**Unit-IV:**

1. Authorities under The Industrial Disputes Act -Definitions, Authorities under the Act, Power & Duties of Authorities,
2. Strike & lockout
3. Lay-off and retrenchment
4. Grievance Redressal Machinery

**######Authorities under The Industrial Disputes Act -Definitions, Authorities under the Act, Power & Duties of Authorities**

The following is the machinery for prevention and settlement of industrial disputes: The nine types of machinery for prevention and settlement of industrial disputes are as follows:

1. **Works committees 2. Conciliation officers 3. Boards of conciliation 4. Court of enquiry 5. Labour courts 6. Industrial Tribunals 7. National Tribunal 8. Arbitration. 9. Joint Management Council**.

1. **Works committees:** As per the provisions of the Industrial Disputes Act, 1947, organizations employing **100 or more persons have to set up works committees at unit level.** These committees have **equal number of representatives** from the workers and the employers. Works committees are **purely consultative** in nature and have been regarded as the most effective agency for the prevention of industrial disputes. This committee represents workers and employers. It is the duty of the works Committee to promote measures for securing and preserving amity and good relations between the employers and workers. **Issues relating to** wages, benefits, bonus, terms and conditions of employment, hours of work, welfare measures, training, development, promotion, transfer, etc. fall under the purview of works committees.

THE OBJECTIVES OF WORKS COMMITTEES ARE TO:

* Remove the causes of friction in the day-to-day work situation.
* Foster amity and harmonious relationship between the parties.
* Create an atmosphere for voluntary settlement of disputes and frictions.

**FUNCTIONS OF WORK COMMITTEE -**The main function of the works committee is “to **promote measures for securing and preserving amity** and **good relations** between the employer and workmen and, to that end, **to comment upon matters of their common interest** or concern and endeavour to compose any material difference of opinion in respect of such matters”. The works committees are normally concerned with **problems of day-to-day working** of the concern and are not intended to supplant or supersede the union for the purpose of collective bargaining. **It is to try to settle the dispute in the first instance through the process of mediation in the initial stage of the dispute. The works committee also time to time comments upon the matters in dispute.**

**2.Conciliation officers:**  Appointment and duties of **Conciliation officers:** One of the authorities under the Act is the conciliation officer. The law provides for the appointment of Conciliation Officer by the Government to **conciliate between the parties to the industrial dispute.**The Conciliation Officer is given the **powers of a civil court, whereby he is authorized to call the witness the parties on oath.** It should be remembered; however, **whereas civil court cannot go beyond interpreting the laws, the conciliation officer can go behind the facts and make judgment which will be binding upon the parties.**

On receiving information about a dispute, the conciliation officer **should give formal intimation in writing to the parties concerned of his intention to commence conciliation proceedings** from a specified date. He should then start doing all such things as he thinks fit for the purpose of persuading the parties to come to fair and amicable settlement of the dispute. Conciliation is an art where the **skill, tact, imagination and even personal influence** of the conciliation officer affect his success. The Industrial Disputes Act, therefore, does not prescribe any procedure to the followed by him. The conciliation officer is required to submit his report to the appropriate government along with the copy of the settlement arrived at in relation to the dispute or in case conciliation has failed, he has to send a detailed report giving out the reasons for failure of conciliation. The **report in either case must be submitted within 14 days of the commencement** of conciliation proceedings or earlier. But the time for submission of the report may be extended by an agreement in writing of all the parties to the dispute subject to the approval of the conciliation officer.

If an agreement i**s reached (called the memorandum of settlement), i**t remains binding for such period as is agreed upon by the parties, and if **no such period is agreed upon, for a period of six months** from the date on which the memorandum of settlement is signed by the parties to the dispute, and continues to be binding on the parties **after the expiry of the period aforesaid, until the expiry of two months** from the date on which a notice in writing of an intention to terminate the settlement is given by one of the party or parties to the settlement.

3.Constitution and duties of **Board of Conciliation:**

In case Conciliation Officer fails to resolve the differences between the parties, the government has the discretion to appoint a Board of Conciliation. **The Board is tripartite and adhoc body. It consists of a chairman and two or four other members.**

The chairman is to be an **independent person and other members are nominated in equal number by the parties to the dispute.** Conciliation proceedings before a Board are similar to those that take place before the Conciliation Officer. The Government has yet another option of referring the dispute to the Court of Inquiry instead of the Board of Conciliation.

The machinery of the Board is set in motion when a dispute is referred to it. In other words, the Board does not hold the conciliation proceedings of its own accord. On the dispute being referred to the Board, it is the duty **of the Board to do all things as it thinks fit for the purpose of inducing the parties to come to a fair and amicable settlement.** The Board must submit its report to the government within **two months** of the date on which the dispute was referred to it. This period can be further extended by the government by two months.

The government can also appoint a Board of Conciliation for promoting settlement of Industrial Disputes. The chairman of the board is an independent person and other members (may be two or four) are to be equally represented by the parties to the disputes.

**The duties of the board include:**

A Board to which a dispute is referred **must investigate the dispute and all matter**s affecting the merits and the right settlement thereof and do all things for the purpose of inducing the parties to come to a fair and amicable settlement of the dispute without delay. If a settlement is arrived at, the Board **should send a report to the appropriate Government together with a memorandum of the settlement signed by the p**arties to the dispute. If **no settlement is reached, the Board must send a full report together with its recommendation for the determination of the dispute.** In case of failure of settlement by a Board, the “appropriate Government” may refer the dispute to a Labour Court, Tribunal or National Tribunal.

The Government is however not bound to make a reference. But after receiving a report from a Board it must **record and communicate to the parties c**oncerned its reasons for not doing so. A Board is required to submit its **report within two 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. The time-limit for the submission of a report can be extended by the appropriate Government or by agreement in writing by all the parties to the dispute.

1. **Court of Enquiry:** A procedure similar to the constitution of Board of Conciliation is provided for bringing into existing Court of inquiry as well. While a **Board of Conciliation may be constituted for promoting the settlement of an industrial dispute the purpose for which a Court of Inquiry may be constituted is “for enquiring into any matter** appearing to be connected with or relevant to an industrial dispute”.

The court of enquiry is required to submit its report within a period of six months from the commencement of enquiry. This report is subsequently **published by the government within 30 days of its receipt.** Unlike during the period of conciliation, **workers’ right to strike, employers’ right to lockout, and employers’ right to dismiss workmen, etc. remain unaffected during the proceedings in a court to enquiry.**

**A court of enquiry is different from a Board of Conciliation**. The former aims at inquiring into and revealing the causes of an industrial dispute. On the other hand, the latter’s basic objective is to promote the settlement of an industrial dispute. Thus, a court of enquiry is primarily fact-finding machinery. The government may appoint a Court of enquiry for enquiring into any industrial dispute. A court may consist of one person or more that one person and in that case one of the persons will be the chairman. The Court shall be required to enquire into the matter and submit its report to the government within a period of six months.

**Duties of the Court:** In case of the failure of the conciliation proceedings to settle a dispute, the government can appoint a Court of Inquiry to enquire into any matter connected with or relevant to industrial dispute. It is the duty of the Court of Inquiry into matters referred to it and submit its report to the appropriate Government **ordinarily within six months** from the commencement of its inquiry. This period is, however, not mandatory and the report even after the said period would not be invalid.

**5.Labour courts:**

The appropriate government may, by notification in the **official gazette constitute one or more** labour courts for adjudication of Industrial disputes relating to any matters specified in the second schedule of Industrial Disputes Act. A labour court **consists of one person only, who is normally a sitting or an ex-judge of a High Court.** It may be constituted by the appropriate Government for adjudication of disputes which are mentioned in the second schedule of the Act.

**The government sets up Labour Courts to deal with matters such issues referred to a labour court** may include:

The propriety or legality of an order passed by an employer under the **Standing Orders**

The application and interpretation of Standing Orders.

**Discharge and dismissal** of workmen and grant of relief to them.

Withdrawal of any statutory concession or privilege.

Illegality or otherwise of any strike or lockout.

All matters not specified in the third schedule of Industrial Disputes Act, 1947. (It deals with the jurisdiction of Industrial Tribunals).

**6.Industrial Tribunals:**

The appropriate government may, by notification in the official gazette, constitute **one or more Industrial Tribunals** for the adjudication of Industrial disputes relating to the following matters: Wages, Compensatory and other allowances, Hours of work and rest intervals, Leave with wages and holidays, Bonus, profit-sharing, PF , Rules of discipline ,Retrenchment of workmen, Working shifts other than in accordance with standing orders

It is the duty of the Industrial Tribunal to hold its proceedings expeditiously and to submit its report to the appropriate government within the specified time.

Like a labour court, an industrial tribunal is also a **one-man body**. The matters which fall within the jurisdiction of industrial tribunals are as mentioned in the second schedule or the third schedule of the Act. Obviously, industrial tribunals have **wider jurisdiction than the labour courts**. Moreover an industrial tribunal, in addition to the presiding officer, c**an have two assessors to advise him in the proceedings;** the appropriate Government is empowered to appoint the assessors.

**7.National Tribunal:**

A National tribunals is **constituted by the Central government** for Industrial Disputes involving **question of national importance**. The Central Government may constitute a national tribunal for adjudication of disputes as mentioned in the second and third schedules of the Act or any other matter not mentioned therein provided in its opinion the industrial dispute involves “questions of national importance” or “the industrial dispute is of such a nature that undertakings established in more than one state are likely to be affected by such a dispute”.

The Central Government **may appoint two assessors to assist the national tribunal**. The award of the **tribunal is to be submitted to the Central Government which has the power to modify or reject it if it considers it necessary in public interest.**

It should be noted that every award of a Labour Court, Industrial Tribunal or National Tribunal **must be published by the appropriate Government within 30 days from the date of its receipt.** Unless declared otherwise by the appropriate government, every award shall come into force on the expiry of 30 days from the date of its publication and shall remain in operation for a period of one year thereafter.

The central government may, by notification in the official gazette, constitute one or more National Tribunals for the adjudication of Industrial Disputes in matters which are of a nature such that industries in more than one state are likely to be interested in, or are affected by the outcome of the dispute.

It is the duty of the National Tribunal to hold its proceedings expeditiously and to submit its report to the central government within the stipulated time.

**8.Arbitration:**

The employer and employees may **agree to settle the dispute by appointing an independent and impartial person called Arbitrator.** Arbitration provides justice at **minimum cost.**

It is process in which a **neutral third party** listens to the disputing parties, gathers information about the dispute, and then takes a decision which is binding on both the parties. **The conciliator simply assists the parties to come to a settlement, whereas the arbitrator listens to both the parties and then gives his judgment.**

There are two types of arbitration:

**Voluntary Arbitration:** In voluntary arbitration the arbitrator is appointed by both the parties through mutual consent and the arbitrator acts only when the dispute is referred to him

**Compulsory Arbitration:** Implies that the parties are required to refer the dispute to the arbitrator whether they like him or not. Usually, when the parties fail to arrive at a settlement voluntarily, or when there is some other strong reason, the appropriate government can force the parties to refer the dispute to an arbitrator.

**9 Joint Management Council :**

In India, the joint management council (JMC) came into existence due to the provisions in this regard made by the **Industrial Policy Resolution, 1956.** These councils were set up to enable workers to participate in management and infuse a spirit of cooperation between the workers and the management.

T**he salient features of the JMCs are as follows:**

The scheme is a voluntary one.

The minimum and maximum number of its **members are 6 and 12** respectively consisting of equal number of representatives of workers and employers.

The JMCs deal with matters **like information sharing, consultative, and administrative.**

The decisions taken by the JMC should be unanimous ones.

The JMCs can be set up in the unit**s employing 500 or more persons** and having strong trade unions

In India, industrial units like Hindustan Insecticides, HMT, Indian Airlines, Air India, in the public sector and TISCO, Arvind Mills, Modi Spinners and Weaving Mills, in the private sector, have been pioneers to introduce the JMC scheme. Past experience indicates that whenever the JMC schemes have been setup, there have been better industrial relations, more satisfied work force, increase in productivity, better profits, etc.

This scheme has been introduced at the **shop floor and plant level in 236 public sector** undertakings by September 1994. However, like the works committees, the functioning of the JMCs in India is also plagued by the factors like reluctance of workers, union rivalries, the management’s lukewarm attitude, etc.

**#######Forms of Industrial Disputes [Strike and lockout]**

|  |  |
| --- | --- |
| **Strike** | **Lockout** |
| 1) A strike is when employees in a certain industry stop working to compel them to satisfy certain demands. | 1) A lockout occurs when an employer closes the workplace temporarily, suspends operations, or terminates the employment of a group of people who were previously employed. |
| 2) Strikes are defined as the **workers' complete cessation of work** until their demands are met by the employers. | 2) Lockouts are defined as the temporary closure of a workplace, stoppage of work, or refusal to hire. |
| 3) Strikes are frequently **triggered by economic factors.** | 3) Lockouts can occur for a **variety of reasons, both economic and non-economic.** |
| 4) Employees use strikes as a **weapon.** | 4) Employers use lockouts as a weapon. |
| 5) Illegal strikes can be in a variety of forms. For example, put your pen down, take it leisurely, and so on. | 5) There are **no different types** of illegal lockouts. There is only one of them. |

**Meaning of strike**

Strike has been defined in Section 2 (q) of the Industrial Disputes Act as under—
Strike means a **cessation of work by a body of persons employed in any industry acting in combination, or a concerted refusal, or a refusal under a common understanding, of any number of persons who are or have been so employed to continue to work or to accept employment.**
The analysis of the definition would show that there are the following essential requirements for the existence of a strike:
(1) There must be cessation of work.
(2) The cessation of work must be by a body of persons employed in any industry;
(3) The strikers must have been acting in combination;
(4) The strikers must be working in any establishment which can be called industry within the meaning of Section 2(j); or
(5) There must be a concerted refusal; or
(6) Refusal under a common understanding of any number of persons who are or have been so employed to continue to work or to accept employment;
(7) They must stop work for some demands relating to employment, non-employment or the terms of employment or the conditions of labour of the workmen.

**Types of strike**

1. **General strike-**The general strike is one where **the workmen come together under a common understanding and stay away from work emitting the employer where heavy costs in the process as the work is brought to a standstill**. General strikes are resorted to for **securing economic demands** like improvement in the matters of basic pay, bonuses, leaves and holidays etc. Such strikes are common in the Railways, Post and Telegraph Department and also by government employees.
2. **Mass casual leave**-Mass casual leave is another way adopted by the workers to ventilate their grievances, where all the wor**kers go on leave at the same time,** in negation of what is stated in the standing orders. The employees have a right to avail leave only in accordance with the standing orders, but this sort of a strike is resorted to by workers so that the management is pressurized to talk to them and settle their demands.
3. **Stay in, sit down, pen down strikes-**In the strikes, the **worker centre the place of work, but do not work**. They also do not believe their place of work. In these forms of strike the entry of the workers is legal, when they refused to leave the place of work. There squatting on the premises, constitutes, friends, as there is an element of a criminal trespass present in the same. When strikes are basically staged in banks, wherein the purpose. Many a times is to shake the credit of the bank in the market. If such strikes are continued for a long period, it certainly affects the repute of the employers and the market and such strikes sometimes lead to untoward incidences.
4. **Go slow-**Go slow in the form of strike wherein there is a deliberate delaying of production by the workmen pretending to be engaged in working. It is one of the most pernicious practices which are discontented and disgruntled workers sometimes resort to. This is nothing less than being dishonest because by going slow. In such strikes, there is a delayed production, reduced output and many a times the machineries also kept going on a reduced speed which is extremely damaging to the machinery parts. The workers remain entitled to full wages and other emoluments, as well as conditions of service, which even otherwise are to flow through them, but at the same time, the managements do not get the quantum of production which is expected from the workers for the salaries which they get.
5. **Token strike-**The strikes are staged as a token of protest for some grievance which the **worker's hammer**. Such strikes many a times are of a small duration for a span, but they qualify to be a strike if at all. All the ingredients of the definition in section 2(q) are satisfied.
6. **Lightning or quickly strikes-**As the name suggests, **the strikes are held in a flash of a second.** And that is why they are called as lightning or quickly strikes. These strikes are staged all of a sudden and the thought behind it is to spread the message of an instant strike with all the workers. Normally, the workers, if at all **they are to go on strike given notice** and then carry the thought into an action, but here, the strikers first strike and then start to bargain. As t**here is no notice present in the strike, such strikes are illegal ex-facie.**
7. **Sympathetic strikes-**Such strikes are staged t**o extend sympathies to some other union,** who are really on strikes against the management and in such strikes the workers do not have some grievance of their own. It is just staged to extend their support to some other union. However, the workers fail to understand that in this sort of a strike. It is the managements who have. To pay the salary packets to workers who really do not have a grievance of their own, and thus such strikes are not at all justified, besides being illegal, as there is no satisfaction of all the other ingredients present in section 2(q) of the Industrial Disputes Act 1947.
8. **Hunger strike-**Hunger strike in the strike were by the workmen resorting to this site of a strike refrain from having food and also stop from working. The hunger strike of Mahatma Gandhi was called as 'satyagrah' merits goal was to secure the ends of truth. The hunger strike by strikers is just the restraint imposed from having food where the goal to be achieved is a monetary one. The hunger striker is also liable under section 309 of the Indian Penal Code, which is an attempt to commit suicide. It is not that every strike will incur a penalty. However, the stage reached by the strikers should be such a stage where there is a certainty of a suicide and only then would section 309, Indian Penal Code come into picture. Section 3093 of the Indian Penal Code deals with attempt to commit suicides.
9. **Work to rule strike-**This is a new form of a strike which is resorted to by the disgruntled workmen to circumvent the provisions of law governing their service conditions. The striking employees here added to the service rules in such a fashion that it causes harassment to the general public. The striking employees do not usually added to the rules in such a manner which they do it in this form of a strike. A minute of the ones of the rules causes harassment rather than helping the general public, and which also results down in slowing the momentum of work. Such strikes are usually staged in public utility services where the object is to harass the public in an indirect manner so that the government is pressurised to succumb to the demands of the workmen.
10. **Mass resignations-**Mass resignations is another form of a strike wherein all the workmen who are employed in an industry submit their resignations to the management. It becomes cumbersome and difficult for the management to accept every worker's resignation as that would have an effect of bringing the very industry to a standstill. The pressure which is exerted by the workers. By giving a mass resignation is basically to make the management agree to their demands and the standpoint of view
11. **Gherao-** In simple words 'gherao' means encirclement of a target where the one targeted is not allowed to move in any direction. Gherao means to surround. It is a physical blockade of managers by encirclement aimed at preventing the egress and ingress from and to a particular office or place. This can happen outside the organisational premises too. The managers / persons who are gherao are not allowed to move for a long time. Sometimes, the blockade or confinements are cruel and inhuman like confinement in a small place without light or fans and for long periods without food and water. The persons confined are humiliated with abuses and are not allowed even to answer “calls of nature”.

**Gherao of the vice chancellor: A mini case study**

The non-teaching employees of a Central University in the North-East India had some demands with the University authority for quite some time. Non-confirmation of some of the employees even after completion of six years service was one of the main demands. That the Vice Chancellor was to resign on 31st October was known to all in the University.

As the last pressure tactic, the employees started Vice Chancellor’s gherao on 31st October at 11.00 a.m. They shut down the entrance gate of the administrative building at 3.00 p.m. to block the egress and ingress from and to the office in the administrative building.

The Vice Chancellor was kept confined in his office chamber. He was humiliated throughout the gherao by using abuses, disconnecting his telephone line, not allowing him food and water and even not allowing him to answer “calls of nature”. This scene lasted for 18 hours and was over only by 5 a.m. next day when some 50 C.R.P.F jawans with local police came from the city which is about 20 kms. away from the University Campus.

They broke the entrance gate of administrative building, rescued the Vice Chancellor and arrested 117 employees confining the Vice Chancellor under Section 340 of the Indian Penal Code and kept them behind bars for a day.

On 1st November, the Vice Chancellor handed over the charge of his office to the senior most Professor of the University at his residence in the city. In the wee hours on 2nd November, he left for where he came from. The aftermath of gherao created a tuneful atmosphere in the University Campus for about two weeks.

**#####Lockouts**

Lockout is a **work stoppage** in which an **employer prevents employees from working**. It is declared by employers to put pressure on their workers to come to their way by consensus about settlement of issued lead to lockout. This is different from a strike, in which employees refuse to work. Thus, a lockout is employers' weapon while a strike is raised on part of e**mployees. According to [section 2(1)] of Industrial Disputes Act 1947, lock-out means the temporary closing of a place of employment or the suspension of work or the refusal by an employer to continue to employ any number of persons employed by him**. Factory lockout is the ultimate **weapon** in the hands of the management when an uncontrollable situations arises in the factory. No matter what it is factory lockout will cause great loss to the management and to the workers. However, the rights of strikes and lockouts have been restricted to achieve the purpose of the Act, namely peaceful investigation and settlement of the industrial disputes.

**Why the word lock out?**

**Lock made is not permanent that can be closed and opened. The word 'out' can be understood as keeping temporarily away management and employees from the factory, till settlement of the issues caused to lockout.**

**Legal status**A lockout in contravention of sec 10(3), Sec 10A (4A) i.e. declaration of lock-out when an industrial dispute has been referred, is an illegal lockout. Also, a lockout in contravention of sec 22, 23 i.e. issuing a notice before lockout, is an illegal lockout (Sec 24(1)). Howeve**r a lockout declared in consequence of an illegal strike is legal (Sec 24(3)). A legal lockout can become a strong tool in the hands of the employer in critical situations.**

**Kingfisher Airlines**

Kingfisher airlines of India went into losses amounts of 8,000 crores due to failure in meeting competition in the aviation industry eventually had not paid salaries to its employees for a period of six months which led to agitation among employees eventually resorted for strike. With the loss of Rs. 8,000 crores by Kingfisher airlines additionally got a burden of another Rs. 7,000 crores hence declare partial lockout by its top officials on 1st September 2012.

Lockout of any factory or industry is governed by the law called the Industrial Disputes Act 1947. According to section 22 of this Act, lockout of factory or industry must be done only after issuing **prior notice to concern employees.** If not, such lockout shall be treated as illegal lockout and concerned factory or industry shall be penalised according to the Industrial Disputes Act 1947.

**Procedure of Lockouts [**According to Sec. 22(2)]

Proposal to go on lockout factory should be intimated to workers by way of prior notice, that is 14 days stipulated time period should be given to the workers to respond . **During this 14 days** time employer should not lockout. Only after expiry of the that 14 days and management fails to resolve issues within that 14 days, employer can go for lockout on fixed date by giving notice of lockout. Such lockout should be done before the expiry of that six weeks only. Succinctly lockout of factory should be done only after the expiry of 14 days of prior notice given by the management.

**The Reasons Behind The Lockouts**

* Disputes or clashes in between workers and the management.
* Unrest disputes or clashes in between workers and workers.
* Illegal strikes, regular strikes or continuous strikes by workers may lead to lockout of factory or industry.
* External environmental disturbance due to unstable governments, may lead to lockouts of factories or industries.
* Continuous or accumulated financial losses of factory or industry, may lead to opt lockout by the management.
* Maybe lockout, if any company involves in any fraudulent or illegal activities.
* Failure in maintaining proper industrial relations, industrial peace and harmony.

**Prohibits an employer from declaring a lockout:**

in any of the eventualities mentioned therein [Section 22(2) of the Industrial Disputes Act 1947]
No employer carrying on any public utility service shall lock-out any of his workman:

**without giving them notice** of lock-out as hereinafter provided, within six weeks before locking-out; or

within fourteen days of giving such notice; or

before the expiry of the date of lock-out specified in any such notice as aforesaid; or

during t**he pendency of any conciliation proceedings before a conciliation officer and seven days after the conclusion of such proceedings**

Case study -Facts [+] 18-july-2012, India: leading car manufacturer Maruthi Suzuki at Maneser (Haryana), workers created extreme violence by burning alive company's general manager human resource (Awanish Kumar Dev) to death, burnt down office furniture, injured several executives, supervisors, managers and the Japanese manager of the factory was also attacked. 91 workers were arrested for this brutal act including causing heavy damage to the company's property. The sequence of events began in the morning with a worker beating up a supervisor on the shop floor.

Workers union alleges that this incident happened due to the supervisor made objectionable remark against a permanent worker, who belongs to the Scheduled Caste category. When we opposed it, they misbehaved with us and suspended the worker that led to violence. But the management alleges that the workers' union prevented the management from taking disciplinary action against the worker. Finally management declared temporary close down of the car Manufacturing plant that produces about 1600 units per day. In terms of value the per day loss is about Rs. 70 crores. By then Cars waiting for delivery to its customers were more than one lakh units that may take more than five months to begin delivery due to lockout.

As company manufactures market demanded key models like Swift hatchback and Dzire sedan faces a huge backlog. Maruthi Suzuki competitors like Ford, Skoda and Hyundai got benefited in the market as many people shift to other brands in the view of long waiting period for delivery of cars from Maruthi Suzuki.

No Payment for 2000 staff on August 1st, 2012. Company decided that no one working at the Manesar plant will be given salary. According to the rule, after the company's lockout, workers are not paid till the time it (lockout) is revoked. The monthly salaries of its employees for the period before the incident, will be paid only after the lockout is withdrawn and the plant starts functioning.

Workers had damaged everything like computers, server cables and entire data on July 18. Eventually company has no records of its employees and their duty-hours details for the entire month and finally company decided to pay its employees only after retrieving their data. [Source :TOI]

**#######Lay-off and retrenchment**

| BASIS FOR COMPARISON | LAYOFF | RETRENCHMENT |
| --- | --- | --- |
| Meaning | Lay-off refers to the provisional termination of the employee, at the instance of the employer. | Retrenchment means involuntary separation of an employee due to the replacement of labor by machines or the close of the department. |
| What is it? | Action step | Business strategy |
| Defined in | Section 2 (kkk) of Industrial Dispute Act, 1947 | Section 2 (oo) of Industrial Dispute Act, 1947 |
| Nature | Temporary | Permanent |
| Operation of company | Stops after the declaration. | Continues even after the declaration. |
| Re-appointment | As soon as the lay-off period ends. | Employee's connection with the organization are severed immediately. |

**Layoff Definition:**

According to [section 2 (kkk)] of Industrial disputes act, 1947,"**lay-off"** means the **failure, refusal or inability of an employer on account of shortage of coal, power or raw materials or the accumulation of stocks or the break-down of machinery [or natural calamity or for any other connected reason] to give employment to a workman whose name is borne on the muster rolls of his industrial establishment and who has not been retrenched;**

Explanation : Every workman whose name is borne on the muster rolls of the industrial establishment and who presents himself for work at the establishment at the time appointed for the purpose during normal working hours on any day and is not given employment by the employer within two hours of his so presenting himself shall be deemed to have been laid-off for that day within the meaning of this clause:

**Non-applicability of layoff provisions to certain establishments**

According to section 25A of chapter VA of Industrial Dispute Act 1947, certain establishments do not have any provisions relating to layoff of the employees by the employer. In such circumstances, layoff would be considered without any authority of law.

Such establishments are: Industrial establishments in **which less than 50 work**men are employed, on an average per working day.

Industrial establishments which are of a **seasonal character and in which work is performed only intermittently.**

Employees employed in the above said establishments do not have right for laid-off compensation. However if there is any agreement between employer and employee for that purpose or on the grounds of social justice, laid-off competition can be paid.

In South India Corporation Ltd. v. All Kerala Cashewnut Factory Workers' Federation the Court held that if any establishment is not covered within the scope of this Chapter V-A, the Tribunal has no right to grant relief on the basis of any fanciful notions of social justice.

Except above said industrial establishments, all other industrial establishments ( 50 workmen and above industrial establishments which are not of seasonal character) have provisions relating to lay off of the employees by the employer.

**Right of Compensation by workmen laid-off**

**[Right of workmen laid-off for compensation] Industrial Disputes Act,1947 Section 25-C-workman has right to lay-off compensation subject to the following conditions, they are:**

* Workman name should be **borne on muster rolls** of the establishment and he/she is not a badli workman or a casual workman; and
* The workman should have **completed not less than one year** continuous service as defined under Section 25-B; and
* The workman should have **laid-off, continuously or intermittently**;
* Then the workman **shall be entitled to lay-off compensation for all days during which he was so laid-off;**
* However, the workman shall **not be paid lay-off compensation for such weekly holidays** as may intervene the period of lay-off.
* The lay-off compensation is equ**al to 50% of the total of the basic wages and dearness** allowance that would have been payable to him, if he had not been so laid off.
* Explanation: "**Badli workman" means a workman who is employed in an industrial establishment in the place of another workman** whose name is borne on the muster rolls of the establishment, but **shall cease to be regarded** as such for the purposes of this. section, if he has completed one year of continuous service in the establishment.

**Maximum days allowed to Layoff of employee by employer**

According to section 25C of Industry and dispute Act 1947, **maximum days allowed to Layoff of employee by employer is 45 days, f**or those days, employee who is laid-off is entitled for compensation equal to **50% of the total of the basic wages and dearness allowance** that would have been payable to him, had he not been so laid off.

However, if this contingency is prolonging beyond a reasonable time, say 45 days, it would be matter of serious concern. both to the employer and to the workmen because both of them are put to a loss of 50% wages i.e. The employer is required to pay lay-off compensation without extracting work from workmen and workmen too, would be losing 50% wages which he would have earned had he not been so laid-off. **Therefore the parties can enter into an agreement not to continue lay-off after a period of 45 days in a year**.

**Compulsory permission from competent authority by employer to lay off of workmen**

Section 25M of [Industrial Dispute act 1947](http://www.google.com/url?q=http://www.whatishumanresource.com/the-industrial-disputes-act-1947&sa=D&sntz=1&usg=AOvVaw3U3r7fCvvtrO78qXlIzpkq" \t "/home/akanxagalande/Documents\\x/_blank) (Amendment in 1984), For Industrial establishments in which **not less than 100 workmen** are employed, on an average per working day and **are of not being seasonal character** and in which work is performed only intermittently, have to **seek prior permission from competent authority** by the employer to layoff workman. if the employer does not apply to seek prior permission or where such permission is **refused by the competent authority specified above, to effect lay-off, such lay-off shall be considered as illegal** and the workmen laid-off shall be entitled to all benefits as if they have not been laid-off.

**Can an employer avoid the lay-off compensation?**

Section 25A of [Industrial Dispute act 1947](http://www.google.com/url?q=http://www.whatishumanresource.com/the-industrial-disputes-act-1947&sa=D&sntz=1&usg=AOvVaw3U3r7fCvvtrO78qXlIzpkq" \t "/home/akanxagalande/Documents\\x/_blank), following establishments can avoid lay off compensation according to the Section 25E

Industrial establishments in which **less than 50 workmen** are employed, on an average per working day, but not to industrial establishments in which more than 100 workmen are employed.

Industrial establishments which are of **a seasonal character** and in which work is performed only intermittently.

**Workmen not entitled to compensation in certain cases [Section 25E] of [Industrial Dispute act 1947](http://www.google.com/url?q=http://www.whatishumanresource.com/the-industrial-disputes-act-1947&sa=D&sntz=1&usg=AOvVaw3U3r7fCvvtrO78qXlIzpkq" \t "/home/akanxagalande/Documents\\x/_blank)**

(i) if he refuses to accept any **alternative employment in the same establishment** from which he has been laid off, or in any other establishment belonging to the same employer situate in the same town or village or situate within a radius of five miles from the establishment to which he belongs, if, in the opinion of. the employer, such alternative employment does not call. for any special skill or previous experience and can be done by the workman, provided that the wages which would normally have been paid to the workman are offered for the alternative employment also;(ii) if he **does not present himself for work** at the establishment at the appointed time during normal working hours at least once a day;

(iii) if such **laying-off is due to a strike or slowing-down of production on the part of workmen in another part of the establishment.**

**######Definition of retrenchment of employee-** "Retrenchments" means **the termination by the employer of the service of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action but does not include-**

(a) voluntary retirement of the workman; or

(b) retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf; or

43[(bb) termination of the service of the workman as a result of the non-renewal of the contract of employment between the employer and the workman concerned on its expiry or of such contract being terminated under a stipulation on that behalf contained therein; or]

(c) termination of the service of a workman on the ground of continued ill-health;]

Examples- In Duryodhan Naik v. Union of lndia, the Court held that the discharge of surplus labour by the employer· for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action is called retrenchment, but where the services of all workmen have been terminated by the employer on a real and bona fide closure of business or the undertaking is taken over by another employer, it has no application of retrenchment.

In Santosh Gupta v. State Bank of India, a female employee was discharged on the grounds that she failed to qualify herself in the prescribed test for confirmation of services. The Tribunal held that the termination does not amount to retrenchment. But the Supreme Court reversed the decision of the Tribunal and ordered reinstatement of the employee with full back wages. The Supreme Court further held that the expression “termination of service for any reason whatsoever” is wide enough to include every kind of termination of service except those which are expressly excluded by the proviso to the definition of retrenchment as given in Section 2(oo)|.

**####Procedure for retrenchment [Section 25G]**

The principle of **'last come; First go':-**

Where any workman in an industrial establishment who is a citizen of India, is to be retrenched and he belongs to a particular category of workmen in that establishment, in the **absence of any agreement** between the employer and the workman in this behalf, the employer shall ordinarily retrench the workman who was **the last person to be employed in that category,** unless for reasons to be recorded the employer retrenches any other workman.

**Re-employment of retrenched workmen [Section 25H]**

Where any workmen are retrenched, and the employer proposes to take into his employment any persons, he shall, in such manner as may be prescribed, give an opportunity [to the retrenched workmen who are citizens of India to offer themselves for re-employment, and such retrenched workmen] who offer themselves for re-employment shall have preference over other persons.

**Retrenchment conditions**

**According to the Section 25F [Conditions precedent to retrenchment of workmen]**

* Employee should have **continuous service for not less than one** year under an employer
* **One month’s notice** in writing indicating the reasons for retrenchment or payment for the period of the notice
* Compensation which shall be equivalent to **fifteen days’ average pay**[for every completed year of continuous service] or any part thereo**f in excess of six months.**
* Notice in the prescribed manner is served on the appropriate government
* If no application seeking permission to retrench workmen is made by the employer or where such permission is refused, such **retrenchment shall be deemed to be illegal** and the workmen shall be entitled to all benefits as if they have not been given any notice. (sub-Section 7).

 #######**Grievance Redressal Machinery**

The term “grievance” has been defined by different researchers in different ways.

Mondy and Noe defined grievance as “employee’s dissatisfaction or feeling of personal injustice relating to his or her employment.”

Keith Davis defines grievance as “any real or imagined feeling of personal injustice which an employee has about the employment relationship.”

**Nature of grievance-** A grievance may be submitted by workers, or several workers, in respect of any measure or situation, which directly affects, or is likely to affect, the conditions of the employment of one or several workers in the organization. Where a grievance is transformed into a general claim either by the union or by a large number of workers, it falls outside the grievance procedure and normally comes under to purview of collective bargaining.

**The following areas were causes of employee grievance:** Promotions, Amenities, Continuity of Service, Compensation, Disciplinary action, Fines, Increments, Leave, Medical Benefits, Nature of Job, Payment, Acting promotion, Recovery of dues, Safety appliances, Superannuation, Transfer Victimization, Condition of work.

The **International Labour Organization (ILO)** classifies a grievance as a complaint of one or more workers with respect to wages and allowances, condition of work and interpretations of service stipulations, covering such areas as overtime, leave, transfer, promotion, seniority, job assignment and termination of service. Chandra found that policy issues relating to hours of work, incentives, wages, DA, and bonus are beyond the scope of the grievance procedure-they fall under preview of collective bargaining.

**CAUSES OF GRIEVANCE**

There are several causes, which leads to employee grievance in an organization. Management Practices

* The behaviour of supervisor, peer’s group can cause grievance.
* The improper division of work among employees lead to employee grievance.
* The negligence of one’s efforts towards the organization.
* The autocratic organizational environment can cause grievance.
* The implementation of personnel policies is not intended policies, it well lead to grievance.
* If task objective is not clearly defined to employee, then also then employee get frustrated and ultimately grievance arises.
* Matters such as employee compensation, seniority, overtime and assignment of personnel to shifts are illustrations of ambiguities leading to grievance.
* Poor communication between management and employees is another cause of grievance.

**The Model Grievance Procedure**

The Model Grievance Procedure was formulated in pursuance to the Code of discipline adopted by the 16th Session of the Indian Labour Conference in 1958. Most of the grievance procedures now a day are built around the Model Grievance Procedure with certain changes to suit the size and special requirements of an enterprise.

The model Grievance Procedure provides for five successive time-bound steps. These are as under:



1. An aggrieved employee shall first present his grievance **verbally** in person to the officer designated by the Management for this purpose. An answer shall be given to him within 48 hours of the presentation of the complaint.
2. If the worker is not satisfied with the decision of this officer or fails to receive an answer within the stipulated period, he shall in person or by his departmental representative, if required, present his grievance to the **head of the department** designated by the management for this purpose. And he will get the answer **within 3 days** of the presentation of his grievance.
3. If the decision of the departmental head is unsatisfactory, the aggrieved worker may request the forwarding of his grievance to the Grievance Committee, which shall make its recommendations to the management within 7 days of the worker’s request. The final decision of the management shall be communicated to the worker within the stipulated period (3 days) by the Personnel Officer.
4. A revision of his grievance can be done if the decision is not satisfactory. The management shall communicate its decision within a week.
5. If no agreement is possible the union and the Management may refer the grievance to voluntary arbitration within a week from the date of receipt by the worker of the management’s decision.

In the above-mentioned procedure the following points should be noted:

* Calculating the various time intervals under the above clauses, holidays shall not be included.
* The Management shall provide the necessary clerical and other assistance for the smooth functioning of the grievance machinery.
* During the working time, the concerned person may go for enquiry with the Labor/personnel Officer, provided the he has taken permission from his supervisor. Hence he may not suffer any loss of payment.