. Registration of trade unions and employers' associations is provided under the Act. The South Australian System is a mixed system of the Court and Wages Board System. Appeals to the Industrial Court against the decision of Industrial Boards are more frequent than appeals against the Victorian Wage Boards.[26]

Queensland :

The Queensland Conciliation and Arbitration Act provides for an Industrial Court consisting of not more than five members.[27] The President of the Court is of the rank of a Supreme Court Judge. No qualifications are prescribed for the members. A member can sit alone and constitute the Court. In practice, they sit independently excepting in major cases relating to basic wages and standard hours. A party can ask for a full Court decision and in that event the member of the Court has to invite opinion of all the members. A Bureau of Industry is provided to furnish statistical and economic data to the Court. Registration of unions and employers' associations is provided under the Act. A party to an industrial dispute whether registered or not, has to notify the dispute to the nearest Magistrate who also acts as Industrial Magistrate. The Court then hears the case either itself or asks the

Industrial Magistrate to hear and determine the dispute. Provision exists for appeal against the decision of the Magistrate to the Industrial Court.

"The Court is required to proceed by 'equity good conscience and substantial merits of the case without regard to technicalities or legal forms or the practice of other Courts!"[28]

Proceedings before the lay members are quite informal, though they are legalistic before the Full Court. Entry of legal practitioners is permitted only when consented by the other party. Normally it takes five to seven weeks for making an award out of which three to four weeks are allowed to the other party to submit its reply to the claims made by the first party. Access to the Court is simple with minimum procedural formalities. Though no formal provision exists for conciliation, the Court is empowered to call a compulsory conference of the parties. The Court makes a Common Rule for the entire industry, irrespective of the parties to the dispute.

"In framing its awards, the Court is subject under the Act to rather more precise directions as to their content than is usual in Australian arbitration legislation. The basic wage must be 'not less than is sufficient to maintain a well conducted employee of average health, strength and competence, and his wife and family of three children in a fair and average standard of comfort, having regard to the conditions of living in the calling in respect of which such basic wage is fixed.' In making a declaration on the basic wage or standard hours, the Court must take into account the probable economic effect upon the industry concerned and the community in general....."[29]

"In general, the Queensland arbitration system is one of the most flexible and speedy in Australia. Despite the lack of formal provisions for conciliation, procedure in fact reveal a considerable amount of conciliation and agreement between the parties."[30]

Working of the Australian System :

Conciliation

The compulsory conciliation proceedings in Australia have received meagre credit in securing settlement of an industrial dispute. The Act has only succeeded in obtaining the attendance of the parties and cannot compel them to reach or accept a settlement. The reason for its failure is described to be the general tendency in the parties, observable in other countries also where two successive proceedings are provided for disputes settlement to postpone the determination of a dispute till the second proceeding is completed in the hope of getting a better deal.[31]

Arbitration :

It is said that the organised labour and employers have generally reposed their confidence in the principle of compulsory conciliation or arbitration as methods for prevention and settlement of industrial disputes. The Community has also largely favoured the retention of these methods. The compulsory conciliation and arbitration are said to have been built into the structure of the Australian society.[32]

Dis-satisfaction however does prevail with the working of the scheme of the Act. The procedures prescribed under the Act are found to be extremely legalistic, costly and dialatory.

"In the opinion of the author there is, as claimed in the allegations, an indefensible amount of legalism and delay in, or associated with the working of, these Australian systems, and their cost, governmental and to industry, is burdensomely high ..... But in many instances, the complaints have been in an exaggerated form, and the facts and considerations on which assertions are based, or which are relevant to them, are not always known or appreciated."[33]

It is said that in many cases the delay in proceedings has been caused by the frequent adjournment motions sought by the parties to prepare their case. As regards legalism it is claimed that it is much less in the proceedings of the industrial courts than of the ordinary courts, though the same procedures are followed by both.

The arbitration tribunals do not consider them rigidly bound by precedents. It is however admitted that some avoidable legalism is caused due to duality of control of industrial relations exercised by Federal and State industrial authorities without an official nexuz. Demarcation disputes over the coverage of employees under the awards of the two types of authorities are a common occurrence in the Australian system.[34]

Impact on Trade Unions

It is claimed that the compulsory conciliation and arbitration system in Australia has not retarded the growth of trade unions. In fact the working of the Act and implementation of the awards have very much depended upon the functioning of trade unions. The expression of collective claims is left to the registered trade unions under the Act. Awards generally contain a provision authorising trade union

officials to enter an establishment, interview employees and inspect the relevant registers to ascertain the implementation of the award. The registered trade union is authorised under the Act to sue an employer for recovery of any amount payable under the award. The Act has thus by granting the enforcing and policing capacities to the registered trade unions made the trade unions important agents of the statutory industrial authorities.

"A trade union in Australia where registered as an organisation, industrial union or association under the relevant arbitration legislation, has, except in the isolated case where there is more than one registered employee organisation in the same field what amounts to a sole right of representation before such a tribunal of the workers in the industry to which it is functionally related and in obtaining of awards in their interests in fixation of the terms and conditions of employment in that industry. Among the better known countries there is none where organised labour has profited in such a degree from legal enactment, ..."

"To avail themselves of the benefits accruing thereby the important unions almost entirely, however, became registered as organisations under federal industrial regulative legislation beginning with the Commonwealth Conciliation and Arbitration Act of 1904.[13] In that way they broadened into institutions of an Australia-wide appearance and authority, and became firmly entrenched on a national basis.[35]

Contribution to Industrial Relations

It has been found difficult to assess the Australian system of industrial regulation in terms of its contribution to industrial peace. It is nevertheless admitted: 'But there

"13. At the present time the membership of unions so registered represents slightly more than 80% of the total membership of all trade unions in Australia ....."

can be no question that the best hopes of Australian Industrialists and public men, in respect of industrial regulation, have not been realised.[36]

Of late it is however observed that while the system of compulsory conciliation and arbitration has failed to completely out-law the strikes, their duration has been on the decline as indicated by the reduction in working days lost per worker, in the face of increase in the number of strikes, shown in the following table :-

	Number of strikes		Working days lost per worker involved.	
	1958	1963	1958	1963
Coal Mining	416	222	1.86	1.58
Other Mining	8	9	1.26	1.07
Manufacturing	170	489	2.86	1.84
Building and Construction	55	146	3.91	2.22
Stevedoring	256	312	0.81	0.80
Other Transport	54	49	1.71	0.68
Other Industries	28	23	1.61	1.12
Totals :	987	1,250	1.56	1.41

While citing the above figures Raymond J.O'Dea explains the reduction in duration of strikes as follows :

"Over the period illustrated, the Arbitration system developed a pattern of penalties, which discouraged long strikes. It will be noted how the left-wing-influenced metal trades and building unions reacted by having more frequent pin-pricking strikes to force 'over award' payments. A short strike would be often over before the employers could call upon the sanctions of the arbitration machinery.

The current strike pattern would be similar to that of 1963, except in the Stevedoring Industry".[37]

As the Commonwealth of Australia has no powers to legislate directly to regulate the terms and conditions of employment in private industry and it intervenes through the Conciliation and Arbitration Act, the contribution of the latter is found to be more marked in the betterment of service conditions in industry. The awards of the tribunals have granted substantial wage increases, reduction in working hours, holidays with pay, better employment amenities.

"On a review and a summarising of the evidence of the advance in industrial justice, it can reasonably be claimed that, since the inception of industrial regulation, a noteworthy progress has been made in the material comforts of the Australian worker that extends to both his working and his home life, and that the increased leisure available to him, combined with a measure of financial security, now provides him with opportunities for a higher cultural development and a sounder intellectual happiness.'[38]

It is also claimed that the increased benefits granted under the awards have not impaired the existence of an industry or its efficient and economic working.[39]

It has been largely admitted that while the Australian system has not succeeded in preventing strikes and lock-outs, it has regulated service conditions of the working class and has provided a distributive mechanism for balancing the pressures in the economy.

"From the above, it may be seen that the achievements of the system do not include the outlawing of the strike, or of the lock-out, of which latter is a rarity in Australia today.

Rather must the achievements be looked for in the minimum wage, uniformity of working conditions through out the nation, or economic valve to correct a recession, and social machinery to overcome comparative injustice."[40]

"The Australian System has solid achievements to its credit. At an early stage it solved the question of employer recognition of the labour union and thus avoided almost totally what was an ugly phase in American labour relations history. It achieved the attainment of humanitarian goals in the form of reasonable living wage, limitation of hours, abolition of sweating, and the provision of paid holidays and annual leave by the civilized process of talking it out in Court. The legal machinery of award making creaks at times, the constitutional strait jacket is very inconvenient and the whole machinery of strike restrictions functions sporadically and at half-cock.[41]

P A R T - II

The Indian System - A Comparative View-point

In India, the Industrial Disputes Act, 1947 (I.D. Act) provides for prevention and settlement of industrial disputes. The Act covers all the States of the Indian Union. The Act is administered both by the Central and State Governments in respect of industries falling under their respective jurisdiction. Labour being a Concurrent subject, the State Governments have freedom to enact their own labour legislation. A few States like Uttar Pradesh, Madhya Pradesh, Maharashtra, Gujarat and Rajasthan have accordingly enacted their own legislation for settlement of industrial disputes. In these States, the Industrial Disputes Act, 1947 is applicable to industries not covered by the State legislation.

The Commonwealth Conciliation and Arbitration Act in Australia covers all employees in an industry. The Industrial Disputes Act, 1947 has however limited coverage of 'workmen' employed in an industry excluding all employees having administrative and managerial duties and those doing supervisory work on a monthly wage exceeding Rs.500/-.

In contrast to the Australian system where the administering authority under the Arbitration Act is vested in the industrial authorities viz. Commonwealth Conciliation and Arbitration Commission and the Commonwealth Industrial Court, under the Industrial Disputes Act, 1947, the 'appropriate' Government remains the administering authority in all important matters such as making a reference, constituting a tribunal and enforcing an award etc.

Prevention of Industrial Disputes :

The Commonwealth Conciliation and Arbitration Act, 1904, entirely concerns itself with settlement of industrial disputes and as such does not provide for any plant level bipartite body to settle day to day differences and promote amicable relations between labour and management. In India for this purpose, the Industrial Disputes Act, 1947 provides for setting up of works committees in industrial establishments employing 100 or more workmen. These Works Committees are constituted of equal representatives of employers and workmen.

Besides this statutory body, there are some voluntary bodies and procedures for dealing with unit level grievances of industrial workers. The Code of Discipline voluntarily agreed between the representatives of employers and workmen provides for a model grievance procedure to be adopted in industrial establishments.

Settlement of Industrial Disputes :

Conciliation : The Act empowers the 'appropriate' Government to appoint Conciliation Officers and/or constitute a Board of Conciliation to mediate and promote settlement of industrial disputes. A Conciliation Officer may be appointed for a specified area, one or more industries in an area or specified industries either permanently or temporarily. The Board of Conciliation consists of an independent Chairman, two or four Members representing equally the two parties to the dispute. The Act imposes a time limit of 14 days and 2 months for conciliation proceedings before an Officer and Board respectively. The conciliation proceedings under the Australian system are not made time-bound. The report of the conciliation proceedings in the Indian system is submitted

to the appropriate Government for necessary action. If a settlement is reached, then it is binding on the parties. In case of failure, the Government decides whether to refer the dispute to a Board/Court or Tribunal. The conciliation authority under the Industrial Disputes Act is never concerned in the adjudication of disputes as may sometimes happen in the Australian system.

Adjudication :

The Industrial Disputes Act empowers the 'appropriate' Government to constitute a Labour Court, Industrial Tribunal or National Tribunal to adjudicate a dispute. Each of these bodies consists of one person only who is of the rank of a Judge of a High Court or District Judge of three years standing. A person holding any judicial office for at least seven years can constitute a Labour Court. For appointment as a National Tribunal, only a High Court Judge is eligible. A Court or Tribunal can appoint one or more assessors having special knowledge to advise it on any matter. In the Australian system,a Commissioner who is a lay member of the Commission can arbitrate over a dispute while in the Indian system only a person having judicial qualifications and experience is entitled to adjudicate. No time limit is fixed for conclusion of adjudication proceedings under both the systems. In Australia, the major disputes relating to wages, hours and leave are determined by the Commission in Presidential Session only. In India, the jurisdiction of the different adjudicating authorities is clearly demarcated under the Industrial Disputes Act on the basis of the issues involved in a dispute. Disputes relating to any matter listed under the Second Schedule of the Act such as propriety or legality of an order under the

Standing Orders, application and interpretation of Standing Orders, discharge or dismissal, legality or illegality of a strike and lock-out, are referred to a Labour Court. Disputes relating to matters covered under the Third Schedule of the Act, such as wages, allowances, hours, leave, retrenchment, etc. are referred to a Tribunal, while a National Tribunal is constituted by the Central Government to determine disputes of national importance or disputes involving inter-state industrial establishments.

Making of a Reference :

Both in Australia and India any existing or apprehended dispute can be referred for conciliation or adjudication. While in Australia the Commonwealth Conciliation Commission itself moves or is moved in to settle a dispute; in India a reference is made by the appropriate Government to a Board/ Court/Tribunal constituted by it to deal with the dispute. In Australia, a registered organisation is entitled to directly refer a dispute to the Arbitration Commission which is empowered to consider or not to consider the reference on its own merits, the Industrial Disputes Act does not provide for any direct reference to a Board/Court/Tribunal. The parties can apply separately or jointly to the appropriate Government for a reference of the dispute to a Board/Court/ Tribunal. The appropriate Government, if satisfied, that the persons applying represent the majority of each party shall make the reference.

Powers of the Conciliation and Adjudication Authorities under the Industrial Disputes Act :

As in Australia, the conciliation and adjudication authorities under the Industrial Disputes Act are empowered

to enter an industrial establishment to which a dispute relates, for the purpose of an inquiry after giving a reasonable notice. Under the Industrial Disputes Act, a Board/Court/Tribunal has the powers of a Civil Court and can accordingly enforce attendance of any person and examine him on oath, compel production of relevant documents etc. Similar powers are vested into the Commonwealth Arbitration Commission for the purpose of settling a dispute by conciliation or arbitration.

Nature of Settlement/Award :

The settlement reached at conciliation proceedings and an award made by a Court or Tribunal are binding on the parties to the dispute under both the systems. A settlement under the Industrial Disputes Act comes into operation from the date agreed between the parties and remains into effect for a period agreed in the settlement. If no such dates are agreed then it comes into effect from the date of signing the settlement and remains in operation for six months. A report of the Board or award of the Court/Tribunal under the I.D. Act is published within 30 days of its receipt by the appropriate Government and comes into operation after the expiry of 30 days from the date of its publication. Under the Commonwealth Arbitration system, this period is three weeks. The maximum period for the operation of an award is five years under the Australian System while it is three years under the I.D. Act. Under the Industrial Disputes Act, there is no provision for variation of an award by a Court/Tribunal as provided under the Commonwealth Arbitration Act. But under some of the State Acts in India, there is a provision for modification of an award. In case there is a significant change in circumstances justifying a modification of the

award, the appropriate Government is empowered to refer the award to the Court/Tribunal for decision whether the period of award need be shortened. The decision of the Court/Tribunal is final.

The Act, however, empowers the appropriate Government not to enforce an award or part thereof in public interest. The appropriate Government may in such a case make its order rejecting or modifying the award within 90 days from the publication of the award and shall present the award along with its modifications before the State Legislature or the Parliament as the case may be. The modified award would become enforceable after fifteen days from the date it is so laid. In case the appropriate Government fails in making its order rejecting or modifying the award within 90 days, the award would come into operation after the expiry of 90 days from the date of publication of the award. No such power is vested in the Government under the Australian system in which a variation within the ambit of the award can be made by the Arbitration Commission itself on application from a party to the award without requiring a fresh reference.

Appeals :

Under the Industrial Disputes Act, an award of a Court/ Tribunal is final and there is no provision for an appeal. An appeal against an award lies to the Supreme Court. A Writ Petition can be filed in the High Court. A Labour Appellate Tribunal was provided under the Act of 1950 to entertain appeal against an award of a tribunal, but it was abolished in 1956 as it did not satisfy labour in general and trade unions. In Australia too, there is no appeal from the award of the Commission.

Voluntary Arbitration :

The Industrial Disputes Act provides for reference of a dispute to arbitration on agreement between the parties, before it is referred to adjudication to a Labour Court/ Tribunal. The arbitrators shall be the persons as agreed between the parties. The arbitration award is binding on the parties to the dispute in the same manner as an award of the Court/Tribunal.

Parties to the dispute :

Under the Commonwealth Arbitration system, the Commission is empowered to implead any other party in a dispute referred for conciliation or arbitration which in its view may be affected by the dispute. The Industrial Disputes Act also empowers the appropriate Government to implead all those parties in a reference to a Board/Court/ Tribunal which are likely to be affected by the dispute. Even in case of voluntary arbitration opportunity is given to all the interested parties to be heard by a notification before an award is made.

Court of Inquiry :

Besides the conciliation and adjudication authorities, the Industrial Disputes Act provides for Court of Inquiry consisting of one or more independent persons and a Chairman to be appointed from amongst the members. The appropriate Government can constitute a Court of Inquiry to inquire into any matter relating to an industrial dispute. The Court has to submit its report within six months. Under the Australian system, the Commonwealth Arbitration Commission refers a dispute for inquiry to a Commissioner or a Local Board.

Public Utility Services :

The Industrial Disputes Act makes a distinction in disputes arising in public utility services and other industries. Railways, postal, telegraph and telephone services, electricity or water supply undertakings, public sanitation services, etc. are defined to be public utility services under the Act. The Act also authorises the appropriate Government to declare any industry covered under the First Schedule of the Act (which includes industries such as Banking, Coal, Cement, Cotton Textile, Iron and Steel, Food-stuffs) to be a public utility service in the public interest for such period as it may desire.

The Act makes provisions for compulsory conciliation and adjudication of disputes in public utility services. As soon as a notice of strike is given under Section 22 of the Act the appropriate Government has to compulsorily refer the dispute to a Board/Court/Tribunal unless it considers that the notice is frivolously or vexatiously given. If on receiving the report of the Board of Conciliation, the appropriate Government does not refer a dispute for adjudication, it has to give the reasons for its decision to the parties. The Australian system of disputes settlement does not draw any such distinction in public utility services and other industries.

Strikes and Lock-outs :

While the Commonwealth Conciliation and Arbitration Act does not make any direct provisions relating to strikes and lock-outs, the Industrial Disputes Act lays down the conditions under which a strike or lock-out shall be illegal and provides penalties of imprisonment or fine or both, for

participating in, instigating or aiding an illegal strike. In defining an illegal strike, the Act draws distinction between public utility services and other industries.

A strike or lock-out in a public utility service is illegal under the Industrial Disputes Act if it is declared :

(i) without giving a six weeks' notice to the other party;

(ii) within fourteen days of giving such notice;

(iii) during pendency of conciliation proceedings and seven days after the conclusion of such proceedings.

A strike or lock-out is illegal in any industry under the following conditions :

(i) during the conciliation proceedings before a Board and seven days after the conclusion of such proceedings;

(ii) during the pendency of adjudication proceedings before a Court/Tribunal and two months after the conclusion of such proceedings;

(iii) during the pendency of arbitration proceedings before an arbitrator and two months after the conclusion of such proceedings;

(iv) during the period of operation of settlement or award in respect of any matter covered thereunder.

Besides, the appropriate Government is empowered to make an order prohibiting the continuance of any strike or lock-out in respect of any dispute, when a reference is made to a Board/Court/Tribunal. Continuance of a strike or lock-out legally commenced and which is not prohibited

by an order of the appropriate Government on making a reference to a Board/Court/Tribunal is not illegal under the Industrial Disputes Act. Also a strike or lock-out declared in consequence of an illegal lock-out or strike is not illegal under the Act.

Enforcement of Awards :

There is no special authority constituted under the I.D. Act as provided under the Commonwealth Conciliation and Arbitration Act for enforcement of awards. The I.D. Act provides penalties of imprisonment or fine or both for breach of an award, and certain provisions of the Act. The appropriate Government can refer a question of interpretation of an award to a Tribunal/Court/Board. constituted under the Act for the purpose of settlement or investigation of a dispute. If any money is to be recovered under a settlement/ award then on application from the workman concerned, the appropriate Government if satisfied about the claim shall get the amount recovered through the Collector as arrear of land revenue. If any question arises as to computation in money terms of any benefit from an employer or money due from an employer, such question may be decided by a Labour Court on application made to it.

Union Security Provision :

While the Commonwealth Conciliation and Arbitration Act empowers the Commission to grant union's claim for preference treatment to its members in respect of recruitment, and continuation of employment the Industrial Disputes Act does not make any such provisions. The Industrial Disputes Act only grants protection to certain workmen from any adverse

change in their conditions of service, dismissal, discharge during pendency of proceedings before a Board/Court/Tribunal/ Arbitrator . The number of such protected workmen under the Act can be equal to 1% of the total workmen employed in an establishment subject to a minimum of 5 and maximum of 100 workmen. The appropriate Government is authorised to make rules providing for distribution of these workmen among the different trade unions, if any, and the manner in which the protected workmen are to be chosen. [(vide Section 33(3)(4)]

Wage Boards :

No statutory wages boards on the lines of wages boards in Victoria and Tasmania are constituted in the Indian system excepting in Maharashtra/Gujarat under Bombay Industrial Relations Act. However, non-statutory tripartite wages boards for different industries are constituted from time to time by the Central Government to award suitable wage structure for different categories of workers employed in the entire industry. The awards of such wage boards are to be voluntarily implemented by different units in the industry.

Trade Unions :

Trade Unions in India are registered under a separate legislation viz. the Trade Unions Act, 1926. In Australia, both in the federal and State spheres, barring some exceptions, the trade unions are registered under the same legislation which provides for settlement of disputes.

The Trade Unions Act, 1926 empowers the appropriate Government to appoint a Registrar of Trade Unions for a State. Under the Act any seven or more members of a trade union can apply to the Registrar for registration of their trade union,

whereas the minimum size of a union to be qualified for registration under the Commonwealth Arbitration Act is 100 working members in an industry. In the Australian system, registration of a trade union can be refused if one is already registered in that particular industry to which members of the applicant union can conveniently belong. No such limitation is placed on registration of a union under the Trade Unions' Act, 1926, which coupled with smaller membership qualifications for registration has led to multiplicity of unions in Indian industry. As in the Australian system, the Trade Unions' Act in India too requires a union applying for registration to make rules relating to maintenance of membership registers, payment of subscription, utilization of union funds, appointment of office-bearers of trade unions, annual audit of accounts, etc. One significant difference is noticeable in regard to appointment of office-bearers. While under the Australian system, the rules of a union have to make provision for election of the office-bearers by secret ballot and lay down elaborate procedure for such election, no such obligation is placed on a trade union seeking registration under the Indian system. Also the Australian legislation provides for strict regulation of the conduct of the office-bearers of a trade union in the interest of smooth and efficient working of an industry. No such regulations are embodied in the Indian Trade Unions Act, 1926. The provisions relating to maintenance of membership registers are more elaborate and strict under the Australian system. The Indian Trade Union Act does not provide any machinery for settlement of intra-union disputes relating to membership, unfair union rules, payment of subscription, etc. In the Australian Commonwealth system, all such disputes can be referred to the Commonwealth Industrial Court. In the Australian system, the registration of a union

can be cancelled if it is held guilty of continued breach or non-observance of an award. While the Indian Trade Union Act does provide for cancellation of the registration of a union under certain conditions, these do not include breach of an award. Under the Australian system, the regulations relating to trade unions are so framed as to secure union help in the working of the arbitration system. Such co-ordination has been wanting in the Indian industrial relations system.

Recognition of Unions :

Under the Australian system, the problem of recognition of a union is to a great extent solved by industry-wise registration of trade unions under the Act. In India the problem of recognition of union has been complicated due to multiplicity of registered unions at plant and industry level and absence of any statutory provisions relating to recognition of a representative union. While a voluntary procedure agreed under the Code of Discipline is adopted for recognition of union on membership basis, it has not yielded satisfactory results. The Code provides for recognition of a union in an industrial establishment if it has 15% of membership in that establishment. For recognition of a union at industry level in a local area, a union has to have 25% of membership in that industry. The recognition of a genuine union is made difficult due to lack of authentic membership records. In some of the State Acts, a union having a membership of 25% of the employees in an industry is considered as a Representative Union, which acquires the status of a recognised union and a bargaining agent.

One significant difference between the Australian and Indian industrial relations systems is that while the Commonwealth of Australia has no powers to directly legislate

for regulation of terms and conditions of service in private industry and it intervenes through the Commonwealth Conciliation and Arbitration Commission, no such limitation exists in India and therefore considerable legislation has been enacted to protect workers' rights and interests. The scope of the award in Australia is limited to terms and conditions of service not prescribed by law, while the scope of the award in India extends to reinstatement of discharged and dismissed employee, retirement benefits like gratuity, payment of bonus and other conditions of service over and above prescribed by legislation.

REFERENCES

1. Australian Labour Relations Readings, Edited by J.E. Issac & G.W. Ford, 1966, Melbourne, Sun Books, Part IV, 'Labour Arbitration in Australia' E.I. Sykes, pp. 288-289.

2. Australian Labour Relations Readings, op cit. , 'Labour Arbitration in Australia' E.I. Sykes, p.301.

3. Australian Labour Relations Readings, op cit., 'Labour Arbitration in Australia' E.I. Sykes, pp. 300-301.

4. Australian Labour Relations Readings, op cit., 'Labour Arbitration in Australia' E.I. Sykes, p. 307.

5. Australian Labour Relations Readings, op.cit., 'Labour Arbitration in Australia' E.I. Sykes, p. 313.

6. Australian Labour Relations Readings, op cit., 'Labour Arbitration in Australia' E.I. Sykes, p. 314.

7. Australian Labour Relations Readings, op cit., 'Labour Arbitration in Australia' E.I. Sykes, p. 315.

8. Trade Unions in Australia, Australian Institute of Political Science, Edited by John Wilkes & S.E. Benson, pp. 110-111.

9. Australian Labour Relations Readings, op cit., 'Labour Arbitration in Australia' E.I. Sykes, p. 320.

10. Australian Labour Relations Readings, op cit., 'Labour Arbitration in Australia' E.I. Sykes, p. 316.

11. Australian Labour Relations Readings, op.cit., 'Labour Arbitration in Australia' E.I. Sykes, pp. 308-309.

12. Trade Unions in Australia, op cit., pp. 96-97.

13. Trade Unions in Australia,op. cit., p. 108.

14. Orwell D Foenander, Trade Unionism in Australia Some Aspects 1962 The Law Book Co. of Australia, p.45.

15. Australian Labour Relations Readings, op cit., 'Labour Arbitration in Australia' E.I. Sykes, pp. 310-311.

16. Foenander, Trade Unionism in Australia Some Aspects op cit., pp. 11-12.

16-A Raymond J. O'Dea : A Guide to Industrial Relations in Australia, Sydney, West Publishing Corporation Pty. Ltd. 1967, pp. 6-7.

17. Australian Labour Relations Readings, op cit. Part II 'Trade Unions' Introduction, p.80.

18. Australian Labour Relations Readings, op cit. Part II 'Trade Unions' Introduction, pp. 81-82.

19. Australian Labour Relations Readings, op cit. Part II 'Trade Unions' Introduction, p. 126.

20. Australian Labour Relations Readings, op cit. Part II 'Trade Unions' Introduction, p. 128.

21. Australian Labour Relations Readings, op cit. Part IV 'Industrial Regulation and Collective Bargaining' Introduction, p. 272.

22. Australian Labour Relations Readings, op cit. Part IV 'Industrial Regulation and Collective Bargaining' Introduction, p. 274.

23. Australian Labour Relations Readings, op cit., 'Wages Boards in Victoria', K.W. Hince, pp. 342-343.

24. Australian Labour Relations Readings, op cit., 'Wages Boards in Victoria', K.W. Hince, p. 348.

25. Kenneth F.Walker, Industrial Relations in Australia, 1956, Massachusettes, Harvard University Press, pp. 20-22.

26. Walker, Industrial Relations in Australia, op cit., pp. 24-26.

27. With the separation of judicial and arbitration functions in the Commonwealth Arbitration System in 1956, suitable changes were made in the Queensland system in 1961, and the arbitral functions of the Court were entrusted to the Industrial Commission and judicial powers were given to Industrial Court.

28. Walker, Industrial Relations in Australia, op cit., p. 27.

29. Walker, Industrial Relations in Australia, op cit., p. 27.

30. Walker, Industrial Relations in Australia, op cit., p. 27-28.

31. Orwell De R. Foenander, Industrial Conciliation and Arbitration in Australia, Australia, The Law Book Co. of Australia Pty. Ltd., 1959, pp. 94-103.

32. Orwell De R. Foenander, Industrial Conciliation and Arbitration in Australia, op. cit., p. 51;
Also see Mark Perlman, Judges in Industry, A study of Labour Arbitration in Australia, Melbourne University Press, Carlton, N 3, Victoria, Australia, 1954, pp. 7-8.

33. Orwell De R. Foenander, Industrial Conciliation and Arbitration in Australia, op cit., p. 58.

34. Orwell De R. Foenander, Industrial Conciliation and Arbitration in Australia, op. cit.,p. 58.

35. Orwell De R. Foenander, Trade Unionism in Australia, Some Aspects, pp. 6-7.

36. Orwell De R. Foenander, Industrial Conciliation and Arbitration in Australia, op cit., p. 35.

37. Raymond J. O'Dea, A Guide to Industrial Relations in Australia, op cit., pp. 10-11.

38. Orwell De R. Foenander, Industrial Conciliation and Arbitration in Australia, op cit., p.45.

39. Orwell De R. Foenander, Industrial Conciliation and Arbitration in Australia, op cit., p.46.

40. Raymond J. O'Dea, A Guide to Industrial Relations in Australia, op cit., p. 11;
Also see Orwell De R. Foemander, Industrial Regulation in Australia, Melbourne University Press, 1947, pp. 93-95.

41. Australian Labour Relations Readings, op cit., 'Labour Arbitration in Australia' E.I. Sykes, pp. 320-321.

Issues for Consideration

1. The Amendment Act of 1956 to the Conciliation and Arbitration Act shifted the administration of the Act from the Attorney-General's office to the Department of Labour and National Service. On what considerations was this shift necessitated?

2. It is said that the major portion of a federal award is generally in terms of agreement reached between the parties. On what issues generally do parties fail to reach an agreement?

3. What is the percentage of awards made in the form of certified agreements between the parties?

4. How are grievances handled in Australia? To what extent can grievances be settled by the Board of Reference in the Commonwealth Arbitration System?

5. What significance do the parties attach to compulsory conciliation proceedings in Australia? On average what is the percentage of disputes settled through conciliation? Does conciliation succeed in important disputes?

6. Are the conciliation proceedings affected by the provision for compulsory arbitration? Is recourse to arbitration automatic?

7. What was the Australian experience in the past with common personnel for both conciliation and arbitration? Does the change in arrangements suggest that such combination did not work? How is demarcation of functions maintained when a Commissioner takes up conciliation proceedings or when a conciliator is appointed as a Local Board?

8. Of the references dealt with by the Commission, how many are filed by the organisations themselves? How many references are taken up by the Commission on its own?

9. What is the percentage of appeals filed to the Commission against the awards of the Commissioners? Of these appeals how many are from employers; how many from workers?

10. Have there been occasions of conflict within the Commission between the judicial and non-judicial members? Which of the two as a group has been more effective?

11. How has the separation of arbitral and judicial functions affected the working of the Commonwealth Arbitration system? Has it added more technicalities and legalism in the system?

12. Two bodies exist in the federal system to perform judicial functions - the newly created Commonwealth Industrial Court and the old Commonwealth Court of Conciliation and Arbitration. How is the jurisdiction of these two Courts demarcated?

13. To what extent has the Australian system succeeded in reducing legalism, delay and high cost involved in adjudication?

14. How does the doctrine of 'ambit' affect the working of Commonwealth Arbitration Commission? Are the claims in the log put too high to widen the 'ambit' of the dispute and thereby making the assessment of the merits of the demands by the Court difficult? Alternatively does this doctrine add to the Commission's work by necessitating fresh references to get a variation in the award?

15. What is the procedure followed before an employee is discharged or dismissed? Is he given charge-sheet containing the misconduct committed and an opportunity to explain the charges laid against him?

16. Is any list of misconduct drawn up? Does it include items such as habitual late attendance, insubordination, negligence, over-staying of leave, damage to implements or property of the employer?

17. Is there any legal right of reinstatement? If so how is it enforced?

18. What is the pattern of trade union organisation? Is the trend for indistry-wise unions strengthening or weakening?

19. How do the authorities in Australia reconcile the principle of freedom of association with the right to refuse registration to a union on the ground that there already exists another union to which the members of the applicant union can conveniently belong?

20. Has the Conciliation and Arbitration Act succeeded in discouraging multiplicity of unions in a plant or industry by disallowing in the normal course registration of more than one union in an industry?

21. How does Commonwealth Arbitration Commission deal with disputes where one or both sides are unregistered?

22. In case of more than one registered union in an industry, does the Commission implead all unions? If not, how does a partial award affect uniformity in service conditions and the desirable wage differentials?

23. What has been the experience with regard to the working of the provisions relating to compulsory unionism in Queensland and Western Australia? Have such provisions helped the enforcement of arbitration awards?

24. How is the trade union organisation in Australia affected by statutory regulations under different sets of legislative provisions in the federal and States jurisdiction?

25. What is the extent of outside leadership in trade unions? How far does the legalism in labour-management relations necessitate outside leadership?

26. What are the attractions to outsiders to take to union leadership?

27. Are their frequent claims for over award payments? How do they affect the working of compulsory arbitration system? How are such claims settled? When such payments are made in a unit? How do they affect standardisation?

28. To what extent are strikes prohibited in the Australian System? Do all the federal awards carry an 'anti-ban' clause? Is such a clause added by the Arbitration Commission on its own or on the demand of the employers' organisation?

29. What is generally the penalty for defiance of an 'anti-ban' clause - fine, imprisonment, cancellation of award, deregistration of the Union? Is a distinction made between strikesin essential and non-essential services?

30. How is a strike called by an unregistered trade union dealt with in the Commonwealth Arbitration System?

31. In the absence of an 'anti-ban' clause, on what principles is an action taken against a strike?

32. In Victoria, the Wages Boards do not deal with disputes relating to individual employees. To what extent such disputes are handled by the Board of Reference constituted by a Wage Board?

33. Has there been a comparative study of arbitration system in different States?

34. What methods are used for handling disputes in Public Service Corporations? What authority is granted to management to settle the disputes internally? At what stage a dispute is to be referred for adjudication?

35. What has been the experience of the administration of industrial relations in the federal and State Governments? Is there a demand for federal take over of industrial relations in certain areas?

36. Has there been a felt need for rationslising federal and States industrial relations legislation in Australia?

37. The Commonwealth Conciliation and Arbitration Act covers all employees employed in an industry, while the Industrial Disputes Act excludes employees having administrative, managerial and higher supervisory duties. What is the Australian experience in dealing with disputes involving high officials in industry?

38. Under the Commonwealth Arbitration system the Government has no role in making a reference or enforcing an award and all powers are vested in the relevant industrial authorities constituted under the Act, while under the Industrial Disputes Act the authority is exercised by the appropriate Government. Is the Australian system better designed to keep the industrial authorities away from political pressures?