

According to the **sec 2(k) of the industrial dispute Act, 1947**, the definition of **Industrial dispute** is given as follows:—

“industrial dispute” means any dispute or difference between employers and employees or between employees and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person;

Workmen of IS Institution vs IS Institution — Although, the definition of Industrial dispute does not contain the word industry, but it is necessary that such dispute shall have arise in the industry. *SC held that the word ‘Employers and Workmen’ used in the definition of Industrial dispute has made it necessary to use in Industry.*

Basis	Individual dispute	Industrial dispute
Related to	Related to any particular individual.	Related to several persons or workmen
Support	Doesn't have support of workmen or union	Have support of workmen and union.
Vesting of interest	Interest of only one person vested in it	Interest vested among several persons

Newspaper Ltd. vs State Industrial Tribunal, UP — a matter related to promotion of any person is an individual dispute.

Individual dispute becomes Industrial dispute when it is supported by — *sufficient number of workmen, Any trade union, or Any other body.*

Newspaper Ltd. vs State Industrial Tribunal, UP and **State of Bihar vs Kripashankar Jaiswal** — when a dispute raised by sufficient number of workmen or by any trade union is Industrial dispute.

Sec 2A — *Where any employer discharges, dismisses, retrenches, or otherwise terminates the services of an individual workman, any dispute or difference between that workman and his employer connected with, or arising out of, such discharge, dismissal, retrenchment (छटनी) or termination shall be deemed to be an industrial dispute notwithstanding that no other workman nor any union of workmen is a party to the dispute.*

Atlas Cycle Industries vs PN Thukral — the provision of 2A is lawful and any dispute between individual workman and management can be considered as industrial dispute. **Madras High Court** has same view.

According to the **sec 2(j) of the industrial dispute Act, 1947**, the definition of **Industry** is given as follows:—
“industry” means any business, trade, undertaking, manufacture or calling of employers and includes any calling, service, employment, handicraft, or industrial occupation or avocation (business) of workmen;

Workmen of IS Institution vs IS Institution and **Safdarjung hospital vs Kuldeep Singh** — *SC held that, It is not proper to divide the definition of industry into two parts. Industry is conducted by a collective effort of both employer and workmen.*

Principles of determining nature of industry — *(whether any institution is industry or not)*
Principal propounded in the following cases: —

State of Bombay vs Bombay Hospital Mazdoor Sabha —

- Activity by the support of employer and workmen.
- Object is to satisfy human needs.
- Organised like business or trade.
- Not only for personal interest.

Bangalore Water Supply v/s A. Rajappa — *principles of triple test*

1. Systematic activity
2. Co-operation of employer and workmen
3. Object of production and distribution

Institution not considered as Industry —

1. Public service commission, because goods & services are not produced and distributed.
2. Law department

Institution can and can not be considered as Industry —

Considered as Industry	Not considered as Industry
<ol style="list-style-type: none">1. Private or commercial hospitals, shall be industry, if they fulfil the triple test.2. University, for those employees who comes under the definition of workmen.3. Club, if they fulfil the triple test.	<ol style="list-style-type: none">1. Government hospital, because it freely served the patients (Safdarjung hospital vs Kuldeep Singh)2. University, for those employees which do not come under the definition of workmen.3. Club, in case of Madras Gymkhana. Because object is to provide entertainment facility.

According to the **sec 2(s) of the industrial dispute Act, 1947**, the definition of **Workman** is given as follows:—
“**workman**” means any person (including an apprentice) employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be express or implied, and for the purposes of any proceeding under this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of, that dispute, or whose dismissal, discharge or retrenchment has led to that dispute.

Following persons are not included in workman —

1. Who is subject to Air force act, Army, Navy act;
2. Person employed in police service or jail service;
3. Person employed in managerial or administrative capacity;
4. Person employed in supervisory capacity draws wages exceeding Rs.10,000 (before amendment of 2010, amount was of Rs.1600) per mensem.

Person considered as workman —

head clerk in regional office - not managerial or administrator

Person who guide those who runs machine

Development officers who perform clerical work or manual or mechanical work.

Part-time employee, Teacher, Advocate, Headmaster, Priest of a Temple.

Person not considered as workman —

Branch manager of bank, Peon in non-industrial departments

Salesman, as his work is not of the nature of manual, skilled, unskilled or clerical nature.

Organisational minister and assistant minister of trade union

Private porter

Principal propounded in Burma Shell company (Burma Shell v/s Burma Shell management)

Two principal propounded for workmen by Supreme Court —

- Nature of work (basis of his prime work)
- Person not considered as workmen who look after managerial or administrative work.

According to the **sec 2(q) of the industrial dispute Act, 1947**, the definition of **Strike** is given as follows:—

“**strike**” means a cessation of work by a body of persons employed in any industry acting in combination, or a concerted (jointly) 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.

Important points —

no limit for period of strike

Strike can not be completed by absence of work

It require collective refusal of work

May Day is celebrated on 1st May.

Strike can be held in following ways —

General Strike	Symbolic Strike	Pens-down Strike	Tools-down Strike	Go-slow Strike
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PNB vs Workman — Pens down and Tools down strike is also know as **stay-in-strike**.

Lock-out —

According to the **sec 2(L) of the industrial dispute Act, 1947**, the definition of **Lock-out** is given as follows: —
“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.

Basis	Strike	Lock-out
Held by	Workmen	Employer
Opposite of	Lockout	Strike
Weapon of	Weapon of workmen to enforce their demands	Weapon of employer to force workmen to leave their demands
Ways of performance	Several ways, like pens-down etc.	No other ways
Section	2(Q)	2(L)

There are two types of strike or lock-out —

1. Legal	2. Illegal
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Legal Strike/Lock-out —

Following are the requirements for the legal strike/lock-out given under **sec 22(1) & sec 22(2) of the industrial dispute Act, 1947**: —

1. Done after giving a prior notice of **six weeks**.
2. Not done within **14 days** of such notice.
3. Not done **before** the **date mentioned** in the notice.
4. Not done during the pendency of any conciliation proceeding before the conciliation officer and within the **seven days** of termination of such proceeding.

Illegal strike/lock-out is not fulfilling the conditions given in section 22(1) / 2(2).

Results of Illegal strike

Penalty , sec 26(1) — Imprisonment upto 1 month or fine of Rs. 50 or both	Wages - Not entitled to get the wages.	Dismissal - workman can be discharged and can reappointed after the termination of strike.
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Results of Illegal lock out

Penalty , sec 26(1) — Imprisonment upto 1 month or fine of Rs. 1000 or both	Wages - Entitled to pay the wages.	Dismissal - workman can not be discharged during the illegal lock-out.
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According to the **sec 2(kkk) of the industrial dispute Act, 1947**, the definition of **Lay-off** is given as follows: —
“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.

- workmen present in industry and employer is unable to provide work within two hours of his presence, then it is deemed to be said that he is laid off for the day.

Rights of workman on lay-off —

Sec 25(c) of Industrial Dispute Act, 1947 mention about the right of workmen who are laid off.

1. A laid-off workmen is entitled to get compensation from the employer
following conditions to be fulfilled:
 - His name must be entered in the muster roll
 - He must be completed at least **one year continuous service**

- The workmen must **not be Badli or casual workmen**
- 2. The compensation shall be paid for all days (except holidays).
- 3. Compensation amount shall be equal to 50% of the total of basic, wages & dearness allowances.
- 4. Compensation is payable for a maximum period of 45 days during a period of 12 months
- 5. If Badli workmen has completed one years continuous service in the establishment then he shall be entitled to get compensation.

Workmen is not entitled to receive compensation — Sec 25(e)

1. Workman not accept alternate employment.
2. Workman is **not present** during the **working hours** in establishment for at least **one time** a day.
3. Separation from work because of strike or cessation of production.

According to the **sec 2(oo) of the Industrial Dispute Act, 1947**, the definition of **Retrenchment** is given as follows:—

“retrenchment” 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 contains a stipulation on that behalf, or
- C. Termination of the service of a workman on the ground of continued ill-health.

Elements of retrenchment —

1. The employers terminate the service of Birdman,
2. There is some reason for such termination of service,
3. The termination of service is not by the result of punishment for disciplinary action.

Following could be the reason of retrenchment —

1. More than required employees are employed,
2. Closure of any department,
3. Lack of ROMaterial,
4. Defect in machinery,
5. Natural calamity,
6. Establishment of self working machinery,
7. Economic crisis etc.

Exceptions		
- Voluntary retirement of workman	- Retirement on superannuation	- Termination of service on ill-health of workmen

Condition Precedent 25(F)		
Notice	Compensation	Notice to appropriate govt.
<ul style="list-style-type: none"> - one month with reasons - Retrenchment should be effected after the expiry of the notice period - Workmen must be paid in lieu of notice. 	<ul style="list-style-type: none"> - shall be paid at the time of retrenchment. - Equivalent to 15 days average pay for every completed year of continuous service or any part thereof in excess of 6 months. 	<ul style="list-style-type: none"> - notice in the prescribed manner to be served on the appropriate govt. or authority as may be specified by the appropriate govt. by notification in official gazette.

Procedure 25(G) —

The well recognised principle of retrenchments is **‘first come last go’** and **‘last come first go’**.

The application of this principle requires the fulfilment of following conditions —

- legal workmen	- employed in properly established industry	- belong to particular category of workmen	- no agreement contrary to above principle between the employer & workman.
- Indian citizen			

Re-employment 25(H) —

The person claiming re-employment is required —

- citizen of India	- have been severed from service by retrenchment.	- to be present after the notice of re-employment by the employer.
Basis	Lay-off	Retrenchment
Relationship	Does not terminate between workman & employer	Ceases between workman & employer
Compensation	Not always payable	Compulsory
Amount of compensation	50% of basic wages and dearness allowance	average wage of 15 days
Notice	Not required	Required
Application of ' <i>last come first go</i> '	Does not apply	Applies
Nature of reason	Temporary	Uncertain or dynamic

According to the **sec 25(o)** of the **Industrial Dispute Act, 1947**, the definition of **Closure** is given as follows: —
“closure” means permanent close down of any industrial establishment. It is done due to unavoidable reasons and previous sanction of appropriate government is taken.

Basis	Lock-out	Closure
Nature	Temporary	Permanent
Motive	Done intentionally to lower down the demands of the workmen.	Done due to reasons beyond the control of the employer
Compensation	Not payable	Average salary of 15 days for a continuous service of completed one year or part there of exceeding 6 months
End of relationship	No	Yes
Notice	Not required	Required
Sanction of appropriate govt.	Not required	Prior sanction of appropriate govt. is necessary in closer. Application for prior approval is required to be made before 90 days period.

According to the **sec 2(m)** of **The Factories Act, 1948**, the definition of **Factory** is given as follows: —
“factory” means any premises including the precincts (boundary) thereof—

- I. whereon ten or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on with the aid of power, or is ordinarily so carried on, or
- II. whereon twenty or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on without the aid of power, or is ordinarily so carried on, but does not include a mine subject to the operation of the Mines Act, 1952 or a mobile unit belonging to the armed forces of the Union, railway running shed or a hotel, restaurant or eating place.

Elements —

1. **Premises or precincts** - open space is also a factory [Bombay vs Harmoshji]
2. **Number of workers**
 - manufacturing with power 10 or more, without power 20 or more.
 - Re KV V Sharma - Film studio is considered as Factory; Canteen of cinema hall is not factory.
3. **Manufacturing process was operating** - making, altering, repairing, pumping oil, generating, printing constructing, preserving or storing in cold storage etc.

Employment of women —

1. Separate latrines & urinals.
2. Shall not clean, lubricate or adjust any part of moving machine.
3. Shall not work in any part of cotton pressing and cotton opener factory.

4. Should not lift, carry or move any load so heavy likely to cause her harm.
5. Separate facilities for washing for women.
6. Where more than 30 women workers are there, suitable rooms provided for the use of children under the age of six years of such woman.
7. No adult should work for more than nine hours a day.
8. Shall be allowed to work between 6 AM and 7 PM.
9. Female juvenile should be allowed to work between 6 AM and 7 PM.
10. Female child allow work between 8 AM and 7 PM.

Employment of young persons — sec 67 to 75

1. < 14 years of age, not allowed to work in factory.
2. >= 14 years of age, required certificate of fitness.
3. Certificate of fitness should be issued by certifying surgeon.
4. < 17 years of age, allowed to work between 6 AM and 7 PM.
5. Child shall not be employed for more than four and half hours and should work between 10 AM and 6 PM.
6. The period of work shall be limited to 2 shifts.
7. Not allowed to work if a child already worked in another factory.
8. Factory shall display and correctly maintain note is a period and work of children.
9. Factory should maintain name, nature, shift, number of certificate of children working in it.

Health— sec 11 to 20	Welfare— sec 42 to 50
<ol style="list-style-type: none"> 1. Cleanliness 2. Disposal of waste and effluents 3. Ventilation & temperature 4. Dust and fume (smoke) 5. Artificial humidification 6. Over crowding (14.2 cubic meters of space) 7. Lighting 8. Drinking water 9. Latrines and urinals 10. Spittoons (Rs. 5) 	<ol style="list-style-type: none"> 1. Washing Facilities 2. storing and drying clothes 3. sitting 4. First-aid appliances 5. Canteen 6. Shelters, restroom and lunchroom 7. Creches (शिशुगृह) 8. Welfare officer

Safety— sec 21 to 40			
<ol style="list-style-type: none"> 1. Fencing of Machinery (state of Gujrat vs Jethalal) 2. Work on or near machinery in motion 3. Employment of young person on dangerous machine 4. Striking gear and device for cutting of power 5. Self acting machines 	<ol style="list-style-type: none"> 6. Casing of new machinery 7. Prohibition of employment of women and children nearest cotton opener 8. Hoists and lifts 9. Lifting machines, chains, ropes and lifting tackles 10. Revolving machinery 11. Pressure point 12. Floor, stairs and means of access 	<ol style="list-style-type: none"> 13. Pits, slumps, opening in floors etc. 14. Excessive weight 15. Protection of eyes 16. Precaution against dangerous fumes, gases etc 17. Precaution regarding the use of portable electric light 	<ol style="list-style-type: none"> 18. Explosive or inflammable dust, gas etc 19. Precaution in case of fire 20. Power to require specification of defective parts or test of liability 21. Safety of building and machinery 22. Maintenance of building 23. Safety officers

According to the **sec 2(h)** of **The Minimum Wages Act, 1948**, the definition of **Wages** is given as follows:—
“wages” means all remuneration, capable of being expressed in terms of money, which would, if the terms of the contract of employment, express or implied, were fulfilled, be payable to a person employed in respect of his employment or of work done in such employment, and includes house rent allowance, but does not include—

- i. the value of—
 - a. any house-accommodation, supply of light, water, medical attendance, or
 - b. any other amenity or any service excluded by general or special order of the appropriate Government;
- ii. any contribution paid by the employer to any Pension Fund or Provident Fund or under any scheme of social insurance;
- iii. any travelling allowance or the value of any travelling concession;
- iv. any sum paid to the person employed to defray special expenses entailed on him by the nature of his employment; or
- v. any gratuity payable on discharge;

According to **Mc Connell**, *“Wage rate is the price paid for the use of labour”*.

According to **A.H. Hansen**, *“Wages is the payment to labour for its assistance to production”*.

Minimum wages — According to **Fair Wages Committee**, *“a minimum wages must provide not merely for the bare subsistence of life but for the preservation of the efficiency of the worker, and so it must also provide for some measures of education, medical requirements and amenities.”*

Fair Wages — According to economist **Marshall**, *“fair wages means such wages which includes wages from other occupations and which emphasise on increasing efficiency and on necessity of providing education.”*

Living Wages — According to **Fair Wages Committee**, *“the living wages should enable the male earner to provide for himself and his family not merely the bare essentials of food, clothing, and shelter but a measure of fugal comfort including education for children, protection against ill-health, requirements of essential social needs and a measure of insurance against the more important requirements including old age.”*

Power & functions of an inspector appointed under the minimum wages act — sec 19

1. Enter with such assistance (if any), in any premises or place where employees are employed.
2. Examine any person, he has reasonable cause to believe is an employee employed.
3. Require any person to give information which is in his power to give, within spec to the name address S of the person, foreign from whom the work is given or received.
4. Seize or take copies of such register, record to wages, as he may consider relevant in respect of an offense under Act, which he has reason to believe has been committed by an employer.
5. Other powers as prescribed
6. Inspector shall be deemed to be a public servant
7. Any person required to produce any document or to give information by an inspector.

Role of inspector for granting relief in case of lesser payment then minimum wages —

1. The amount paid less to the employee be paid.
2. Payment of compensation to be made which will be up to 10 times of the balance amount.

Disqualifications of office bearers under trade union act, 1926—

1. He has not attend the **age** of 18 years.
2. He has been **convicted** in any offence involving moral turpitude and sentenced to imprisonment.

Who can become office bearer —

- 1/3rd of total number or 5 of the office bearers, whichever is less, maybe office bearers who are not engaged or employed in that industry to which trade union is connected.

immunities is under trade union act —

- Criminal offence immunity sec 17
- Civil liability sec 18