MACHINERIES FOR SETTLEMENT OF INDUSTRIAL DISPUTES

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Abstract

The Industrial Disputes Act, 1947, which was enacted on the eve of Indian Independence, provides for various machineries for the settling of industrial disputes. The order of these mechanisms is adopted innately in the Act. There was a mushrooming of industries in the first five-year plan and thereafter. With the growth of industries in all sectors and in all dimensions, a natural by product was industrial disputes. It was sensed by the forefathers of our nation that, an industrial dispute would certainly take a toll on the national exchequer bringing down the *per capita* income of every citizen of India as well as throttling the economic growth of the country. Care has a consequence had to be taken to ensure that the industrial disputes do not escalate to gigantic proportions, and also to ensure that the disputes are nipped in the bud.

The machineries prevent the unwarranted increase of industrial disputes, and if at all they took place, give a framework where they could be agreeably illuminated, were accordingly created which were made accessible inalienably in the Industrial Disputes Act, 1947. The machineries for settlement are also called as adjudicating machineries whereby any dispute which either exists or is apprehended, is submitted to one of these machineries so that a peaceful settlement is arrived at between the parties litigating or the adversaries. The nation could ill afford any dispute unless and until some national interest was traded off, which would also lead to industrial unrest, wastage of man-hours and ultimately lead to a decline in the industrial production. In order to save this untoward happening, the machineries for settlement of industrial disputes were made available under the Industrial Disputes Act, 1947 so that all disputes could be amicably settled, and those which were not settled could aptly be adjudicated in the labour or industrial courts, or at times even before the national tribunal, and the interests of both the parties,

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that is the managements as well as the unions or singular workmen on the one hand, are not jeopardised.

This paper attempts to state and logically analyse the existing framework of machineries available for the settlement of industrial disputes under the Industrial Disputes Act, 1947 are e.g., Works Committee, conciliation officer, Board of Conciliation, Labour Court, Industrial Tribunal, Court of Enquiry and National Tribunal.

Key words: industrial disputes, Industrial Disputes Act 1947, labour, Labour Court, Board of Conciliation, Industrial Tribunal, Court of Enquiry

Introduction

Poverty anywhere is a threat to prosperity everywhere.

- Prof. John Galbraith

The contemporary financial setup has increased the enmity between the haves and the have-nots, and the labour disputes are often disputes where on the one hand there are workers who have minimum wages in their pockets which would last for a month, and on the other hand is a powerful employer who has crores of rupees in his pockets who can afford a litigation for years together.

The advent of the Doctrine of a Welfare State has cast a responsibility on the State to vigorously work for the prevention of industrial disputes as the strains on an economy could lead to irreparable losses. The old Doctrine of 'Laissez Faire' has become obsolete today in the present social economic context mainly due to the reason that the State has been an active participant to protect the interests of the weaker sections of the society who always look upon the State as their mercenary. The traditional 'theories of hire and fire' as well as the 'theories of supply and demand' are thus become outmoded in the present-day social economic context.

Thus, there is an immense responsibility on the State to work upon a system where the prevention of industrial disputes assumes prime importance, and lessens the strains on economy, which lead to irreparable losses. Thus, under the Doctrine of Welfare, the State thought it wise to bid goodbye to the Doctrine of Hire and Fire, and help the economy gather good momentum in the changed social economic setup. Even otherwise, it's everyone's

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duty to cast upon the State to protect the weaker sections of the society who cannot protect themselves.

The Preamble of the Constitution of India has enshrined its goals as social and economic justice to be achieved by every Indian. At present, unquestionably, the goal of the State is to achieve economic and social justice for everyone.

Thus, to implement the abovementioned goals, the legislators of our Nation contemplated upon a system to adjudicate the industrial disputes peacefully through arbitration or other means, fairly and consistently, without departing from the established principles.

Accordingly, the Industrial Disputes Act, 1947(hereinafter referred to as "the I.D. Act") provides for mechanism for the settlement of industrial disputes. The main objective of the I.D. Act is to resolve disputes in a cordial manner. The industrial field is subject to various stresses and strains and thus one of the principal aims of the I.D. Act is to harmonize the conflicting interests of employers and employees. The method of solving the conflicting claims is adopted inherently in the I.D. Act.

Underlined rationale behind the industrial jurisprudence

Industrial jurisprudence is guided by altered philosophy, outlook and approach in the task of resolving and settling the disputes between rival adversaries who can by no stretch of imagination be called as comparable rivals. The reason for this is quite simple as the dispute is mostly between the haves and have-nots.

To harmonize the conflicting interests of capital and labour thus invites a broad outlook which is different from the norms of refined existence. The industrial law has to cater to the needs of the workmen and has to understand that in it lies the faith of the unskilled workers. It is the last shelter where the industrial worker will take refuge and thus humane approach is necessary to narrow down the differences to a minimum extent.

Resolving a dispute is an art which requires a new philosophy, outlook and attitude in the changing scenario of the present-day social needs and demands. The only parameters of justice equity in good conscience were no doubt okay in yesteryears but today what is required is a change in the outlook especially in an era of globalization to solve the present-day needs and demands of both, the management as well as the labour.

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The task of resolving industrial disputes incorporates the assignment of narrowing down the contrasts between the laborers and also the desires of the administrations to the base degree and to guarantee that an agreeable settlement is come to. The work field is liable to different anxieties and strains. The weight which is worked in by the specialists on their particular exchange associations and the weight which is developed by the administrations and the investors on its officers, participate in the quest for settling the distinctions which is a to a great degree fragile assignment.

To resolve any dispute, the five senses are not enough unless the 'common sense', being the sixth sense is brought into play. The prudence has to be applied at every step of resolving a dispute, and it's not only the brain, but the heart that needs to be taken into consideration as well. The fact that there is rich employer on one end and the poor workmen on the other, makes it magnificent to apply the above in proportion. It is said that, one cannot change things differently, unless one sees things differently and thus what is needed is a different approach in the present-day an era of globalization.

The Industrial Disputes Act, 1947: A pragmatic approach

India is not only diverse in traditional sense, but also in its work culture, where the foreign nationals also work, infused with the Indian workforce. The multinationals entering in the Indian peninsular have represented a different spectra of problems altogether. The foreign nationals who mostly have capitalist mindset and have deeply embedded in their minds the 'hire and fire' approach are unmindful and oblivious of the pathetic conditions in which the Indian labour has risen, has waged a relentless battle against the ruthless labour practices which have exploited the labour, and who have earned the various rights under available under various labour legislations.

The alleged multinational approach of having a magic wand to eradicate all these rights, step-by-step is unappreciated by all labour unions, which has further put strains on the employer-employee relationships. Thus, industrial adjudication requires a pragmatic rather than a dogmatic approach to the problems which will affect the entire social existence of not only the managements and labour but India in general.

With the abovementioned objectives, the Government of India took steps to have an ingrained system to resolve the industrial disputes. The aim of these established authorities is to prevent

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such disputes, primarily and if, they do happen, then resolving them amicably.

The Works Committee: An Appropriate authority for settlement of industrial disputes

For the settlement of industrial disputes under the I.D. Act formulation of the Works Committee has been provided in section 3.[1]

Section 3 of the I.D. Act empowers the appropriate Government to constitute Works Committee in an industrial establishment employing hundreds or more workmen. Commotion on the shop floor, fights between workmen, the management taking cudgels against the union on trivial matters and a scenario of a tug of war prevails in every establishment even today.

Thus, it was thought by the framers that an inherent system should be present in the I.D. Act which will take care of the day-to-day skirmishes which an industry is subjected to. The Works Committee thus has representatives of both of the employer and the workmen in equal numbers. The representatives of the workmen are required to be chosen in the manner prescribed by the rules from amongst the "workmen engaged in the establishment and in consultation with their registered trade union if any".

In State of Maharashtra, where there is a recognized union for any undertaking, under any law, for the time being in force, then the

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[1] "**Section 3** of Industrial Disputes Act, 1947:

(1) In the case of any industrial establishment in which one hundred or more workmen are employed or have been employed on any day in the preceding twelve months, the appropriate Government may by general or special order require the employer to constitute in the prescribed manner a Works Committee consisting of representatives of employers and workmen engaged in the establishment so however that the number of representatives of workmen on the Committee shall not be less than the number of representatives of the employer. The representatives of the workmen shall be chosen in the prescribed manner from among the workmen engaged in the establishment and in consultation with their trade union, if any, registered under the Indian Trade Unions Act, 1926 (16 of 1926).

(2) It shall be the duty of the Works Committee 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."

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recognized union is empowered to appoint its nominees to represent the workmen who are engaged in such undertaking.

The duty of the Works Committee is fairly simple and its basic function is to ensure that industrial peace is maintained and trivial matters do not escalate and create industrial disputes of a magnified nature. The Works Committee thus has to promote measures for securing and preserving amity and good relations between the employers and his workmen with regard to matters of common interest. There are also supposed to comment on such matters keeping in mind the final object that industrial peace is to be achieved and any dispute of whatsoever nature is to be solved peacefully. The Works Committee fails in its duties it can take the assistance of the other authorities available under the I.D. Act.

In, *S. Valaiyapathy v. Indian Overseas Bank, Rep. by its Chairman and Managing Director*[2], it was held,

> "If Works Committees are formed by the appropriate Governments as per section 3 of the Industrial Disputes Act; the participation of outsiders can be effectively prevented. Therefore, taking into consideration of the above position, this Court suggests to the appropriate Governments to enforce section 3 of the Industrial Dispute Act, 1947 by constituting Works Committee under section 3 of I.D. Act[3] in all the establishments. The intention of the Parliament to introduce Section 3 of I.D. Act is to remove causes of friction between employer and workmen in the day to day working establishment and to promote measures in securing amity and good relationship between them. It is intended for voluntary settlement and to provide 'indoor management' to the establishment without interference of the outsiders."

In the interest of workers and the management, to keep amicable relations between them, to create peaceful atmosphere and to improve harmonious and constructive relations between the employer/management and employees/staff in the establishments, the following is the gist of suggestions which transpire from various judgements which are given to the appropriate Governments:

- "To enforce section 3 of the I.D. Act by the appropriate Governments by constituting Works Committee consisting

[2] 2014 (140) FLR 373.
[3] The Industrial Disputes Act, 1947.

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of representatives of employers and workmen engaged in the establishment."

- "To amend the provisions of sections 6 and 22 of the Trade Unions Act curtailing outsiders being elected as members as well as office bearers of association/union."

The task of these committees is "to smoothen the frictions that might arise between workmen and the management in day to day work." By no stretch of imagination is the Works Committee to decide the questions wherein important matters such as, alteration in the conditions of service by rationalization is included. The duty of the Works Committee does not extend to anything more than making suggestions and to make an endeavour to compose material differences. The function basically is to keep the shop floor as well as the industry free from any differences which could escalate into major disputes, and to make an attempt to nip every dispute in the bud by resorting to peaceful discussions across the table.

In *Bharat Petroleum Corporation Ltd. v. Bharat Pal*[4], it was held,

> "It is clear that the policy of the Act is to secure and preserve good relations between the employers and their workmen and to maintain industrial peace and harmony. It is with this object that section 3 of the Act contemplates the establishment of the Works Committee whose duty it is to promote measures for securing and preserving amity and good relations between the employers and the workmen. It the Works Committee is unable to settle the disputes arising between the employer and his workmen, conciliation officers and the boards of conciliation offer assistance to the parties to settle their disputes."

The appropriate Government or any officer of authority to whom the power under section 39 of the I.D. Act is entrusted, may after making necessary enquiries "dissolve any Works Committee at any time, by order in writing provided he is satisfied that the committee has not been constituted in accordance with the rules or that not less than two thirds of the number of representatives of workmen have without any reasonable justification, fail to attend three consecutive meetings of the committee or that the committee has ceased to function for any other reason," thus defeating the very purpose for which the Works Committee was formed in industrial law.

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[4] 2013(136) FLR 598 (Delhi HC).

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Veracity of the success of Works Committee

The Works Committee has not met with much success as was contemplated at its formation. The problem is with the mindset of the managements as well as that of the unions. The officers in the management think it is too degrading on their part to discuss issues relating to the industry with the members of the Works Committee, and their suggestions are looked down upon or even ridiculed.

The problem is of '*id-egos*' of the part of officers of the managements, which are too massive to be broken. There is apathy on the part of the management to consult the Works Committee and they more often than not make their suggestions a subject of ridicule, ie the hostile attitude adopted by the managements which use the Works Committee as a tool to undermine the suggestions of their workers and demoralize them making them understand their level of incompetence at every step of the discussions.

The trade union leaders have also contributed their bit, frustrating the pious motive with which the Works Committee was formed. The trade union leaders think that they would be wiped off tomorrow if the Works Committee succeeds in its ventures. They ensure that the management to does not give importance to the suggestions of the members of the Works Committee, so that certain trivial matters can be included in their charter of demands. In short, most of the Works Committees in India has yet to see the light of the day in terms of real success.

Conciliation officers and the art of conciliation

'Conciliation' is an endeavor by a third-party using the various modes of mediation, suggestions or advice to help the rival adversaries reach a settlement of a dispute. This is truer when the rival adversaries are an employer versus an employee. The word 'conciliation' is a derivative of the word 'to reconcile' which means to settle by bringing together. Conciliation is a process whereby an official mediation is sought and an attempt is made to settle the dispute.

The industrial world, especially in India is a world full of turbulences and day in and day out there are industrial disputes occurring in all corners. If we envisage an India, wherein in every industry there is some industrial dispute going on and where the employees have filed umpteen number of cases against the management, it would not be out of place to state that India

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would then cease to be a country and become a Court, wherein half the Indians have filed litigations against remainder of the half. This certainly is not in tune with the idea of a welfare state as is enshrined in the Constitution of India.

On the other hand, we cannot think of a situation in India, wherein no Indian employee would file a case raise a dispute against its management. Whenever there are humans, there are bound to be disputes, and this becomes the entire true where the humans are divided into two classes, the haves and the have-nots. The tug of war then begins and each party thinks that they should have a larger share of the cake. When this is not possible the byproduct is an industrial dispute in industries.

Conciliation is a process in which a negotiation is commenced toward settling of an industrial dispute and kept going through the participation of a conciliation officer. He plays the role of a friend, philosopher, mentor, guide and *Guru* for both the parties and helps them to come to an amicable settlement by settling their differences. The natural forces it is said of the true healers of the disease he creates a fertile ground for these natural forces to act and react and makes an endeavor to ensure that an amicable settlement is reached.

Section 4 of the I.D. Act gives an authority "to the appropriate Government to appoint conciliation officers who are charged with the duty of mediating in and promoting the settlement of industrial disputes".[5]

The appropriate Government is empowered to appoint such number of officers as it thinks fit and charged them "with the duty of mediating in promoting the settlement of industrial disputes". A conciliation officer can be appointed in respect of a specified area or a specified industry, either permanently or for a limited period, but not to perform any quasi-judicial function.

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[5] "**Section 4** of the Industrial Disputes Act, 1947 reads that:

(1) The appropriate Government may, by notification in the Official Gazette, appoint such number of persons as it thinks fit, to be conciliation officers, charged with the duty of mediating in and promoting the settlement of industrial disputes.

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

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Besides persons appointed under section 4 of the I.D. Act there are others too who could perform the same job, and qualify themselves as conciliation officers. However, the settled precedents on this aspect differ.

There is no fixed straight jacket formula for conciliation, and thus it is an art which may differ from person to person. The process of conciliation is not rigid and is also not expected to be rigid as the medicine should suit the patient. The conciliation officers should be aware of the medicine as well as the patients, as regards what would best suit them. The conciliation officer has to have a tactful handling of any situation, with a tinge of diplomacy and prevent a situation many times from taking a serious turn. He is to have the SWOT analysis of either of the parties are ready in his mind so that he can weigh the strengths, weaknesses, opportunities and threats, of each other against the strength of each other and ultimately ensure that both get a feeling of a a win-win situation and then an amicable settlement is signed, with a smile on the face of rival adversaries. The conciliation officer is to understand and appreciate the difficulties of the other and at the same time as to balance the rival claims and engage in a delicate task of reaching an amicable settlement. Conciliation is thus an art.

In *Workers of Buckingham and Carnatic Co v. Commissioner of Labour and Ors.*,[6] it was held,

> "Conciliation is more or less a matter of negotiation between the parties. The function of a conciliator is to bring the management and the workers together with a view to enter into discussions on the points in dispute and to discover means of settlement acceptable to both. Under the Industrial Disputes Act the conciliation officer is an independent agency created with a view to promote industrial peace by making available Governmental facilities in the process of collective bargaining. His presence and participation at the discussions does often facilitate an objectivity of approach in the matter of the bargain between the management and the labour."

In the words of Sinha, J. in *Royal Calcutta Golf Club Mazdur Union v. State of West Bengal and Ors.*,[7]

> "The main task of the conciliation officer is to go from one camp to the other and find out the greatest common measure of agreement. He has to investigate the dispute and do all such

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6 1964 1 LLJ 253 (Kar).

7 1957 1 LLJ 218 (Cal).

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things as he thinks fit for the purpose of inducing the parties to arrive at a fair and amicable settlement of the disputes. Therefore, when there is an industrial dispute brought up for conciliation at the instance of one union, that union is no doubt the bargaining party. But the bargain being made with the assistance of the conciliation officer can be expected to be fair to all the workers including those who are not members of the union. It is this principle that distinguishes a mere settlement between one union and the management by direct approach, and a settlement reached after conciliation."

The role assigned to the conciliation officer was again discussed in, *Workers of Buckingham and Carnatic v. Labour Commissioner*[8] wherein,

"The pivotal role assigned to the conciliation officers under the Industrial Disputes Act, 1947 is like an independent agency, created with a view to promote industrial peace by making available Government facilities in the process of collective bargaining to stop the main task of the conciliation officer is to go from one camp to another and find out the greatest common measure of agreement. He has to investigate the dispute and do all such things as it thinks fit for the purpose of inducing the parties to arrive at a fair an amicable settlement of the dispute."

Section 11 provides that "a conciliation officer may, for the purpose of enquiries into existing or apprehended industrial disputes, after giving a reasonable notice, enter the premises occupied by an establishment to which the dispute relates."

Under the provisions of section 11(4) of the I.D. Act, "conciliation officer, make call for and inspect any document which he has grounds to consider being relevant to an industrial dispute, in respect of production of documents, conciliation officer has the same powers vested in a civil court under the Code of Civil Procedure."

Section 12 lists down the duties of a conciliation officer as per which he "shall hold conciliation proceedings in the prescribed manner".[9]

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8 AIR 1964 Madras 538.

9 "**Section 12** of the Industrial Disputes Act, 1947:

(1) Where any industrial dispute exists or is apprehended, the conciliation officer may, or where the dispute relates to a public

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In the case of, *The Management of Tata Consultancy Services Limited v. Selvinth Ganesh Joshua and Ors,*[10] it was discussed that whether the conciliation officer is competent to determine the status of an employee in the light of definition under section 2 (s) of the I.D. Act. On the bare perusal of section 12, it is crystal clear that the conciliation officer is obliged to consider only bringing about settlement of the dispute, after proper investigation and also examining other matters necessary for settlement of the dispute, by inducing the parties to come to a fair and amicable settlement. No adjudication is involved in conciliation process, as conciliation can be achieved only by inducing the parties to come to a fair and amicable settlement. If a party to the dispute questions the status of the complainant that the employee is not a workman under the definition of section 2 (s) of the I.D. Act, the conciliation officer may not proceed with the matter for adjudicating the issue of status of the employee. The conciliation

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utility service and a notice under Section 22 has been given, shall hold conciliation proceedings in the prescribed manner.

(2) The conciliation officer shall, for the purpose of bringing about a settlement of the dispute, without delay, investigate the dispute and all matters affecting the merits and the right settlement thereof and may do all such things as he thinks fit for the purpose of inducing the parties to come to a fair and amicable settlement of the dispute.

(3) "If a settlement of the dispute or of any of the matters in dispute is arrived at in the course of the conciliation proceedings the conciliation officer shall send a report thereof to the appropriate Government or an officer authorized in this behalf by the appropriate Government together with a memorandum of the settlement signed by the parties to the dispute.

(4) If no such settlement is arrived at, the conciliation officer shall, as soon as practicable after the close of the investigation, send to the appropriate Government a full report setting forth the steps taken by him for ascertaining the facts and circumstances relating to the dispute and for bringing about a settlement thereof, together with a full statement of such facts and circumstances, and the reasons on account of which, in his opinion, a settlement could not be arrived at.

(5) If, on a consideration of the report referred to in sub- Section (4), the appropriate Government is satisfied that there is a case for reference to a Board, Labour Court, Tribunal or National Tribunal, it may make such reference. Where the appropriate Government does not make such a reference it shall record and communicate to the parties concerned its reasons therefore.

(6) A report under this section shall be submitted within fourteen days of the commencement of the conciliation proceedings or within such shorter period as may be fixed by the appropriate Government: Provided that, subject to the approval of the conciliation officer, the time for the submission of the report may be extended by such period as may be agreed upon in writing by all the parties to the dispute."

10 2015-2-LW127.

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officer can proceed with the reference for settlement, only in the event, both the parties are in agreement with the status of the employee making the reference that he is a workman.

Categories of settlement made before conciliation officer

The word 'settlement' describes arriving at a solution which is agreeable by both the parties involved in the dispute. It is then when both the parties were incapable of arriving at an arrangement without disrupting the peace. It is one of the duties of the conciliation officer to ensure that there is industrial peace and there is a minimization of industrial disputes, if not a total elimination. The conciliation officer thus as to induce the parties before it and reach an amicable settlement which is agreeable to both the parties.

The two categories of settlement made before a conciliation officer can be deciphered from section 2(p) as well as section 18 of the I.D. Act, 1947 as follows:

- "One which is arrived at in the course of conciliation proceedings that is which is arrived at with the assistance and concurrence of the conciliation officer who is duty bound to promote right settlement and to do everything he can do to induce the parties to come to a fair and amicable settlement of a dispute."
- The other is "a written agreement between the employer and workmen arrived at otherwise than in the course of conciliation proceedings does the conciliation proceedings leading to a settlement by the conciliation officer are covered in the first part". It is in the feeling of a tripartite settlement wherein the entry foes constitute to parties and the mollification officer the third one. This tripartite settlement, according to the mollification officer is a correct settlement as that is statute itself throws an obligation on the placation officer to make strides on the off chance that he witnesses or captures a mechanical debate. This sort of a settlement is an obligation forced under area 12 (3) of the Industrial Disputes Act, 1947 and if at all settlement is touched base at over the span of appeasement procedures, the placation officers might get a reminder marked by the gatherings to the debate and send it to the suitable expert.

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It was held in *Bennett Coleman and Co. Ltd. v. State of Bihar and Ors.,*[11]

> "Settlement is defined under section 2 (p) to be a settlement arrived at in the course of conciliation proceedings and includes a written agreement between the employer and the workmen otherwise than in the course of conciliation proceedings. The recommendations of the Wage Board are thus neither an award nor a settlement in terms of the provisions under the I.D. Act."

Failure Report

The process of conciliation no uncertainty is an undertaking towards having a friendly settlement, which could be marked by both the gatherings with the intercession of the pacification officer. In any case, infrequently both the gatherings take such inflexible stances that it is not just troublesome however incomprehensible for the appeasement officer to influence them two to consent to a genial settlement. Now and again one-party is tough to the point that it can purchase the time, bear to sit idle and keeping in mind that away the time in order to influence the other party to destroy simultaneously. This kind of a corrupt reasoning is viewed as a methodology by one of the gatherings who wind up in a superior dealing position. These components therefore keep the pacification officer from achieving a pleasing settlement to both the gatherings. The appeasement officer at that point is left with no other option yet to pass a report under section 12 (4) of the I.D. Act which is all the more prevalently called as a Failure Report, which is then sent to the Government.

The Failure Report under section 12 (4) includes:

- "Steps taken by the conciliation officer for ascertaining the facts relating to the dispute;
- Steps taken by the conciliation officer for ascertaining the facts relating to the dispute;
- Steps taken by the conciliation officer to bring about a settlement;
- Reasons for which the settlement could not be arrived at."

As the conciliation of service appointed by the appropriate Government, the Failure Report is sent by him to the appropriate Government. The appropriate Government then considers the Failure Report so made and if it is satisfied that there is a case for

11 2015 (2) SCALE 571.

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adjudication it may refer the dispute to a Board, Labour Court, Tribunal or National Tribunal. This act of referring a dispute is called as a 'reference'.

In *BN Elias and Co. Private Limited v. GP Mukherjee*[12] it was held,

> "The Government after considering the report of conciliation officer may make reference of the dispute to the other bodies mentioned in the Act. But under section 10 which deals with the reference of disputes to other bodies, there is nothing to indicate that the Government has to wait for the report of the conciliation officer before acting under the provisions of that section."

Board of Conciliation: A magnified conciliation

Section 5 of the I.D. Act gives that, the fitting Government may constitute a Board of Conciliation to promote a settlement of a modern debate. A Board of Conciliation can be depicted fairly as an amplification of appeasement officer as respects the way toward advancing a settlement of a mechanical question.[13] The Board should be constituted if a mechanical question exists or is secured. Be that as it may, the Board is liked to placation officer just where the debate includes confounded inquiries requiring uncommon treatment and in addition where the laborers of the class are in world.

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12 AIR 1959 CAL 339 DB.

13 "**Section 5** of the Industrial Disputes Act, 1947 reads as follows:

(1) The appropriate Government may as occasion arises by notification in the Official Gazette constitute a Board of Conciliation for promoting the settlement of an industrial dispute.

(2) A Board shall consist of a Chairman and two or four other members, as the appropriate Government thinks fit.

(3) The Chairman shall be an independent person and the other members shall be persons appointed in equal numbers to represent the parties to the dispute and any person appointed to represent a party shall be appointed on the recommendation of that party: Provided that, if any party fails to make a recommendation as aforesaid within the prescribed time, the appropriate Government shall appoint such persons as it thinks fit to represent that party.

(4) A Board, having the prescribed quorum, may act notwithstanding the absence of the Chairman or any of its members or any vacancy in its number: Provided that if the appropriate Government notifies the Board that the services of the Chairman or of any other member have ceased to be available, the Board shall not act until a new Chairman or member, as the case may be, has been appointed."

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The Board of Conciliation "shall consist of a Chairman and two or four other members as the appropriate Government thinks fit. The Chairman shall be an independent person while the other members of the board shall represent the parties in equal numbers." Mostly they are the representatives of the employers and employees, which can be represented through their trade unions. The appointment of the members shall be on the recommendation of the party concerned. On failure of a party to make its recommendations to the appropriate Government it is empowered to appoint suitable persons to represent that party.

The quorum for conducting proceedings is to where the strength is three and three were the strength is five. A Board having the prescribed for is empowered to act even if the Chairman or any of its members are absent. However if the appropriate Government have notified that the services of the Chairman or any member have ceased to be available, the Board shall not conduct its proceeding until the appointment of a new Chairman or members. The duties of the Board are similar to those of the conciliation officer but the members of the Board act in a judicial capacity and have more powers than those possessed by a conciliation officer.

There have been many awards passed by the Board of Conciliation e.g., *the Kalelkar Award* for celebration employees, *the Shastri Award* for bank employees, *the Shetty Award* for judicial officers etc., the body usually decides upon service conditions which would be applicable in some craft or an industry as a class.

It was held in, *TaraniSarmah v. Numaligarh Refinery Ltd.*,[14]

> "Section 10 of the Act provides for making a reference of industrial disputes to a Board of Conciliation, Labour Court or Industrial Tribunal. To be more specific, Section 10(1)(c) says that where the appropriate Government is of the opinion that any industrial dispute exists or is apprehended, it may at any time by order in writing refer the dispute or any matter appearing to be connected with or relevant to the dispute to a Labour Court for adjudication. A careful reading of the said provision would show that no period of limitation has been prescribed for making a reference u/s. 10 of the Act. The phrase "at any time" appearing in that section is co-relatable to the existence or apprehension of an industrial dispute in the opinion of the appropriate Government. Therefore, as long as in the opinion of the appropriate Government, an industrial dispute exists or is apprehended, it would be within the

[14] 2014 (5) GLT 150 (Gauhati).

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competence of the appropriate Government to make a reference under Section 10 of the Act."

Section 13 of the I.D. Act depicts the duties of the Board.[15]

Constitution of Court of Inquiry

Section 6 of the I.D. Act empowers the appropriate Government to constitute a Court of Inquiry as occasion arises, for the purpose of inquiry in to any matter appearing connected with or relevant to an industrial dispute.[16] The idea of Court of Inquiry has been

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15 "**Section 13** of the Industrial Disputes Act, 1947:

(1) Where a dispute has been referred to a Board under this Act, it shall be the duty of the Board to endeavor to bring about a settlement of the same and for this purpose the Board shall, in such manner as it thinks fit and without delay, investigate the dispute and all matters affecting the merits and the right settlement thereof and may do all such things as it thinks fit for the purpose of inducing the parties to come to a fair and amicable settlement of the dispute.

(2) If a settlement of the dispute or of any of the matters in dispute is arrived at in the course of the conciliation proceedings, the Board shall send a report thereof to the appropriate Government together with a memorandum of the settlement signed by the parties to the dispute.

(3) If no such settlement is arrived at, the Board shall, as soon as practicable after the close of the investigation, send to the appropriate Government a full report setting forth the proceedings and steps taken by the Board for ascertaining the facts and circumstances relating to the dispute and for bringing about a settlement thereof, together with a full statement of such facts and circumstances, its findings thereon, the reasons on account of which, in its opinion, a settlement could not be arrived at and its recommendations for the determination of the dispute.

(4) If, on the receipt of a report under sub-section (3) in respect of a dispute relating to a public utility service, the appropriate Government does not make a reference to Labour Court, Tribunal or National Tribunal under Section 10, it shall record and communicate to the parties concerned its reasons therefor.

(5) The Board shall submit its report under this section 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: Provided that the appropriate Government may from time to time extend the time for the submission of the report by such further periods not exceeding two months in the aggregate: Provided further that the time for the submission of the report may be extended by such period as may be agreed on in writing by all the parties to the dispute."

16 "**Section 6** of the Industrial Disputes Act, 1947 reads as:

(1) The appropriate Government may as occasion arises by notification in the Official Gazette constitute a Court of Inquiry for inquiring into any matter appearing to be connected with or relevant to an industrial dispute.

(2) A Court may consist of one independent person or of such number of independent persons as the appropriate Government may think

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borrowed from the British Industrial Court Act, 1919. The Government can refer any single or more matters connected or relevant to the dispute or can refer the whole to the Court which can be set up irrespective of consent of parties to dispute.

Section 14 of the I.D. Act spells out the duties of the Court of Inquiry. Court of Inquiry shall "inquire into the matters referred to it and report thereupon to the appropriate Government ordinarily within a period of six months from the commencement of its inquiry. The Court of Inquiry shall inquire into the matters only if they are referred to it and not otherwise."

Labour Court: An adjudication authority under the Industrial Disputes Act, 1947

The appropriate Government has been empowered to constitute the court naming 'Labour Court' under section 7 of the I.D. Act.[17] Labour Court is one of the adjudication authorities set up under the I.D. Act; and was introduced in the Act by amending Act in 1956. The Labour Court constituted under that consists of only one person who is to be appointed by the Government to act as the deciding officer provided he fulfills the qualifications which have been laid down in the Act. The Labour Court presiding officer should "had held any judicial office in India for not less than

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fit and where a Court consists of two or more members, one of them shall be appointed as the Chairman.

(3) A Court, having the prescribed quorum, may act notwithstanding the absence of the Chairman or any of its members or any vacancy in its number: Provided that, if the appropriate Government notifies the Court that the services of the Chairman have ceased to be available, the Court shall not act until a new Chairman has been appointed."

[17] "**Section 7** of the Industrial Disputes Act, 1947:

(1) The appropriate Government may, by notification in the Official Gazette, constitute one or more Labour Courts for the adjudication of industrial disputes relating to any matter specified in the Second Schedule and for performing such other functions as may be assigned to them under this Act.

(2) A Labour Court shall consist of one person only to be appointed by the appropriate Government.

(3) A person shall not be qualified for appointment as the presiding officer of a Labour Court, unless-

(a) He is, or has been, a Judge of a High Court; or

(b) He has, for a period of not less than three years, been a District Judge or an Additional District Judge; or

(c) He has held any judicial office in India for not less than seven years; or

(d) He has been the presiding officer of a Labour Court constituted under any Provincial Act or State Act for not less than five years."

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seven years", is one of the requirements for becoming a Labour Court. The interpretation of the word 'judicial office' has not been free from controversy.

It was held in, *Statesmen Private Limited v. H.R. Deb*[18],

> "The expression holding a judicial office signifies more than discharge of judicial functions. The phrase postulates that there is an office and that office is a judicial office means a fixed position for performance of duties".

There are other officers in the Government for example the Deputy Collector who also enjoys some judicial powers but cannot be said to hold a judicial office within the meaning of the I.D. Act.

The Labour Courts are empowered to adjudicate upon industrial disputes relating to any matter specified in the Second Schedule of the I.D. Act and also can perform such other functions which an assigned to it.

As per the Second Schedule of the I.D. Actmatters within the jurisdiction of Labour Court are as follows:

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

The jurisdiction of the Labour Court under the I.D. Act can only be invoked in the manner provided in the Act a direct approach to the Labour Court by parties is not possible. However, due to some recent amendments in some states a direct approach to the Labour Court challenging the dismissal or discharge, by workmen is possible. The Labour Court also enjoys some powers like:

- creation of new rights of the parties; and
- is also empowered to appoint *amicus curiae* i.e., friend of the Court.

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18 AIR 1968 SC 1495.

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When confronted with an industrial dispute the conciliation officer tries to reach an amicable settlement. If at all the same is not possible he passes a Failure Report. Reference is then made to the Industrial Court or to the Labour Court depending on the facts of the case and the nature of the dispute.

It was held in, *Guman Singh, Workman, c/o Faridabad Kamgar Union v. Presiding Officer, Labour Court, Faridabad*,[19]

> "When a reference for adjudication of an industrial dispute is made by the Government, the Labour Court has to make determination on its merits since it cannot be rescinded nor cancelled more so when the concern workmen was not agreeing to a compromise."

While mediating a modern question the Labor Court needs to restrict its forces to the terms of the reference and on the off chance that once an adjustment, change or modification in the terms of the reference is looked for, it must be sent back to the suitable Government which will then make a corrigendum and resend the reference to the Court. That arbitration procedures as to the reference offer debate will be regarded to proceed till date when the honor that is the judgment of the Labor Court winds up enforceable. The Labor Court implies the work court which is properly delegated as per the Industrial Disputes Act and in this way a honor go by the Labor Court which isn't appropriately designated or is named in contradiction of the statutory arrangements, can be tested in a writ petition.

It is held in, *the State of Maharashtra v. Labour Law Practitioners' Association and Ors.*,[20]

> "Article 235 provides that the control over district Courts and Courts subordinate thereto shall be vested in the High Court; and Article 236 defines the expression 'District Judge' extensively as covering judges of a city civil Court etc., as earlier set out, and the expression 'judicial service' as meaning a service consisting exclusively of persons intended to fill the post of the District Judge and other civil judicial posts inferior to the post of District judge. Therefore, bearing in mind the principle of separation of powers and independence of the judiciary, judicial service contemplates a service exclusively of judicial posts in which there will be a hierarchy headed by a District Judge. The High Court has rightly come to the

[19] 2003 (98) FLR 591 (P&H HC).
[20] AIR1998SC1233.

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conclusion that the persons presiding over Industrial and Labour Courts would constitute a judicial service so defined. Therefore, the recruitment of Labour Court judges is required to be made in accordance with Article 234 of the Constitution."

An issue usually crops up, as to, does the jurisdiction of the Labour Court exist even when workmen is not dismissed or discharged. This was answered by the Honorable Bombay High Court in, *Uttam Baban Abhang v. Durwani Karmachari Sahakari Patsansth Maryadit and Ors.*,[21]

"The ratio laid down by the Apex Court in the case of *Hindustan Lever v. Ashok Vishnu Kate*[22] clearly, therefore, lays down the law that even at the penultimate stage i.e., prior to the issuance of the order of dismissal, the Labour Court will have the jurisdiction to entertain a complaint under section 28(1) read with item (1) of Schedule IV of the State Act."

It was held by the Delhi High Court in, *Shivji Sharma v. Secretary (Labour) and Ors.*,[23]

"It, therefore, is clear that the Labour Court has the power and jurisdiction to give any such relief as the circumstances of the case may require on reaching to the conclusion that the order of discharge or dismissal of a workman was not justified. Therefore, the Labour Court has passed its order in exercise of power under Section 11A of the Industrial Disputes Act.[24] Moreover, in catena of judgments, one of which has been cited

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21 2015 Lab IC 4132.

22 AIR 1996 SC 285.

23 2015 (146) FLR 537.

24 "**Section 11A** of the Industrial Disputes Act, 1947 reads as under: Powers of Labour Courts, Tribunals and National Tribunals to give appropriate relief in case of discharge or dismissal of workmen-

> Where an industrial dispute relating to the discharge or dismissal of a workman has been referred to a Labour Court, Tribunal or National Tribunal for adjudication and, in the course of the adjudication proceedings, the Labour Court, Tribunal or National Tribunal, as the case may be, is satisfied that the order of discharge or dismissal was not justified, it may, by its award, set aside the order of discharge or dismissal and direct reinstatement of the workman on such terms and conditions, if any, as it thinks fit, or give such other relief to the workman including the award of any lesser punishment in lieu of discharge or dismissal as the circumstances of the case may require: Provided that in any proceeding under this section the Labour Court, Tribunal or National Tribunal, as the case may be, shall rely only on the materials on record and shall not take any fresh evidence in relation to the matter."

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by the Labour Court itself, the Supreme Court has held that the reinstatement with full back wages is not an automatic relief which is available to a workman and the Court can modify the said relief as per the facts and situations of the case."

Industrial Tribunals: The concept of compulsory adjudication

There was no provision of any adjudicatory machinery in the old Trade Dispute Act, 1929 and accordingly Tribunals were created for the first time by section 7 of the I.D. Act for the purpose of adjudicating upon industrial matters referred to them by the appropriate Government, thus introducing the concept of compulsory adjudication where voluntary negotiations, collective bargaining or mediation through the mercenary of the conciliation authorities have failed. However the original section 7 was replaced by the present sections 7A,[25] 7B and 7C by the Industrial Disputes Amendment Act 1956.

The Tribunals are somewhat different from Courts, though they have been empowered to adjudicate upon industrial disputes. The Industrial Tribunals can adjudicate upon matters in the Third Schedule of the I.D. Act and the matters within the jurisdiction of Industrial Tribunals are as follows:

- "Wages, including the period and mode of payment;
- Compensatory and other allowances;
- Hours of work and rest intervals;
- Leave with wages and holidays;
- Bonus, profit sharing, provident fund and gratuity;
- Shift working otherwise than in accordance with standing orders;

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[25] "**Section 7A.**Tribunals

(1) The appropriate Government may, by notification in the Official Gazette, constitute one or more Industrial Tribunals for the adjudication of industrial disputes relating to any matter, whether specified in the Second Schedule or the Third Schedule [55][and for performing such other functions as may be assigned to them under this Act].

(2) A Tribunal shall consist of one person only to be appointed by the appropriate Government.

(3) A person shall not be qualified for appointment as the presiding officer of a Tribunal unless-

(4) (a) he is, or has been, a Judge of a High Court; or
[56][(aa) he has, for a period of not less than three-years, been a District judge or an Additional District Judge;[57] [* * *]

(5) The appropriate Government may, if it so thinks fit, appoint two persons as assessors to advise the Tribunal in the proceeding before it."

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- Classification by grades;
- Rules of discipline;
- Rationalization;
- Retrenchment of workmen and closure of establishment; and
- Any other matter that may be prescribed.”

Under section 7A the suitable Government has been engaged to designate at least one Tribunal by methods for notice. The Tribunals has purview to arbitrate upon issues indicated in the Second and Third Schedule. Under the arrangements of segment 7A the proper Government has abundant forces to constitute a Tribunal.

The Industrial Tribunals is relegated the locale to mediate upon modern question determined in the Second and Third Schedule of the I.D. Act or "any issue giving off an impression of being associated with significant to such a debate" alluded to it under section 10 (1) (d) of the I.D. Act. It is unimportant whether any such issue having all the earmarks of being associated with or significant to the fundamental question identifies with any issues indicated in the second or the third calendar or not. The main stipulation to area 10 sets out that when a debate identifies with issues determined in the Third Schedule and isn't probably going to influence in excess of hundred laborers, the proper Government has the carefulness to influence a reference to the Labor To court.

Along these lines, while questions emerging under the Second Schedule can be arbitrated both by the Industrial Court and Tribunal, questions emerging from issues identified with the Third Schedule can be alluded for mediation to a Tribunal alone unless the case falls under temporary to segment 10 (1) (d). The word purview is of a wide undertone.

The Supreme Court clarifying the concept of jurisdiction in, *Ujjam Bai v. State of Uttar Pradesh*[26] wherein the Supreme Court clarified,

> “Jurisdiction means authority to decide. Whenever a judicial across a judicial remuneration empowered required to enquire into a question of law or fact for the purpose of giving a decision on it, it's finding thereon cannot be impeached for laterally or on an application for certiorari butter binding until reversed on appeal. When a quasi-judicial authority has jurisdiction to decide matter, it does not lose its jurisdiction by

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26 AIR 1962 SC 1621.

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> coming to a wrong conclusion whether it is wrong in law or in fact. The question whether a criminal jurisdiction depends not on the through the falsehood of the facts into which it has to enquire, or upon the correctness of its findings on these facts, but upon the nature and it is determinable at its commencement and not at the conclusion of the enquiry. If you can Tribunals comes to a right conclusion that a particular dispute is an industrial dispute, it has jurisdiction to proceed further with the adjudication of the dispute if it decides that the dispute is not an industrial dispute it can have no jurisdiction to proceed further. But if it wrongly decided the jurisdictional issue such conclusion will be unable to judicial review". The jurisdiction of an Industrial Court is circumscribed by the provisions of the I.D. Act on the terms and conditions of reference."

It was held in, *Bharat Bank Ltd v. Employees of Bharat Bank*,[27]

> "The other fundamental test which distinguishes a judicial from a quasi-judicial or administrative body is that the former decides controversies according to law, while the latter is not bound strictly to follow the law for its decision. The investigation of facts on evidence adduced by the parties may be a common feature in both judicial and quasi-judicial Tribunals, but the difference between the two lies in the fact that in a judicial proceeding the judge has got to apply to the facts found, the law of the land which is fixed and uniform. The quasi-judicial Tribunal on the other hand gives its decision on the differences between the parties not in accordance with fixed rules of law but on principles or administrative policy or convenience or what appears to be just and proper in the circumstances of a particular case.
>
> In setting the disputes between the employers and the workmen, the function of the Tribunal is not confined to administration of justice in accordance with law. It can confer rights and privileges on either party which it considers reasonable and proper, though they may not be within the terms of any existing agreement. It is not merely to interpret or give effect to the contractual rights and obligations of the parties. It can create new rights and obligations between them which it considers essential for keeping industrial peace. The Tribunal is not bound by the rigid rules of law. The process it employs is rather an extended form of the process of collective

[27] (1950) LLJ 923 (SC).

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bargaining and is more akin to administrative than to judicial function."

There are certain principles for adjudication by Industrial Tribunals, which emerge from a cursory glance at many judgments which have been time and again passed by the Apex Court as well as the various High Courts which can be summarized as follows:

- The judicial and quasi-judicial bodies require to act judicially in deciding disputes and to function within the limits prescribed by the law.
- The jurisdiction is limited to workmen as defined in section 2 (s) of the I.D. Act and also limited to the territory to which the dispute relates.
- The Tribunal in case of dismissal or misconduct does not act as a Court of appeal but it can interfere in the interest of industrial peace, there is victimization or unfair labour practice.
- The Industrial Tribunals have the jurisdiction to modify and change the terms and conditions of contract of employment if it considers them as unjust and harsh.
- The Tribunals have unfettered powers to give adequate relief prayed for by the disputants permissible under the reference made to it.
- The jurisdiction of Tribunals to direct reinstatement of a discharged and dismissed workmen in case of wrongful discharge and dismissal has now been given statutory recognition by the insertion of section 11-A by the Legislature.
- The Tribunals have wide powers to grant interim relief, which should not be of course the final relief.
- It is open for a Tribunal to impose new obligations are very the contract in the interest of industrial peace or give awards which may have the effect of extending existing agreements or making of new ones.
- The Tribunal can pass an award in the interest of social justice and also with a view to seek this and harmony between the employer and his workmen.
- Tribunals have jurisdiction to adjudicate upon all matters specified in the second or the third schedule of the I.D. Act.

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Conclusion

The machineries for settlement of industrial disputes, which are embedded in the I.D. Act itself, is a boon in itself. Since 1947, that is since the day of Indian independence there have been a few question which have held the general public at emancipate and besides aggravated the business representative connections in India. In any case, the nearness of the innate apparatuses under the I.D. Act has kept mechanical question from taking the perilous turn. It is overwhelming to envision concerning what might be the situation in India had there been no apparatuses for the settlement of mechanical debate. The debate would have made peace issues other than dissolving the business representative relations boats to a point from which there was no arrival. The machineries for the settlement of industrial disputes no doubt serve as the prime machineries however there could be other methods in which industrial disputes could be settled say, for example creation of rules wherein the relationships between the employer and the employees can be regulated to a considerable extent, e.g., adding elements to the model standing orders so that harmony can be maintained between the employer and the employees.

The Indian Labour Conference in its 15th session in 1957 evolved a Code of Industrial Discipline. The Code makes it obligatory upon the businesses and additionally the representatives to settle their question either by method for a grievance settlement apparatus, arrangements, and appeasement or even by intentional intervention. The Code sets commitments to be seen by the administration and the associations as them two over obligation towards the general public. Aggregate bartering to constitute another technique for settling modern question, however the nearness of the hardware of settlement exhibit in the Industrial Disputes Act, 1947 itself has been the prime mover for the settlement of mechanical debate since 1947.

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