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INDUSTRIAL DISPUTE PREVENTION: A CASE STUDY OF NTPC LTD

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ABSTRACT

The study of Industrial Dispute prevention involves the study of determining the types of disputes and their causes along with the settlement and prevention of disputes. What is the management attitude towards labor. A comparative analysis of strikes and lock out till 2009. Finally study gives the suggestions and conclusion about how to prevent the industrial dispute. The data for such study have been collected through various primary and secondary sources. At last the study talks about the case Incident of NTPC Ltd. causes of Industrial dispute, settlement of dispute, and the consequences of dispute to the country. Therefore there is an urgent need to recognize, reorient and restructure the settlement machinery to cope with the present day needs.

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INTRODUCTION

The problem of industrial dispute is common to almost all the developed and developing countries of all over the world. The development of capitalistic industry which means the control of the tools of productions by small entrepreneurs class has brought to the fore the acute problem of friction between management and labor across the world [1]. Industrialization has tended to create a hiatus between management /employers and workers, owing to the absence of workers ownership over means of production this gap has led to industrial friction and conflicts, which ultimately cause industrial dispute [2]. A review of the existing literature suggests that employees in unionized workplace have significantly more voice mechanisms present than in non-unionized workplace [3]. In India, trade unions have played the role of an agent of social and economic changes, protecting and enhancing the interest of its members and trying to squeeze more and more out of management through bargaining or conflict [4]. Disputes and their resolutions has been a subject of intensive research for several decades now [4]. While some scholars consider dispute as destructive, others consider as opportunities to create awareness about problems and improve internal management [5].

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Hellman perhaps brings out the dichotomy succinctly when he suggests that agreement is not necessarily good but neither is disagreement especially when people disagree for the sake of disagreeing, as a way to assert themselves and to avoid feeling dominated [6]. In the Indian context disputes as for the Industrial Dispute Act, 1947, a dispute is raised when an employment contract is not carried out [7]. The issues could include wage demands, union rivalry, political interference, unfair labor practices as described in the fifth schedule of the ID act, multiplicity of labor laws, industrial sickles etc [8]. The dispute resolution framework under the ID Act consists of Conciliation, Arbitration and adjudication. Apart from this, in line with the theories of industrial jurisprudence, in the unionized context there is collective bargaining, establishment of work committee, discipline management and grievance resolution procedures, which help prevent dispute in the first place [9]. The first step in the resolution of dispute is their discovery and exposure [10]. There are many upward communications that can be developed for the purpose of bringing dissatisfaction to the surface [11]. Grievance procedure is perhaps the most significant means of discovering and resolving employee complaints and dissatisfactions[11]. On the other hand, there is distinct possibility that the organization will become dissatisfied with the particular employee [12]. Though the Skinner approach to operant conditioning of behavior would preclude the use of punishment, typical

practice of most organizations include programs of negative disciplinary action ending up with the maximum penalty of discharge from the organizations [13]. Powers has been concentrated in the hands of a few entrepreneurs, while a majority has been relegated to the insignificant position of mere wage-earners [14]. The workers have now come to realize that most of their demands can be satisfied if they resort to concerted and collective action; while the employees are aware of the fact that they can resist these demands [15]. This refusal to meet their genuine demands has often led to dissatisfaction on the part of the workers, to their distress, and even to violent activities on their part, which has hindered production and harmed both the workers and the employees [16]. This study attempts to examine some vital dimensions of the industrial disputes in NTPC Ltd. The present study has been undertaken with a view that only a few studies on the subject have been conducted. The study has wider coverage and is a pioneer study on some important issues of industrial disputes. It attempts to analyze the issues in the changing economic scenario in the era of industrial deceleration, political turnmoil, militancy, global crisis, liberalization, globalization and privatization [17]. Some addressed issues in the study are as follows 1. To examine the types of disputes in India, 2. Dominating causes of Industrial disputes,3. To analyze the industrial dispute and settlement and prevention of the disputes from various dimensions, 4. To study the management attitude towards labour, 5. Comparative analysis of strikes and lock out during the period (2000-2009) and 6. Offering suggestions and implications for improvement.

Types of Industrial disputes

Industrial dispute may take the form of strikes, go-slow tactics, token strikes, and sympathetic strikes, pen –down strike, hunger strike, and bandhs gheraos and lock out. A strike is a stoppage of work, initiated or supported by a trade union, when a group of employees act together as a last resort to bring pressure to bear on an employer to resolve a grievance or constrain him to accept such terms and conditions of services as the employees want to enjoy. If however, an employer closes down his factory or place where his workers are employed, or if he refuses to continue in his employ a person or persons because he wants to force them to agree to his terms and conditions of services during the pendency of a dispute. The resulting situation is a lock out. Disputes according to the code of Industrial relations introduced in the United Kingdom in 1972

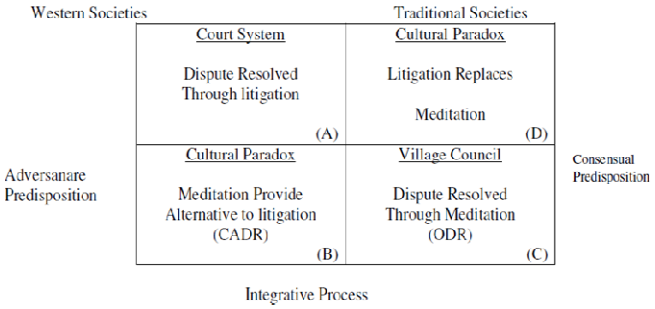
Are of two kinds as follows

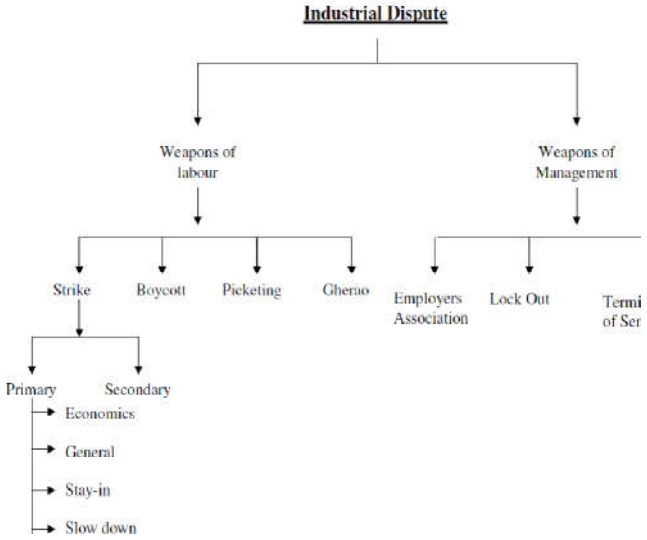
- **Disputes of rights**, which relate to the application or interpretation of an existing agreement
- or contract of employment; and
- **Disputes of Interest**, which relate to the claims by employee or proposals by a management

About the terms and conditions of the employment. According to the Industrial Dispute Act 1947, and many judicial decisions which have been handed over by courts and tribunals, industrial disputes may be raised on any one of the following issues: Fairness of the standing orders, Retrenchment of workers following the closing down of a factory, lay-offs. discharge or dismissal, reinstatement of dismissed employees, and the compensation for them, Benefits of an Award denied to a worker; nonpayment of personal allowance to seasonal employees, the demands of employees for medical relief for their parents, Wages, fixation wages and minimum rates, mode of payment, and the right of an employee to choose one of the awards when two awards on wages have been given, Lock-out and claim for damages by an employer because employees resorted to an illegal strike, Payment of hours, gratuity, provident fund , pension and traveling allowance, Disputes between rival union and Disputes between employers and employees.

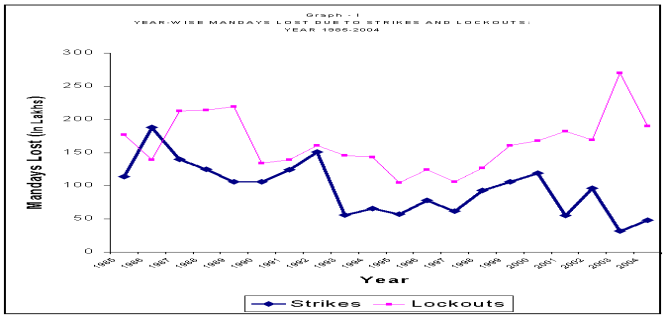
Paradoxes of Industrial Dispute

Distributive Process





Industrial Disputes in India During the year 2004



Causes of Industrial Dispute

The disputes between the management and the workers may arise on account of the following factors:

Economic Cause: These causes may be classified as: Demand for increase in wages on account of increase in all-India Consumer Price Index for Industrial Workers, o Demand for higher gratuity and other retirement benefits, Demand for

higher bonus and Demand for certain allowances such as: House rent allowance, Medical allowance, Night shift allowance, Conveyance allowance, Demand for paid holidays, Reduction of working hours and Better working conditions, etc.

Political Causes

Various political parties control Trade unions in India. In many cases, their leadership vests in the hands of persons who are more interested in achieving their political interests rather than the interests of the workers.

Personnel Causes

Sometimes, industrial disputes arise because of personnel problems like dismissal, retrenchment, layoff, transfer, promotion, etc.

Indiscipline

Industrial disputes also take place because of indiscipline and violence on the part of the workforce. The Managements to curb indiscipline and violence resort to lock -outs

Environmental factors

Inflation Recession (market changes), Natural calamities, Court decision, Legislation or lack of legislation or changes, Political interference and Non-implementation of labor law.

Management factors

Attitudes (authoritarianism, autocratic, rigid), Refusal to recognize unions, Inability to communicate effectively, Discrimination in application of rules or procedures, Violation of codes/agreement/laws/awards and Playing off one union against another.

Trade union factors

Support for poor work ethics or for indiscipline, Indulgence in violence/ assaults on management, Providing protection for indiscipline workers, Wages and allowances, Working conditions, Workload productivity, Quality, Organization changes/ modernization/technological changes and Closure / lock-out/ sales/ mergers.

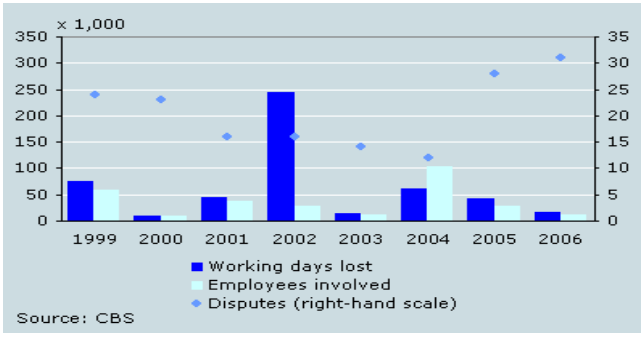
Percentage Distribution of Disputes by Cases

Case Group	2006	2007	2008	2009
Wages and Allowances	21.3	20.4	25.3	22.0
Personnel	14.4	11.5	12.3	13.0
Retrenchment	2.2	2.3	2.4	2.1
Lay Off	-	0.4	0.2	0.4
Indiscipline	29.0	30.0	26.1	29.0
Violence	0.9	0.8	0.9	0.7
Leave and Work Hours	0.5	0.6	0.4	0.5
Bonus	5.7	5.8	5.6	5.9
Inter and Intra Union Rivalry	0.5	0.4	0.5	0.4
Non Implementation of Agreement and Awards etc	2.1	3.1	2.1	3.0
Charter of Demand	10.5	9.6	8.5	9.0
Workload	1.1	0.9	0.8	0.7
Standing Orders/Rules/Safety Measures etc	1.8	1.0	.9	1.5

Increase in disputes

In 2006, 31 industrial disputes resulted in strike action. This is the highest number since 1989. In spite if this, 2006 cannot be characterised as a year of great industrial unrest. A total of 11 thousand workers were involved in industrial action in 2006; in 2005 this was 29 thousand, and in 2004, 104 thousand.

Working days lost, workers involved and disputes



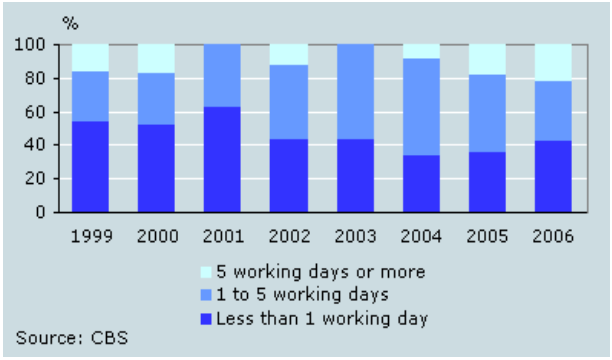
Fewer working days lost

At 16 thousand, the number of working days lost as a result of industrial action was substantially lower in 2006 than in preceding years. The number of days lost fluctuates strongly from year to year: from 9 thousand in 2000 to no fewer than 245 thousand in 2002. By far most of the working days lost in 2002 were the result of disputes in the construction sector.

Most strikes last less than a day

In 13 disputes, the duration of the strike was less than 1 day and in 17 cases it lasted 5 working days or longer. There were a few very long strikes, but as they involved only few workers relatively few working days were lost.

Industrial disputes by duration



Disputes for various reasons

Most working days are lost through disputes about privatisation or takeovers, and negotiations about collective labour agreements. Both these cost about 4.5 thousand working days. Strikes connected with closures cost 4 thousand working days.

Working days lost by reason for dispute

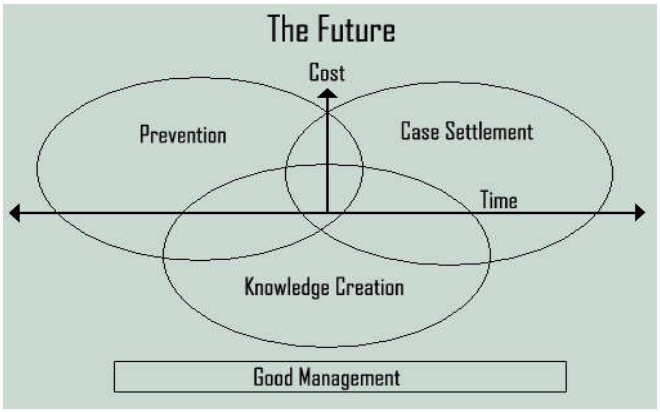
Most days lost in transport and communication

More than half the working days lost were in the transport and communication sector. Disputes in this sector concerned mainly bus and tram companies, and concerned among other things working hours, violent behavior towards workers, privatization and dissatisfaction with management. The manufacturing industry came second, with 6.3 thousand working days lost. In this sector the disputes were about reorganizations and job losses as a result of factory closures and outsourcing.

Dispute Resolution in Indian Context

In the Indian context, since disputes are resolved under the ID Act, the emergence of the non unions firms would have no effect on the dispute resolution framework of conciliation, arbitration and adjudication in some specific cases. Under section 2A of the ID Act, "where any employer discharges, dismisses, retrenches or otherwise terminate the services of an individual workman, any dispute or difference between that workmen and his employer connected with, or arising out of, such discharge, dismissal, retrenchment, or termination shall be deemed to be an industrial dispute not withstanding that no other workman nor any union of workmen is a party to dispute" However even here, whether the employee exercise these option in the first place is debatable as can be concluded from the preceding literature. With the emergence of non union forms, mechanism of industrial jurisprudence like collective bargaining, become redundant. However other mechanisms of providing voice to the employees and pre-empting disputes emerge in the non unionized workplaces.
It emerges from the preceding discussion that for being successful though, these mechanism need to be efficient, user friendly, accessible, non-punitive and confidential. These include open door policy, peer reviewed panels, ombuds persons and employee involvement techniques.

Dispute resolution



Dispute resolution in India

The Dispute Resolution process in India mainly involves the following: Litigation, Arbitration, Conciliation and Mediation.

Litigation process in India

The litigation process in India is based on common law. It is largely based on English common law because of the long period of British colonial influence during the British Raj. There is a single hierarchy of courts in India.

Much of contemporary Indian law shows substantial European and American influence. Various acts and ordinances first introduced by the British are still in effect in modified form today. During the drafting of the Indian Constitution, laws from Ireland, the United States, Britain, and France were all synthesized to get a refined set of Indian laws as it currently stands. Indian laws also adhere to the United Nations guidelines on human rights law and environmental law. Certain international trade laws, such as those on intellectual property, are also enforced in India. Each state drafts it own laws, however all the states have more or less the same laws. Laws directed by the central government and the Supreme Court of India via judicial precedent or general policy directives are binding on all citizens of each state. Each state has its own labor laws and taxation rates.

India's judicial system is made up of the Supreme Court of India at the apex of the hierarchy for the entire country and twenty-one High Courts at the top of the hierarchy in each State. These courts have jurisdiction over a state, a union territory or a group of states and union territories. Below the High Courts are a hierarchy of subordinate courts such as the civil courts, family courts, criminal courts and various other district courts. The High Courts are the principal civil courts of original jurisdiction in the state, and can try all offences including those punishable with death. However, the bulk of the work of most High Courts consists of Appeals from lowers courts and writ petitions in terms of Article 226 of the Constitution of India. The precise jurisdiction of each High Court varies. Each state is divided into judicial districts presided over by a 'District and Sessions Judge'. He is known as a District Judge when he presides over a civil case and a Sessions Judge when he presides over a criminal case. He is the highest judicial authority below a High Court judge. Below him, there are courts of civil jurisdiction, known by different names in different state

Arbitration in India

The Applicable Arbitration Law

The Indian Arbitration and Conciliation Act, 1996 the governing arbitration statute in India. It is based on the Model Law on International Commercial Arbitration adopted by the United Nations Commission on International Trade Law (UNCITRAL) in 1985. Previous statutory provisions on arbitration were contained in three different enactments, namely, the Arbitration Act, 1940, the Arbitration (Protocol and Convention) Act, 1937 and the Foreign Awards (Recognition and Enforcement) Act, 1961. The Arbitration and Conciliation Act, 1996 has repealed the Arbitration Act, 1940 and also the Acts of 1937 and 1961.

International Conventions on Arbitration

India is a party to the following conventions: The Geneva Protocol on Arbitration Clauses of 1923, The Geneva Convention on the Execution of Foreign Arbitral Awards, 1927 and The New York Convention of 1958 on the Recognition and Enforcement of Foreign Arbitral Awards. It became a party to the 1958 Convention on 10th June, 1958 and ratified it on 13th July, 1961. There are no bilateral Conventions between India and any other country concerning arbitration.

The Types of Arbitrations

The Indian Arbitration and Conciliation Act, 1996 applies to both domestic arbitration in India and to international arbitration. Section 2(1)(f) of the Act defines "International Commercial Arbitration" as arbitration relating to disputes arising out of legal relationships, whether contractual or not, considered as commercial under the law in force in India where at least one of the parties is:1. An individual who is a national of, or habitually resident in any country other than India; or2. A body corporate which is incorporated in any country other than India; or 3. A company or an association or a body of individuals whose central management and controls exercised in any country other than India; or 4.The Government of a foreign country.

The Requirements of an Arbitration Agreement

- Section 7(3) of the Act requires that the arbitration agreement must be in writing.
- Section 7(2) provides that it may be in the form of an arbitration clause in a contract or it
- may be in the form of a separate agreement.
- Under Section 7(4), an arbitration agreement is in writing, if it is contained in : (a) a document signed by the parties, (b) an exchange of letters, telex, telegrams or other means of telecommunication, providing a record of agreement, (c) or an exchange of claims and defense in
- which the existence of the agreement is alleged by one party and not denied by the other.
- In section 7(5), it is provided that a document containing an arbitration clause may be adopted by "reference", by a contract in writing.

Conciliation

Conciliation is process by which representatives of workers and employees are brought together before a third party with a view to persuading then to arrive at an agreement by mutual discussion between them. The Industrial Dispute Act, 1947 and other states enactments authorize the government to appoint conciliators charged with the duty of mediating in and promoting the settlement of industrial disputes. A conciliation officer may be appointed for specific area or for specified industries in a specific area or for one or more industries either permanently or for a limited period. In conciliation, the ultimate decision rests with the parties themselves but the conciliator may offer a solution to the dispute acceptable to both the parties and serve as a channel of communication. The parties may accept his recommendations for settlement of any dispute or reject it altogether. If conciliation fails, the next stage may be compulsory adjudication (Mandatory settlement of industrial dispute by labour courts or industrial tribunal or national tribunal under the Industrial Dispute Act, or under any other corresponding state affairs) or the parties may be left to their choice. In cases where a settlement is arrived at , they can record the settlement and in cases of failure of the conciliatory negotiations ,they can send a failure report to the appropriate government.

Management Attitude towards Labor

Managements are generally are not willing to talk over any dispute with their employees or their representatives or refer it to arbitration even when trade unions wants them to do so A management unwillingness to recognize a particular trade union and the dilatory tactics to which it resorts while verifying the representative character of any trade union have been a very fruitful source of industrial strife. Even when representative trade unions have been recognized by employers, they do not, in a number of cases, delegate enough authority to their officials to negotiate with their workers, even though the representatives of workers are willing to commit

Themselves to a particular settlement

Some of the other causes are

- The absence of any suitable grievance redressed procedure, as result of which grievances go on accumulating and create a climate of unrest among the workers.
- When, during negotiations for the settlement of a dispute the representatives of employers unnecessarily and unjustifiably take the side of the management, tensions are created, which often lead to strikes, go-slow tactics or lock outs etc.
- The management insistence that they alone are responsible for recruitment, promotion, transfer, merit awards etc. and that they need not consult their employees in regard to any of these matters, generally annoys the workers, who become un-co-operative and unhelpful, and often resort to go slow tactics. As a result, tension builds up between the parties.
- The Services and benefits offered by a management to its employees do promote harmonious employer-employee relations. But a large number of management has not taken any steps to provide these benefits and services for their workers.

CONCLUSION

Industrial disputes can be treated as an index variable for the industrial relations situation of a country. Industrial relations actors, i.e. government, employers, management, trade unions and workers have earnestly desired to achieve harmonious industrial relations. In the present study industrial disputes denote work stoppages as well as those differences that are reported and settled through the industrial relations machinery. A comparative analysis of strikes and lock out suggests that in absolute terms over the period of study the phenomenon of rising and emerging lock out started appearing on the industrial relations scene. In 2009, 31 industrial disputes resulted in strike action. This is the highest number since 1999. In spite if this, 2009 cannot be characterized as a year of great industrial unrest. A total of 14 thousand workers were involved in industrial action in 2009; in 2005 this was 29 thousand, and in 2004, 104 thousand. At 16 thousand, the number of working days lost as a result of industrial action was substantially lower in 2006 than in preceding years. In 13 disputes, the duration of the strike was less than 1 day and in 17 cases it lasted 5 working days or longer. There were a few very long strikes, but as they involved only few workers relatively few working days were lost. Most working days are lost through disputes about privatisation or takeovers, and negotiations about collective labour agreements. Both these cost about 4.5 thousand working days. Strikes connected with closures cost 4 thousand working days. In India dispute resolution process mainly involves -Litigation, Arbitration,

Conciliation, Meditation. Despite best effort of all, dispute arises among people and organization. It is important to discover these clashes of interest as quickly as possible through such means as gripe boxes, direct observation of behavior, analysis of records. An open door attitude, personnel counselors, morale surveys, exit interviews, ombudsmen and ombudswomen and grievance procedure.

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