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Paper Authors

B. LINGANNA, PROF. V. VENKATA RAMANA



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AN STUDY ON INDUSTRIAL TRIBUNALS WITH RESPECT TO TELANGANA STATE UNDER LAW CONFLICTS

B. LINGANNA

DEPARTMENT OF LAW OSMANIA UNIVERSITY

GUIDE: PROF. V. VENKATA RAMANA

DEPARTMENT OF LAW OSMANIA UNIVERSITY

ABSTRACT

Industrial peace and amenity are of great significance in a developing country like India. Peaceful and harmonious relationship between the partners in production would ensure to workers economic security and also facilities economic development of the nation. On the other hand, in the industrial dispute, human relations are at stake. When the conflict between capital and labour expressed in its overt manifestations i.e. strikes, lockouts, Gherous not only parties to the disputes are adversely affected but also the community at large and the national economy. The losses to the worker, employer and the economy are always greater than the benefits the workmen or the employer might gain. Furthermore, the community is denied from number of essential services and goods. At times the economic life of the country may get disturbed seriously. Industrial peace and amenity are of great significance in a developing country like India.

Peaceful and harmonious relationship between the partners in production would ensure to workers economic security and also facilities economic development of the nation. On the other hand, in the industrial dispute, human relations are at stake. When the conflict between capital and labour expressed in its overt manifestations i.e. strikes, lockouts, Gherous not only parties to the disputes are adversely affected but also the community at large and the national economy. The losses to the worker, employer and the economy are always greater than the benefits the workmen or the employer might gain. Furthermore, the community is denied from number of essential services and goods. At times the

economic life of the country may get disturbed seriously.

INTRODUCTION

Industrial justice administration is a unique sphere of justice dispensation. This is so because it deals with continuous relationship of conflict and accommodation between labour and capital, and not with just one-time disruptions. But, this is more so in processing of collective-labour issues—and especially “interest questions”. The advanced industrial world has cherished and nurtured the institution of collective bargaining for the administration of industrial justice, particularly in the sphere of processing of interest disputes. India, on the other hand, has formalised and



internalised the system of compulsory adjudication. This has been done in the name of promoting economic growth and fulfilment of planned targets. While the foundation of compulsory adjudication was being concretised in India, a section of labour leaders, especially V.V. Giri, an eminent labour thinker (later President of India), did protest the adoption of this model.

The key apprehension of these people was that this model would make the disputant parties hurry at every other phase in dispute-resolution processes so as to reach the stage of adjudication, and that they would meet in labour courts and tribunals as enemies and adversaries. They were wanting to promote voluntary structures, with greater freedom for strikes and lockouts, so as to lead to more equitable determination of industrial relations questions. However, the supporters of compulsory adjudication prevailed over them. They took the plea that the freedom of strikes and lock-outs would retard economic development. They defended adjudication on the plea that the state would administer social justice, through its various organs, in order to restore equilibrium in the power position of the disputant parties.

Thus was accepted the legitimacy of the Industrial Disputes Act 1947 (henceforth known as IDA) to be an instrument of regulating industrial relations. The IDA provided in its preamble that it was being enacted to “make provisions for investigation and settlement of industrial disputes” through, inter alia, labour courts and industrial tribunals. It was, however,

expected that these bodies would speedily resolve industrial differences without involving legalistic court procedures. The draftsmen of the IDA were aware that the compulsory adjudication model enshrined in it could lead to legalisation of industrial disputes. In fact, the statement of aims and objects of the IDA itself acknowledges: “Industrial peace will be most enduring where it is founded on voluntary settlements”.

That was why, they attempted to provide safeguards against the danger of legalisation in this sphere. So as not to be antithetical to the goal of voluntarism, the IDA provided: “No party to a dispute shall be entitled to be represented by a legal practitioner in any conciliation proceedings”. The representation of parties by lawyers before adjudicatory bodies too was discouraged. They could be allowed before them with the consent of the other parties to the proceedings, and with the leave of the authority concerned. Also, to guard against excessive legalisation, it was provided that “the appropriate government may, if it thinks fit, appoint two persons as assessors to advise the tribunal in proceedings before it”.

And, the adjudicatory bodies envisaged under the IDA, including the tribunals, have been given freedom from following any rigid procedure. They can “follow such procedure as the authority may think fit”. The industrial adjudication was thus sought to provide a channel: less expensive, less formal, more accessible and more expedient

than ordinary law courts. Also, the tribunals, through particularly the interest-disputes adjudication, were expected to imbibe the social policy of the state in industrial relations. The Indian judiciary recognised the adjudication system, as envisaged in the IDA, as an instrument of promoting social justice, amity, good relations, and also “collective bargaining”.

The on-demand economy has truly gone global. Consider the case of online platform TaskRabbit, a U.S.-based site where users could post odd jobs. A high number of TaskRabbit’s users were seeking help with the construction of furniture they purchased at IKEA, and skilled workers started using the platform to find customers. Corporate management at Swedish company IKEA noticed the trend, and acquired TaskRabbit in 2017. As a result, a Swedish company now owns a platform labor service in the United States and Britain, with plans to expand the TaskRabbit platform to twenty-seven more countries where IKEA currently owns brick and mortar stores.

Throughout its time, TaskRabbit has claimed it only has a handful of employees, and the terms and conditions on its website list its workers as “independent contractors.” Two other cases effectively illustrate the global nature of on-demand work. Digital platform Upwork, headquartered in Mountain View, California, hosts and parcels out assorted computer programming, graphic design, and data-entry tasks. Upwork posts tasks from requesters around the world, and likewise, the workers on the

platform live around the world, most often working from their homes. A final example is UK company Chatterbox, which uses its platform to connect remote workers in Syrian refugee camps with users in many other countries who pay to learn Arabic. In the past, foreign companies have used platforms to engage Kenyan nationals living in refugee camps tasks as diverse as computer programming and customer support calls.

It has been projected from time to time that the adjudication system is a catalyst to reform the disequilibrium in the power position of labour and employers. Harmony has been emphasized as a social value, and tribunals envisaged as instruments for promoting it. But, the Supreme Court clarified that it should be on a “fair and just basis”.

These were the basic postulates of compulsory adjudication as conceived in the IDA; the tribunal’s procedure and approach were the key aspects of the realisation of objectives envisaged on the above mentioned lines. This paper attempts to discuss the tribunal procedure and approach in industrial justice dispensation. It argues that in their procedure and approach the tribunals have been antithetical to the objectives of informality and expertise. Rather, they have promoted a class of professionals which has shown its presence in industrial relations pervasively and on a grand scale. And, these manifestations are not a problem of attitudes, but the present



‘structuring’ of this model is bound to produce this outcome.

LITERATURE REVIEW

Acevedo, D.D. 2016 Drawing on theoretical developments in the arbitration literature, and in particular the concepts of ‘error’ and ‘intent’, this paper uses data from the 1992 Survey of Industrial Tribunal Applications to identify the factors associated with the stage at which resolution of individual employment disputes occurs. Resolution at ‘conciliation’ is primarily determined by applicants’ characteristics (most notably gender) and by case jurisdiction, whilst subsequent ‘pre-tribunal’ resolution is driven largely by employer and case characteristics. The results are consistent with an error/intent interpretation. ACAS intervention appears to promote ‘settlement’ but does not enhance the overall resolution rate.

Afsharipour, A. 2011 Though surveys of sexual harassment at work have consistently shown it to be a widespread and under-reported problem, there has been little research directed at investigating the appropriateness of seeking a solution to it via claims to industrial tribunals under the Sex Discrimination Act. Based on research which aimed to explore, through interviews and questionnaires, the motives of those who had brought such legal proceedings and their experiences before, during and subsequent to the tribunal hearing, the findings cast doubt on the suitability of tribunal remedies and highlight the

devastating long-term psychological effects of sexual harassment on the victims. Overall the research suggests that remedying sexual harassment via tribunal claims can never be more than a second-best solution. Concludes that prevention is better than cure and places the onus on management to take effective action against harassment.

Rana, S. 2014 This chapter seeks to apply ‘new’ regulation theory to industrial tribunals, in particular the functions and powers of the Australian Industrial Relations Commission (AIRC) in relation to enterprise bargaining and the making of collective workplace agreements. In a conventional economic sense, industrial tribunals have always been regulatory agencies, with their awards operating as labour standards setting minimum pay and conditions. Since the 1990s, though, the major work and impact of industrial tribunals has changed from making awards to the facilitation and approval of agreements as part of the process of labour market “deregulation.” As (at the time of final revision of this paper) it now appears that any powers of the AIRC to supervise agreement-making will shortly and finally be abolished, we are in a position to review the particular approach adopted for the regulation of workplace bargaining over the last decade. If industrial tribunals will no longer have a regulatory role to play in the setting of conditions by agreements, the opportunity also arises for us to consider what new type of institution might now be appropriate for the inevitable regulation which occurs within the labour market.

AGI Italian Attorneys. 2018 The purpose of creating an industrial tribunal was to introduce compulsory adjudication where voluntary negotiation fails and the ‘appropriate government’ believes that the matter is grave enough to be referred to a tribunal. In order to work properly it was felt by the legislature to limit the jurisdiction of such tribunal or courts. As a result two schedules were created. While the intention of legislation has been to create a level playing field industries have tried to evade jurisdiction of the tribunal by taking recourse to quibbling minute points of law. It became necessary to plug all holes in this welfare legislation. As a result Section 10 is one of the most amended sections with the largest number of state amendments. This has been meant that over the years the jurisdiction of tribunals has had to be interpreted a number of times.

Agrawal, K.B.; Singh, V. 2010 This study assesses the effects of industrial disputes legislation and the dispute-settlement process on informal versus formal employment in India. It uses indicators of pro-worker court awards and court efficiency as well as amendments to the Industrial Disputes Act (IDA) at the level of Indian states. The state-level IDA amendments are classified in relation to their pro-worker stance and ability to enforce existing legislation. The main finding is that the relationship between formal employment in both the industrial and service sectors and the judicial indicators is weak. Results are not robust to model specification. Thus, the evidence is neither robust nor strong enough

to confirm the much claimed negative relationship between pro-worker judicial change and the degree of formal work in the entire service or industrial sectors.

METHODOLOGY

The IDA empowers appropriate governments to appoint industrial tribunals to adjudicate disputes relating to any matter, whether specified in the Second Schedule or the Third Schedule. By and large, the Second Schedule contains items relating to rights issues (for example, interpretation of standing orders, discharge, dismissal, etc.) and the Third Schedule relating to interest matters (for example, wages, compensatory allowance, bonus, rationalisation, etc.). However, in case a dispute relates to a matter specified in the Third Schedule and is not likely to affect more than 100 workmen it can even be referred to a labour Court. In other words, the jurisdiction of a tribunal is wider than that of a labour court, as it can decide matters provided both in the Second and the Third Schedule. It may be noted that collective dispute may relate to interest matters like wages, DA, etc. or rights matters like discharge, dismissal, etc.

It was noticed, in Faridabad, collective disputes — whether involving interest or rights issues — are generally referred to the industrial tribunal; individual-termination disputes too, of course, are referred to it. The labour court, by and large, deals with individual-termination disputes and computation proceedings under Section 33C(2) of the IDA. A tribunal under the

IDA consists of one person only, and so is a labour court.¹⁶ A person is not qualified to be appointed as the PO of tribunal unless:

- (i) he is, or has been, a judge of a High Court; or
- (ii) he has, for a period of not less than three years, been a district judge or additional district judge.

The IDA confers upon the adjudicatory bodies the same powers as are vested in a civil court under the CPC 1908, when trying a suit, in respect of: enforcing the attendance of any person and examining him on oath; compelling the production of documents and material objects; issuing commissions for examination of witnesses; and other matters as may be prescribed. Also, investigations made by these bodies are deemed to be judicial proceedings within the meaning of Sections 193 and 228 of the IPC.

They are also given full power to determine and grant, in their discretion, cost of, and incidental to, any proceedings before them.” The tribunal has no power to enforce its own awards. In case awards are not implemented, the labour officer concerned can file prosecution proceedings against any persons responsible for it in the court of the chief judicial magistrate. It may be noted that although an industrial tribunal is not a court, its functions and duties are very much similar to those of bodies discharging judicial functions. However, powers conferred on tribunals and labour courts are wider than those of an ordinary court. The original approach of the framers of the IDA

was to synthesise judicial decision making with the labour relations expertise. A provision to that effect was made through the appointment of ‘assessors’, in case thought necessary by the appropriate government.

The qualifications for assessors were not prescribed nor was their status identified, but the understanding was that they may be industrial relations experts, labour economists or other social scientists. That is how assessors have been appointed to help tribunals in other industrial relations systems. By a later amendment to the IDA in 1956, power was conferred on “a Court, Labour Court, Tribunal or National Tribunal, if it thinks fit, to appoint one or more persons having special knowledge of the matter under consideration as assessor or assessors to advise it in the proceedings before it”.

That means in the case of tribunals, this power is over and above the two assessors which the appropriate government may appoint under Section 7 A(4), thus making the possibility of up to four assessors being appointed to facilitate the tribunal work. It is noticeable that the formalities of the court-like nature were expected to be minimised by adjudicatory bodies envisaged under the IDA. This was done to show sensitivity to the exigencies of industrial relations while processing industrial disputes.

To that effect, tribunals were, therefore, to project themselves as institutions capable of substituting the voluntary procedures, in the event of failure of negotiations, so as to be

made use of by parties as effective aids to industrial dispute resolution. Referring to the importance of such a projection, Marc Galanter rightly remarks: “The impact of courts on disputes is to an extent accomplished by the dissemination of information. Courts produce not only decisions but also messages. Their product is double: what they do and what they say about what they do”. To this end, therefore, it would be essential that tribunals project themselves as more accessible and competent; if they manifest slow and cumbersome procedures, they will not only be perceived as unhelpful but also their output would be effected. The tribunal framework as conceived by the IDA does project such a potentiality, as is noticeable from the provisions just noted. But, it is important to know whether this can actually be operationally efficacious to realise the intended objectives.

RESULTS

Pendency of Judicial Cases

Pendency has been defined by the Black’s law dictionary as “Suspense; the state of being pendent or undecided; the state of an action, etc.. after it has been begun, and before the final disposition of it.” As per the Merriam-Webster dictionary the legal definition of pendency is, “the quality, state, or period of being pendent.” The synonyms abeyance, adjournment, break, cessation, continuance, hiatus, interim, interlude, intermediate time, postponement, recess,

respite, suspense, suspension and temporary stop are often used in place of the word pendency. The Law Commission’s Report number 245 remarked about pendency and other related 10 terms. “There is no single or clear understanding of when a case should be counted as delayed.

Often, terms like 'delay,' 'pendency,' 'arrears,' and 'backlog' are used interchangeably. This leads to confusion. To avoid this confusion and for the sake of clarity, these terms may be understood as follows:

- a. Pendency: All cases instituted but not disposed of, regardless of when the case was instituted.
- b. Delay: A case that has been in the Court/judicial system for longer than the normal time that it should take for a case of that type to be disposed of.
- c. Arrears: Some delayed cases might be in the system for longer than the normal time, for valid reasons. Those cases that show unwarranted delay will be referred to as arrears.
- d. Backlog: When the institution of new cases in any given time period is higher than the disposal of cases in that time period, the difference between institution and disposal is the backlog. Therefore, as is evident, defining terms like delay and arrears require computing ‘normal’ case processing time standards which can be calculated using various statistical and other techniques.”

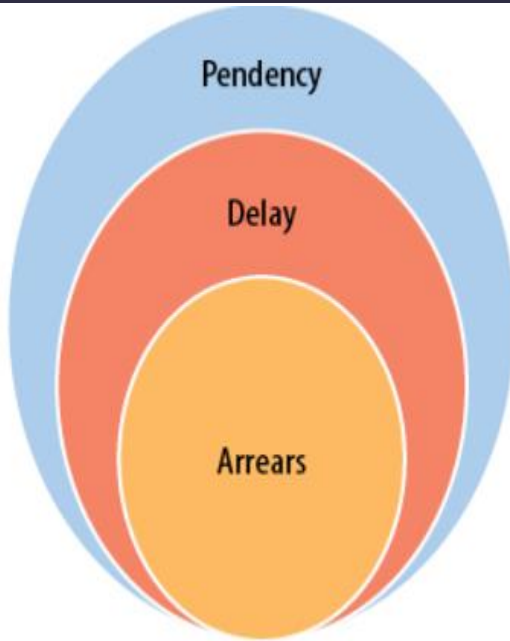


Figure Representation of ‘Pendency’, ‘Delay’, and ‘Arrears’

A report by Daksh interprets the differentiation between these terms. ‘Pendency’ therefore consists of the universal set of cases which have been filed and not been disposed of, ‘backlog’ refers to the difference between filing and disposal of cases in a given time period, ‘delay’ being a subset of ‘pendency’ where a case has taken longer than the ‘normal time’ that it should take for disposal of such a case, and ‘arrears’ being a further subset of ‘delay’ where the case has taken a longer time and no ‘valid reasons’ explain the same. If it were to be represented as a Venn diagram, it would be as shown in Figure.

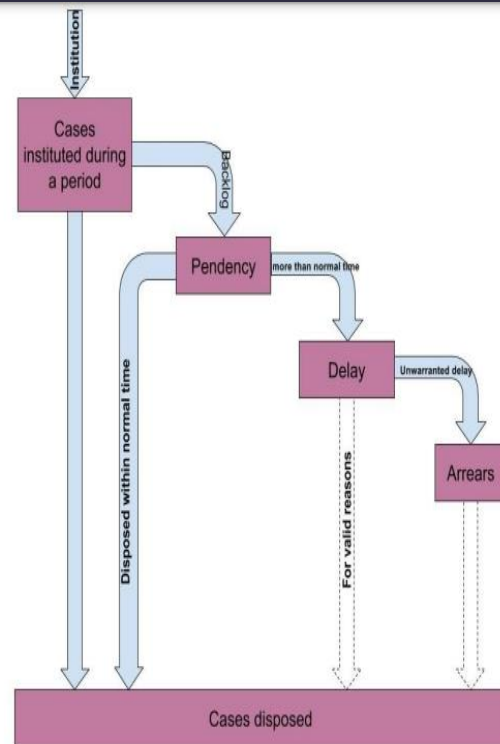


Figure Flow of cases from institution to disposal

Here, the term pendency implies all instituted cases that are not disposed. Delay and arrears are subsets of pendency, and arrears are a subset of delays. The definition of delay depends on rationally determined normal times. Arrears are those delayed cases where valid reasons for delay are missing. The link between backlog and pendency can be understood with the help of diagram below in Figure. Of all the cases instituted in a given time period (say a month), some get disposed of and the remaining enter the basket of pending cases through backlog. At the same time, some of the pendent cases are also disposed of. With passing time, cases also enter the basket meant for delays and eventually arrears.

In defining the delayed cases, it is necessary to specify “normal times” for disposal. These “normal times” could be specified as mandatory time limits or as guidelines. At present, such time-frames do not exist for most categories of trials. In this report, pendency rate is defined as the ratio of total pending cases at the end of year to the total cases registered in that year. Arrear rate is defined as the ratio of total cases in arrears to the total pending cases. When a clear definition of normal times is not available, then cases older than 5 years are assumed to be in arrears.

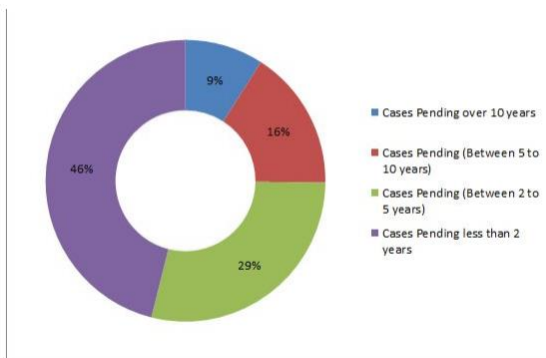


Figure Age-wise Break-up of Pendent Cases

Across the country, one in four cases (25%) is over five years old, as graphically represented in Figure. The number of cases that are over five years old continues to be alarming. The number has increased from 43 lakhs in 2015 to 63 lakhs. If one considers that five years is beyond the “normal time” for any type of case, then these are the arrears in lower judiciary.

Comparative Picture

The practices of data collection in five chosen jurisdictions are as varied as the judicial systems followed. Nonetheless, using available data, broad inferences may be drawn with the help of graphical representation given as Figure 3.5. Pendency in Indian courts, particularly for civil matters, is the highest in the benchmark jurisdictions. In appellate courts and in criminal matters, there is scope for improvement in Indian courts.

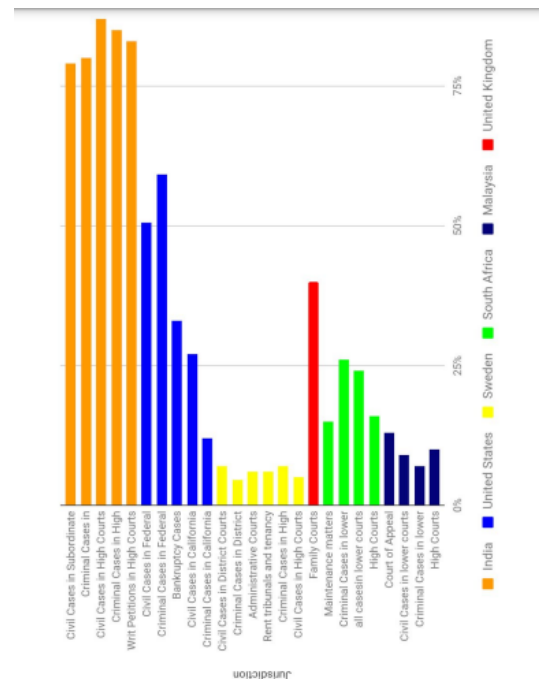


Figure Cases Pending for Over One Year, as a Proportion of Pendency

In many places, the pendency rate is below 100%. Given our definition of pendency rate, this implies that the number of cases pending is smaller than the number of cases instituted in a year. This meant that many cases that were instituted within the last year

(2015) got disposed of by the end of the reporting year, and very few, if any, older cases may be remaining. Analysis in following section substantiates this point.

CONCLUSION

Online crowd work presents endlessly fascinating conflicts of law, jurisdiction, and choice of law problems that will only become more salient as platforms become more established, more legal systems began to enforce existing regulations or pass new ones, and the legal issues around the gig economy reach an increasing number of legislatures and courts. This paper has sought, on a practical level, to work through the labyrinth of doctrinal issues, using the available toolkit of private international law and its intersection with nationally-based labour and employment laws. The analysis, however, only serves to point out the shortcomings of the existing laws and approaches. Working through the maze of corporate compliance concerns and labor standards issues that global crowdwork has created exposes far deeper fault lines in the territorial-based approach to labour and employment law.

As long as the focus for regulation remains on “workplaces,” and physical locations where work is performed, effective regulation of crowdwork will remain elusive. There will be no easy answers for what law to apply to TaskRabbit, Upwork, or Chatterbox. Rather than focus on geographical approaches, this paper has tried to marshal a number of suggestions, looking at extraterritorial applications of law, sectoral regulation, and the soft law of

corporate codes of conduct, to provide the possibility for ways forward.

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