

CHAPTER 6

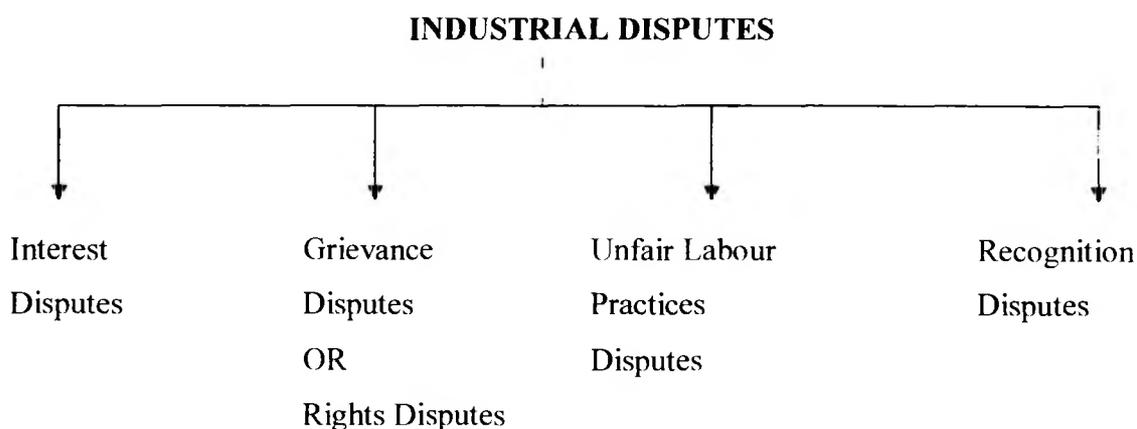
INDUSTRIAL DISPUTES

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Industrialization in a country has always contributed to employment, contribution to national income, per capita income, exports and economic development on one side and industrial disputes on the other. It has always been the case of mixed blessing. The conflict of interest between management and labour is what leads to industrial disputes. The management has a goal of profit maximization and on the other hand the workers expect rise in income, security of job, protection of their skills, improvement in their status and in the working conditions. Those who control the factors of production require strict administration, closer supervision, and maintenance of strict discipline and implementation of rules, code of conduct and code of discipline. Whereas the workers demand a share in capital, voice in management, freedom of expression, participation in management and dignity of employees. So the people that control the factors of production and people that produce always have different or conflicting interest which gives birth to industrial disputes.

According to the Industrial Dispute Act, 1947. Section 2 (K) “Industrial Disputes mean any dispute or difference between employers and employees or between employers and workmen or between workmen and workmen, which is connected with the employment or non – employment or terms of employment or with the conditions of labour of any person”.

Industrial disputes can be classified into four major types, known as interest disputes, grievance disputes, unfair labour practices disputes and recognition disputes.



Interest disputes are also called disputes of interest or economic disputes. In most cases the disputes arises from the demands or proposals for improvement in wages, benefits, job security or terms or conditions of employment. Interest disputes must be properly negotiated or bargained or compromised and test of economic power should be avoided as far as possible. These disputes should be settled through conciliation as far as possible.

Grievance or Rights Disputes are also called as conflict of rights or legal disputes. These disputes take place from day to day working relations in the undertaking. It is a protest by the workers against the act of management that deprives the rights of the employees. The grievance disputes arises out of payment of wages, fringe benefits, working hours, over time, promotions, demotions, seniority, safety, and health related aspects. If grievance dispute as are not sorted out in accordance with a procedure that is accepted by the parties it often results in disturbing the working relationship between the management and employees. The government also encourages voluntary arbitration for this type of dispute settlement.

The most common Labour type of dispute is the disputes over Unfair Practices in industrial relations. The management many times discriminates against workers on the ground that they are the members of the trade union and they participate in the activities of the union. Unfair labour practice includes pressure on employees when they exercise their rights to organize, take part in union activity, refusal to bargain, recruiting new employees during a strike which is not illegal, creating an environment or actually creating an act of force or violence or stop communication etc. Such disputes can be settled through conciliation or such disputes are settled according to the normal procedure laid down under the Industrial Disputes Act 1947.

Recognition Disputes arises when the management of an organisation refuses to recognize a trade union for the purpose of collective bargaining or to represent its member employees in case of a conflict or dispute. When the management dislike a particular union it refuses to accept that trade union for the purpose of negotiations or bargaining and then it becomes a case of trade union victimization. This also happens

when there is already an existing trade union or it is a case of multiple trade unions and each making a claim for recognition. Recognition Disputes also arises when a particular trade union does not have sufficient representatives. Recognition disputes are settled through the guidelines given by the government for recognition of trade union or with the help of Code of Discipline which has been voluntarily laid down by the government.

CAUSES OF INDUSTRIAL DISPUTES

Industrial disputes are a common feature of all industrialized economies, whether it is a capitalist economy or socialist economy or mixed economy. Industry and industrial dispute always go hand in hand infact they are the two sides of the same coin. The employees who give their services and time to the industry are interested in higher wages, good working conditions and want to have a voice in management. The employers on the other hand are more interested in profits, productivity, quality and control of cost. With both these forces acting in opposite direction there is a maximum possibility of disputes and so industrial disputes has become a major feature of industrialization.

Industrial disputes may arise out of economic, political, social or from socio – economic background. At the same time the attitude of the employers and employees is also responsible to a great extent. The factors leading to industrial disputes may be industry related, management related, government related or union related.

The most common causes of industrial disputes can be listed as:

1. Wages and Allowances
2. Personnel Policies
3. Retrenchment
4. Lay off
5. Leave and hours of work
6. Bonus
7. Indiscipline
8. Violence
9. Inter Union rivalry.

10. Non-implementation of awards or agreements
11. Non-fulfillment of demands
12. Workload
13. Work standards
14. Surplus labour
15. Working conditions
16. Change of manufacturing process
17. Violation of rules or codes
18. Shift working
19. Political motives
20. Closure or lockouts
21. Inability to communicate effectively
22. Refusal to recognize unions
23. Authoritarian or autocratic attitude of management.
24. Non-implementation of labour law.

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Whatever may be the reason for an industrial dispute what disturbs the most is the amount of loss to the nation. A developing country with pressure of population, per capita income, poor infrastructure and low standard of living cannot afford to have such out of proportion disputes and loss of mandays.

The Indian Labour Year Book states that in the year 1998 the number of disputes in India in the public sector were 283 and in the private sector it was 814 that means in total there were 1,097 disputes. The numbers of mandays lost in the public sector were 7576000 and 14486000 in the private sector which means a total of 22062000 mandays were lost in a single year 1998. The magnitude of industrial disputes and mandays lost in public sector enterprises are less compared to the private sector. In many cases there is no direct action and so the mandays are not lost but when trade unions adopt strategies like go slow, tools down, pen down, work to rule etc. productivity is lost.

MACHINERY FOR SETTLEMENT OF INDUSTRIAL DISPUTES

The Industrial Disputes Act, 1947 provides an elaborate and efficient machinery for the peaceful and amicable settlement of the industrial disputes. They include:

1. Works Committees (Sec 3)
2. Conciliation Officers (Sec 4)
3. Board of Conciliation (Sec5)
4. Courts of Enquiry (Sec6)
5. Labour Courts (Sec 7)
6. Tribunals (Sec 7A)
7. National Tribunals (Sec 7B)

1. WORKS COMMITTEE

In case of an industrial establishment in which on hundred or more workmen are employed or have been employed on any day in the preceding twelve months, the appropriate Government may by general or special order require the employer to constitute in the prescribed manner, a works committee consisting of representatives of employers and workmen engaged in the establishment, so however that the number of representatives of workmen or the committee shall not be less than the number of representatives of the employers. The representatives of the workmen engaged in the establishment and in the consultation with their trade union, if any and registered under the Indian Trade Union Act, 1926.

Duties of the Works Committee:

It shall be the duty of the works committee.

- a) To promote measures for securing and preserving amity and good relations between the employer and workmen.
- b) To comment upon matters of their common interest or concern and
- c) To endeavour to compose any material difference of opinion in respect of such matters.

2. CONCILIATION OFFICERS (Sec 4)

The appropriate Government may appoint such number of persons as it thinks fit, to be conciliation officers, by notification in the Official Gazette.

A conciliation officer may be appointed for a specified industries in a specified area or for one or more specified industries and either permanently or for a limited period.

Duties of Conciliation Officers:

1. In every industrial dispute, existing or apprehended, the conciliation officer shall hold the conciliation proceedings in prescribed manner.
2. The conciliation officer for settling the dispute without delay shall investigate the dispute and may do all such things to make the parties to come fair and amicable settlement of dispute.
3. The conciliation officer shall send a report on the settlement of the dispute to the appropriate Government together with a memorandum of the settlement signed by the parties to the dispute.
4. If no such settlement is arrived at, the conciliation officer shall as soon as practicable after the close of the investigation, send to the appropriate Government a full report setting forth the steps taken by him for ascertaining the facts and circumstances relating to the dispute, and bringing about a settlement thereof together with a full statement of such facts and circumstances and the reasons on account of which, in his opinion, a settlement could not be arrived at.
5. If, on a consideration of the failure report referred above the appropriate Government is satisfied, that there is a case for reference to a Board, Labour Court, Tribunal or National Tribunal it make such reference. Where the appropriate Government does not make such a reference it shall record and communicate to the parties concerned its reasons thereof.
6. A report under Sec. 12 shall be submitted within 14 days of the commencement of the conciliation proceedings or within such shorter period as may be fixed by the appropriate Government.

Provided that subject to the approval of the conciliation officer. The time for the submission of the report may be agreed upon in writing by all parties to the dispute. [Sec.12(6)].

3. BOARD OF CONCILIATION (SEC.5)

The appropriate Government may as the occasion arises by notification in the Official Gazette constitute a Board of conciliation for promoting the settlement of an industrial dispute. A Board shall consist of Chairman and two or four other members, as the appropriate Government thinks fit.

The Chairman is an independent person and other members are representatives of the parties to the dispute in equal numbers.

Duties of Board of Conciliation (Sec 13):

1. Where the dispute has been referred to a Board under this Act, it shall be the duty of the Board to endeavour to bring about a settlement of the same and for this purpose the Board shall, in such manner as it thinks fit and without delay, investigate the dispute and all matters affecting the merits and the right settlement thereof and may do all such things as it thinks fit for the purpose of inducing the parties to come to a fair and amicable settlement of the dispute [Sec. 13(1)].
2. If a settlement of dispute or of any of the matters in dispute is arrived at in the course of the conciliation proceedings the Board shall send a report thereof to the appropriate Government together with a memorandum of the settlement signed by the parties to the dispute. [Sec. 13(2)]
3. If no such settlement is arrived at, the Board shall as soon as practicable after the close of investigation send to the appropriate Government a full report on the steps taken by the Board for ascertaining the facts and circumstances relating to the dispute and for bringing about a settlement thereof. Report shall also contain a full statement of such facts and circumstance and the reasons on account of which, in its opinion a settlement could not be arrived at. [Sec. 13(3)]

4. The board shall submit its report within 2 months of the date on which the dispute was referred to it or within such shorter period as may be fixed by the appropriate Government. [Sec. 13(5)]. Thus, where conciliation fails, board of conciliation takes over. The functions of the Board of Conciliation are the same as those of the conciliation officers. The purpose of constituting boards of Conciliation is to bring about settlement of individual disputes.

6. COURT OF ENQUIRY (SEC. 6)

The appropriate Government may as occasion arises by notification in the Official Gazette constitute a Court of Enquiry for enquiring into any matter appearing to be connecting with or relevant to an industrial dispute. A court may consist of one independent person or of such number of independent persons as the appropriate Government may think fit and where a Court consists of two or more members, one of them shall be appointed as the chairman. Court shall not be able to act unless minimum number of members required to transact business i.e. quorum is present. Absence of chairman or nay member or any vacancy of its member will not affect the validity of the proceedings of the Court if they are otherwise valid and regular.

Duties of Court of Enquiry:

A court shall enquire into the matters referred to it and report thereon to the appropriate Government ordinarily within a period of 6 months from the commencement of its enquiry.

5. LABOUR COURTS (SEC.7)

The appropriate Government may, by notification in the Official Gazette constitute one or more Labour Courts for the adjudication of industrial disputes relating to any matter specified in the second schedule and for performing such other functions as may be assigned to them under this Act. A Labour Court shall consist of one person only to be appointed by the appropriate Government.

Jurisdiction of Labour Courts [Sec.7(1)]

The Labour Courts adjudicate the following disputes relating to matters specified in the second schedule:

1. The propriety or legality of an order passed by an employer under the standing order,
2. The application and interpretation of standing orders ,
3. Discharge or dismissal of workmen including reinstatement of or grant of relief to workmen wrongfully dismissed.
4. Withdrawal of any customary concession or privilege.
5. Illegality or otherwise of strike or lock-out and
6. All matters other than those specified in the Third schedule.

Duties of Labour Court:

The Labour Court shall hold its proceedings expeditiously and shall as soon as practicable on the conclusion thereof submit its award to the appropriate Government. (Sec. 15)

7. TRIBUNALS (SEC. 7A)

The appropriate Government may by notification in the Official Gazette, constitute one or more tribunals for the adjudication of industrial disputes relating to any matter, whether specified in the Second schedule or the Third schedule. A Tribunal shall consist of one person only to be appointed by the appropriate Government. It shall discharge judicial functions, though it is not a court.

Jurisdiction of Industrial Tribunals [Sec.7 (A)(1)]:

Industrial tribunals have a wider jurisdiction than a Labour Court. It has jurisdiction over any matter specified in Second or Third Schedule. The following matters are specified under the Third schedule:

1. Wages, including the period and mode of payment.
2. Compensatory and other allowances.
3. Hours of work and rest intervals.

4. Leave with wages and holidays.
5. Bonus, Profit sharing, Provident Fund and gratuity.
6. Shift working otherwise than in accordance with standing orders.
7. Classification by grades.
8. Rules of discipline.
9. Nationalization.
10. Retrenchment of workmen and closure of establishment, and
11. Any other matter that may be prescribed.

Duties of a Tribunal:

The duties of a tribunal are the same as those of a Labour Court.

7. NATIONAL TRIBUNALS [SEC. 7 (B)]

The Central Government may by notification in the Official Gazette, constitute one or more National Tribunals for the adjudication of industrial disputes which in the opinion of the Central Government, involve questions of national importance or are of such a nature that industrial establishments situated in more than one state are likely to be interested in, or affected by such disputes. A national tribunal shall consist of one person only to be appointed by the Central Government. The duties of a National Tribunal are the same as those of as Labour Court or an Industrial Tribunal. [Sec.7B (2)]

A Person shall not be qualified for appointment as the presiding officer of a National Tribunal unless he is or has been a judge of a High Court. [Sec. 7B (3)]

The Central Government may, if it thinks fit, appoint 2 persons as assessors to advise the National Tribunal in the proceeding before it [Sec.7B(4)].

Duties of Labour Courts, Tribunals and National Tribunal:

Where an industrial dispute has been referred to a Labour Court, Tribunal or National Tribunal for adjudication, it shall hold its proceedings expeditiously and shall within the period specified in the order referring such industrial dispute or the further period

extended under the second provision to sub-section (2-A) of section 10 submit its award to the appropriate Government (Sec.15).

INDUSTRIAL DISPUTES CLASSIFIED BY STRIKES AND LOCKOUTS

Number of Disputes

	STRIKES	LOCKOUTS	TOTAL
1998	665	432	1097
1999	540	387	927
2000*	426	345	771

* PROVISIONAL.

SOURCE STATE LABOUR DEPARTMENT AND LABOUR COMMISSIONS GOVERNMENT OF INDIA MINISTRY OF LABOUR

MANDAYS LOST DUE TO STRIKES AND LOCKOUTS IN THE PUBLIC AND PRIVATE SECTORS

IN LAKHS

YEAR	PUBLIC SECTOR	PRIVATE SECTOR	TOTAL
1998	75.8 (34.4%)	144.8 (65.6%)	220.6 (100.00%)
1999	11.8 (4.4%)	256.1 (95.6%)	267.9 (100%)
2000*	106.8 (37.1%)	180.8 (62.9%)	287.6 (100%)

SOURCE – MINISTRY OF LABOUR ANNUAL REPORT

* Provisional

METHODS OF RESOLVING INDUSTRIAL DISPUTES

There are various methods of resolving industrial disputes like negotiations, conciliation, mediation and arbitration. Every organisation or management or the trade union has the right and freedom to choose anyone method to resolve the industrial disputes. What is

important here is that Industrial disputes must be solved as early as possible, it must be settled at the level which it has occurred. Both the management and the union should change their attitude and keep their ego aside and resolve the disputes as early as possible. When disputes are not settled relations further become strained and complicated. There should be a WIN – WIN situation, if both management and unions are to be happy. If one wins and one loses relations do not and can never improve. Pending awards can lead to less productivity and losses for both employer and employees. Both the parties as far as possible should resort to negotiations instead of tribunals or conciliation.

NEGOTIATION

For resolving industrial disputes one of the best methods is negotiation. It is in negotiation the two parties that is the employer or management and workers or their unions depend upon themselves for the settlement of disputes. Both the parties have faith and confidence in each other and do not feel the need of a third party. This method of resolving disputes gives importance to dialogue or bipartite dialogue without the government intervention. This method of resolving disputes shows a higher level of maturity in the relationship between management and unions. This is possible when both the parties are well organized, having faith in each other, ready to recognize each other, ready to recognize each others position and dignity. Things become more easy for negotiations when both the parties are ready to adjust and accommodate each others point of view. To resolve disputes both the parties reach to a written agreement through dialogues backed by moral sanctions. The written agreement between management and the workers union gets more acceptance from both the sides, disputes are resolved and at the same time relations are intact. In the process of negotiations if the negotiation machinery breaks down the issues between the parties remain unresolved. In such situations both the parties come to a point of deadlock and then direct confrontation between the two parties begin, definitely resulting into conflict and disharmony. Such conflict and disharmony results into loss of time, money, energy poor industrial relations, loss to the organisation and a subject of greater concern for the society and the state.

CONCILIATION

In this method of resolving disputes both the employer and the employees union take the help from outside such as the government agency. The government agency tries to bring the two parties the management and unions together for discussion and help them in their negotiations. The main objective of conciliation is to reunite the two conflicting groups in the industry to avoid further problems of production, disinterest and strained industrial relations. This method of resolving industrial disputes is adopted when the parties cannot reconcile their differences on their own and still want to avoid the problems of open conflict. Conciliation is a practice by which the services of a neutral third party are used in the dispute, to make the disputing parties come to an amicable settlement. Conciliation process takes place under the guidance of a conciliator. Conciliation machinery consists of a conciliation officer and board of conciliation.

Under section 12(2) of the Industrial Dispute Act of 1947 the conciliation officer shall be involved for the purpose of bringing about a settlement of the dispute. The conciliation officer plays the role of an innovator, protector, discussion guide, leader, advisor and communication link between the two parties. If the conciliation does not get results in the course of conciliation proceedings then the conciliation officer sends a report to the appropriate government a failure report informing that a settlement cannot be arrived at. To make conciliation more effective the National Commission on Labour has recommended that “Conciliation machinery should be a part of the Industrial Relations Commission, which will make it free from other influences. The independent character of the machinery will alone develop greater confidence and will be able to evoke more co-operations from the parties.

MEDIATION

Many times when the two parties to the dispute start making negotiations cannot come to a consensus or when they are unable to find the right solution mediation becomes an important tool. Mediation is a method of settling industrial disputes with the help of an outsider. The mediator is very positive in its approach and also plays a positive role by collecting information from both the parties the management and the union, makes a

proper assessment of their views and interest and on the basis of this offers suggestions for arriving at a solution or for making a proper compromise.

Both in mediation and conciliation there is a role for an outsider and in both the cases a lot depends upon understanding between the parties involved in the dispute. In both the case conciliation and mediation a lot depends upon adjustments for common gains. Both mediation and conciliation are advisory and not judicial in nature. The mediator plays a role of a guide and shows the parties to the dispute new areas of agreement which otherwise they themselves could not have discovered.

ARBITRATION

The word arbitration means settlement of industrial disputes between two or more parties by means of a decision of an impartial body when efforts in the process of conciliation and mediation have failed. Arbitration is judicial in nature whereas conciliation is advisory in nature. Arbitration is voluntary if the parties to the dispute have failed to settle their differences by negotiation and conciliation, agree to submit them to arbitration as prescribed under Section 10A of the Industrial Disputes Act, 1947. Compulsory arbitration or adjudication, the government requires the parties to the dispute to submit their differences to an arbitration tribunal which after considering the facts and arguments submitted to it, makes an award. In case of voluntary arbitration it does not necessarily follow the procedure adopted by the courts. The essentials of voluntary arbitration is that there should be voluntary submission of dispute to an arbitrator and the enforcement of an award may not be necessary and binding because there is no compulsion.

Compulsory arbitration is used when the parties fail to arrive at a settlement through the voluntary methods. Compulsory arbitration may be at times and under certain circumstances, necessary and desirable. The objective of state intervention in the field of industrial relations should be to do social justice and make the weaker party equally strong to enable it to settle its differences through negotiations and collective bargaining.

In compulsory arbitration the parties are forced to arbitration by the state when the parties to the dispute have failed to arrive at a settlement by voluntary method or when there is a

situation of national emergency or when the country is passing through economic crisis or when the parties to the dispute are not well balanced or when the unions are weak and ill-organized or when the employers are very well-organized and more powerful or when industries of strategic importance are involved or when there is a general public dissatisfaction with the existing industrial relations.

In India where industrial disputes are concerned. The Industrial Disputes Act, 1947 is a very important one. The principle objectives of the Act are:

- To promote measures for securing good relations between employers and employees.
- To minimize the difference between the employer and employee and get the disputes settled through adjudicatory authorities.
- To provide suitable machinery for investigation and settlement of industrial disputes.
- To prevent illegal strikes and lockouts.
- To provide relief to workmen in matters of lay-offs, retrenchment, wrongful dismissals and victimization.
- To give the employees the right of collective bargaining and promote conciliation.

The Industrial Dispute Act is a milestone in the historical development of industrial law in India. With the passage of time a number of new principles relating to industrial relations have been introduced in the country such as:

- A permanent machinery for speedy and amicable settlement of industrial disputes. To expedite the conciliation proceedings, maximum time limit has been prescribed within which the machinery must be set in motion.
- Compulsory arbitration in public utility services, including the enforcement of arbitration awards has been recognized.
- Prohibition of strikes and lockouts during the pendency of conciliation and arbitration proceedings.
- Specific time limit for various stages of conciliation and arbitration to eliminate delays.
- An obligation on employers to recognise and deal with representative trade union has been imposed.

- Works Committee to provide machinery for mutual consultation between employers and employees have been set up.
- Industrial disputes may be referred to an Industrial Tribunal where both parties to the dispute apply for such reference or where the appropriate government considers it necessary to do so.

The Industrial Disputes Act, 1947 provides three – tier system of adjudication.

1. Labour Courts
2. Industrial Tribunal
3. National Tribunal

One or more labour courts may be constituted by the appropriate Government for adjudicating industrial disputes specified in the second schedule of the Act, and for performing any other function assigned to them. The duties of the labour court are to hold the adjudication proceedings and submit the awards to the appropriate Government after the conclusion of the proceedings. The labour court usually deals with matters arising in day to day working.

In the three-tier system of adjudication provided by the Industrial Dispute Act of 1947 after Labour Court is the Industrial Tribunal. The appropriate Government may appoint one or more Industrial Tribunal for adjudication of industrial disputes relating to any matter whether specified in the Second Schedule or the Third Schedule. Industrial Tribunal may be for a limited period or permanent. The Industrial Tribunal has all the necessary attributes of a court of justice. It may create new obligations or modify contracts in the interest of industrial peace, to protect the rights of the trade union, prevent unfair practices and victimization. Industrial Tribunals have a wider jurisdiction than a Labour Court.

The third in the three tier system of adjudication of the Industrial Dispute Act of 1947 is the National Tribunal. The Central Government may be notification in the official GAZETTER constitute one or more National Tribunals for the adjudication of industrial

disputes which in the opinion of the Central Government involves question of national importance or any matter which will affect the industrial establishment in more than one state. When a National Tribunal has been referred to, no Labour Court or Industrial Tribunal shall have any jurisdiction to adjudicate upon such a matter.

CODE OF DISCIPLINE AND CODE OF CONDUCT

Code of Discipline forms the Gandhian philosophy to industrial relations to bring employees and trade union to a moral agreement for promoting peace and harmony. Shri Guljarilal Nanda the then Union Labour Minister, a true Gandhian took efforts to bring out a Code of Discipline in 1957 and 1958. It was at his instance that the code was formulated. The code was formally adopted in the 16th session of 1958 Indian Labour Conference. National representatives of both employers and trade unions were parties to it. This code was a special one formulated to voluntarily regulate Labour Management relations. The Code of Conduct was discussed to regulate the inter-union relations and a Code of Discipline was discussed at the Indian Labour Conference to regulate Labour Management relations. After a great deal of persuasion by Shri Guljarilal Nanda the inter-union “Code of Conduct” was voluntarily adopted on 21st May 1958. The four central organizations of labour who were representing the Indian Labour Conference that is Indian National Trade Union Congress, All India Trade Union Congress., Hind Mazdoor Sabha and United Council of Trade Unions agreed to comply with the code. The adoption of the “Code of Discipline” was announced in June 1958. The code of discipline is highly comprehensive and ethical in its approach to the industrial relations system. The “Code of Discipline” ensures that the employers and workers should utilize the existing machinery for the settlement of disputes and avoid direct action. It also explains that both labour and management should recognize the rights and responsibilities of each other. It also explains the obligations of employers and workers. The code does not support any unfair practices but support prompt action for settlement of grievances and implementation of settlements and awards.

The National Commission on Labour thinks that the code has only a limited success and thus it is not a solution to problems of industrial relations.

