CHAPTER 11

WAGE DETERMINATION THROUGH CONCILIATION AND VOLUNTARY ARBITRATION.
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The complexity in wage determination arises out of the Government's attitude of voluntarism on the one hand and of State intervention on the other. The machineries for settling wage disputes are therefore of two types, those that function without State intervention and those which provide for State intervention. Collective bargaining and voluntary arbitration come under the former category; compulsory conciliation and adjudication under the latter. Except in the case of collective bargaining, there is a third person involved in the process of dispute settlement.

Among the methods of settlement through third party intervention, conciliation is more expedient than adjudication. Conciliation involves an element of
voluntariness; it provides a forum in which the employer and employee have equal voices.

The statutory machinery of conciliation

The Industrial Disputes Act 1947 empowers the appropriate Government to appoint conciliation officers and Boards of Conciliation in order to resolve industrial disputes in a peaceful manner. However, in Jaslok Hospital and Research Centre v. Industrial Tribunal, it was held

1. A conciliation settlement is possible only if both the parties agree on its terms.
3. For definition of appropriate Government, see The Industrial Disputes Act 1947 (hereafter called in this Chapter as the Act), S. 2(a).
4. Id., S.4. It reads,
   "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..."
5. Id., S.5 reads,
   "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...

6. (1984) I L.L.J. 76 (Bom.), A strike in the hospital relating to conditions of service arose. The Government referred it to adjudication without first invoking the conciliation machinery. The tribunal awarded reinstatement of some of the workers who were being dismissed by the Management. While challenging this award in the High Court the employers raised a contention that the award itself was null and void since the conciliation proceedings were not initiated. Id., p. 81,
that the provisions relating to conciliation are not mandatory and failure to hold a conciliation would not result in the award being null and void.

The Act imposes compulsory conciliation in public utility services. If a dispute arises in a public utility service, the conciliation machinery automatically comes into action. In other cases the setting in motion of the conciliation machinery is discretionary and not automatic.

Conciliation is an attempt to bring disputants to an agreement. It offers a forum for reconciling the hostile elements. It may even serve as a process which reduces tension. The period of the conciliation may be regarded as a cooling off period. The conciliator gives recommendations and gives suggestions for settling the dispute. His duty is not to determine who is right or wrong, but to adjust the antagonistic interests of the

7. Id., S.20. In a public utility service, conciliation proceedings will commence on the receipt of the notice of strike by the conciliation officer. The section reads,

"A conciliation proceeding shall be deemed to have commenced on the date on which a notice of strike or lock-out under Section 22 is received by the conciliation officer or on the date of the order referring the dispute to a Board, as the case may be.

... ."
employer and the workers. In a nut shell,

"The conciliation process consists of a disinterested person intervening in a dispute as a well-wisher of both sides after the parties have failed to resolve their dispute by mutual negotiations. He endeavours to promote a continuing dialogue between the parties in a calm atmosphere so as to secure ultimately an agreement between them".8

The conciliation officer 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.9

The scope of conciliation is to exert pressure, in a friendly manner on the parties in order to come to a compromise. The pressures may be personal, social, political or economic.10

Conciliation proceedings may be invoked by any of the parties to the dispute. Conciliation officers may also take *suo moto* action. Though conciliation proceedings are mandatory only in public utility services, nowadays conciliation officers intervene in almost all

industrial disputes. In the course of the conciliation proceedings if a settlement is arrived at, the conciliation officer is bound to send a report to the appropriate Government. If no such settlement is arrived at, he should submit a failure report. Report by the conciliation officer is to be submitted to the appropriate Government within fourteen days of the commencement of the conciliation proceedings. Agreement arrived at in the course of conciliation proceedings is popularly known as the memorandum of settlement. When such a memorandum is drawn after a thorough discussion with the parties, it will be binding on all the parties to the dispute and

13. Id., S. 12 (4).
14. Id., S.12 (6). If the conciliation officer is hopeful of a settlement he may consider extension of the proceedings on the request of the parties to a reasonable period. However, the time taken should not exceed ninety days. See Commissioner of Labour, Government of Andhra Pradesh, Conciliation Officers' Manual (1984), p.22.
15. In Britannia Biscuit Co. Ltd. Employees' Union v. Asst. Commissioner of Labour, (1984) I L.L.J.349 (Mad.), the question was whether one of the parties to a settlement can challenge it subsequently. The Court found that the settlement was arrived at, after considering the objections of all the parties including the appellant and that the settlement, thus arrived at was valid and binding upon all the workmen in the establishment. Id., p.361 per Gokulakrishnam, J.
will be binding for such period as is agreed upon by the parties. Can a settlement arrived at between the employer and the workers which is filed before the conciliator, be regarded as a settlement under the Act, In Delhi Cloth and General Mills Co.Ltd. v. Union of India and Others, such a question arose. The Court held that a settlement must be one which is arrived at

16. S.18(3) of the Act provides, "A settlement arrived at in the course of conciliation proceedings under this Act or an arbitration award in a case where a notification has been issued under subsection (3-A) of Section 10-A ... which has become enforceable shall be binding on - (a) all parties to the industrial dispute; (b) to all other parties summoned to appear in the proceedings as parties to the dispute, unless the Board, arbitrator ... records the opinion that they were so summoned without proper cause; (c) where a party referred to in clause (a) or clause (b) is an employer, his heirs, successors or assigns in respect of the establishment to which the dispute relates; (d) where a party referred to in clause (a) or clause (b) is composed of workmen, all persons who were employed in the establishment or part of the establishment, as the case may be, to which the dispute relates on the date of the dispute and all persons who subsequently become employed in that establishment or part".

17. Id., S.19(2). It reads, "Such settlement shall be binding for such period as is agreed upon by the parties, and if no such period is agreed upon, for a period of six months from the date on which the memorandum of settlement is signed by the parties to the dispute, and shall continue to be binding on the parties after the expiry of two months from the date on which a notice in writing of an intention to terminate the settlement is given by one of the parties to the other party or parties to the settlement".

18. (1984) I L.L.J. 174 (Delhi). Even before a notice of conciliation was issued by the conciliator, the parties entered into an agreement and filed it with the conciliator.
during the time of the pendency of the conciliation proceedings. 19

**Effectiveness of the machinery**

Conciliation is a process for settling industrial disputes in a friendly manner. How far is this machinery effective in settling industrial disputes? The effectiveness of the machinery depends to a great extent on the conciliation officer. 20 The conciliation officer must create an atmosphere congenial to a free, frank and friendly discussion. The role of a conciliation officer is significant. He can,

19. The Court said,

"In our opinion, the legislature when it made a settlement binding not only on the parties but also to the present and future employers and workmen intended that such settlement is arrived at in the course of conciliation proceedings must be one which is arrived at during the time of the pendency of the conciliation proceedings. There is no pendency as admittedly the Conciliation Officer did not issue any notice for any conciliation. The settlement has also to be arrived at with the assistance of the Conciliation Officer and his concurrence".

_Id., p.178_. _per_ S.S. Chadha, J.

20. Patience, tact, perseverance, resourcefulness, sound knowledge of industry and its economics as well as fair appreciation of the working conditions of labour are qualities which go a long way in the success of a conciliation officer. See Commissioner of Labour, Conciliation Officer's Manual (1984), p.2.
work as a mediator knowing fully the pulse of both the parties and can formulate acceptable solutions. He can have talks with labour and management separately and can assess the actual extent to which the parties are prepared to go. Reaching of reasonable agreements will be more easy in his presence, if he is one with the necessary tactics, knowledge, character and expertise."

There is a general dissatisfaction about the training and experience of the conciliation officers. This has prompted the National Commission on Labour to make some suggestions for improving the quality of the conciliation officers. For improving effectiveness of conciliation officers the National Commission made the following suggestions namely,

"(i) prescribing proper qualifications for a conciliation officer and improving his quality by proper selection and training;
(ii) enhancing his status appropriately for dealing with persons who appear before him;
(iii) giving additional powers to the conciliator and
(iv) keeping him above political interference".


The drawback of this machinery is evident from the fact that most of the settlements arrived at are on minor issues. 23

The machinery has not been consistently effective in dispute resolution. 24 In the 1960's the number of successful settlements by conciliation, on an all India level, varied between 57 and 83. During the year 1974 it was 41 and in 1975 it went down to 33. 25

23. Sahab Dayal, Industrial Relations System in India (1980), p.77. Even official records available with the Labour Commissioners do not reveal a causewise settlement by conciliation. Personal discussion with the concerned Assistant Commissioners of Labour indicated that about five to ten percent of the disputes concluded before the conciliation officer in some of the districts in the State of Andhra Pradesh related to wages and other forms of remuneration. The National Commission on Labour took notice of the fact that certain employers' and workers' organisations felt that many settlements reached in conciliation were over minor issues. See Report of the National Commission on Labour (1969), p.322.


25. Ibid. However, a contrary view was expressed by the National Commission. According to them during the 1965-67 period, the percentage of settlements reached in Bihar ranged from 51 to 86; in Orissa from 27.5 to 35.8; in Assam from 65.5 to 92.3; in U.P., Punjab and Delhi, in the year 1966 the percentage of conciliation settlements was 66 and in Kerala it was 80 percent. See Report of the National Commission on Labour (1969), p.322.
In the State of Andhra Pradesh, a total number of 182 disputes were settled by the machinery in the year 1978. The number increased to 196 in 1979. However, very poor settlement rates are seen in six districts of Andhra Pradesh.

**TABLE XXVII**

Number of agreements under the Industrial Disputes Act 1947 in the State of Andhra Pradesh.*

<table>
<thead>
<tr>
<th>Year</th>
<th>Period</th>
<th>Sec.12(3) (Conciliation)</th>
<th>Sec.18(1) (Bi-lateral)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1978</td>
<td>January - March</td>
<td>34</td>
<td>15</td>
</tr>
<tr>
<td></td>
<td>April - June</td>
<td>50</td>
<td>9</td>
</tr>
<tr>
<td></td>
<td>July - September</td>
<td>54</td>
<td>16</td>
</tr>
<tr>
<td></td>
<td>October - December</td>
<td>44</td>
<td>14</td>
</tr>
<tr>
<td>1979</td>
<td>January - March</td>
<td>52</td>
<td>8</td>
</tr>
<tr>
<td></td>
<td>April - June</td>
<td>34</td>
<td>7</td>
</tr>
<tr>
<td></td>
<td>July - September</td>
<td>62</td>
<td>15</td>
</tr>
<tr>
<td></td>
<td>October - December</td>
<td>48</td>
<td>22</td>
</tr>
</tbody>
</table>


26. infra, Table XXVII
During the four years from 1981, out of 435 disputes only 2725 disputes were settled by conciliation in these districts.

The figures point to the fact that the conciliation machinery is not functioning effectively. If the subject matter of the dispute is simple, the process of conciliation may prove to be effective. The question relating to wages and other remuneration cannot be easily solved. Most of the wage disputes are complex. This complexity of the subject matter places a heavy burden on the conciliation officer.

A criticism which is levelled against the conciliation machinery is that it may pose a possible hurdle to bipartite negotiations. The parties may not play all their cards at the bipartite negotiation. They may reserve some trump cards to be played at the stage of conciliation, thinking that at the conciliation stage they may have to make some more concessions and that it is therefore wiser to reserve some for the purpose.
the three wage concepts, namely, minimum wage, fair wage and living wage.\textsuperscript{29} He must bear in mind that in an expanding national economy these concepts are bound to vary\textsuperscript{30} from time to time with the growth and development of the national economy and living standards.

The three concepts were explained by the Supreme Court in \textit{Hindustan Times Ltd. v. Their Workmen}\textsuperscript{31} thus:

"At the bottom of the ladder, there is the minimum basic wage which the employer or any industry must pay in order to be allowed to continue an industry. Above this is the fair wage, which may roughly be said to approximate to the need based minimum, in the sense of a wage which is 'adequate to cover the normal needs of the average employer regarded as a human being in a civilised society'. Above the fair wage is the 'living wage', a wage which will maintain the workman in the highest state of industrial efficiency, which will enable him to provide his family with all material things which are needed for their health and physical well-being, enough to enable him to qualify to discharge his duties as a citizen".\textsuperscript{32}

\begin{itemize}
  \item \textsuperscript{29} Commissioner of Labour, Conciliation Officers' Manual (1984), p.22.
  \item \textsuperscript{31} (1963) I L.L.J. 108 (S.C.).
  \item \textsuperscript{32} \textit{Id.}, p.112 \textit{per} Das Gupta, J.
\end{itemize}
The conciliation officer must bear in mind that the minimum wage is the lowest wage below which the efficiency of a worker is likely to be impaired. If an employer cannot maintain his business without cutting down the wages below even a subsistence or minimum wages, he would have no right to conduct his business.\textsuperscript{33}

Fair wage lies between the minimum wage which is a compulsory payment and the living wage which is the goal. In order to fix the fair wage, the Committee on Fair Wages laid down certain considerations.\textsuperscript{34} In the efforts to settle wage disputes the conciliator must ascertain whether the employees deserve the payment of fair wages and whether the employer could pay it. In the case of living wage, though it is much desired economic conditions make it only a dream for the future. The concept of living wage could be understood as the wages which would enable a worker to lead a decent life.

\textsuperscript{33} For a detailed discussion see supra, Chapter 7.

\textsuperscript{34} These were, productivity of labour, prevailing rates of wages in the locality, level of national income and the place of the industry in the economy of the country. Report of the Committee on Fair Wages (1948) para 15.

\textsuperscript{35} Hindustan Times Ltd. v. Their Workmen, (1963) I L.L.J. 108 (S.C.) \textit{per} Das Gupta, J. at p.112.
However, it is difficult to describe the contents of the living wage. It could be regarded as an idealistic concept which may materialise in the future.

Another criteria which the conciliation officer should bear in mind is the principle of industry-cum-region.\(^36\) Conciliation of wage disputes after considering all these relevant factors will make the conciliation pragmatic.

After a careful consideration of all these factors, if the conciliation officer succeeds in settling the dispute, the officer must draw up a memorandum of settlement in respect of the issues settled and submit it along with his report to the Government. In case the conciliation efforts fail, the conciliation officer is required to send a report to the Government,\(^37\) indicating the steps taken by him for ascertaining the facts and circumstances relating to the dispute and for bringing about a settlement thereof. A full statement of the facts and the circumstances and the reasons on account of which, in the opinion

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36. See supra, Chapter 9.

of the conciliation officer, the settlement could not be arrived at, should form part of the report.

In addition to the statutory report required under the Industrial Disputes Act 1947, the conciliation officer should submit a nonstatutory Confidential Report to the Government. This report is intended for the exclusive use of the Government and is meant to supplement the failure report by such information which by its nature cannot be included in the statutory report. The confidential report need not cover what has already been stated in the factual report. It is mainly intended for furnishing additional facts which the conciliation officer has in his possession along with his own comments, assessment, and recommendations. In this Confidential Report, the conciliation officer is required to state his opinion on each demand, regarding its justification and whether any of them merit reference to adjudication. In case of demands like enhancement of wages, revision of wages and other remuneration, the capacity of the establishment

38. Ibid.
40. Ibid.
to bear the additional burden along with the position in comparable industrial concerns on an industry-cum-region basis must also be discussed in the Confidential Report. 41

At the failure of conciliation, the Government may refer the dispute for adjudication. 42

41. Id., pp.34, 35.

42. Industrial Disputes Act 1947, S.10 gives the Government discretion to refer the dispute for adjudication. However, Gajendragadkar, J., in State of Bihar v. D.N. Ganguli, A.I.R.1958 S.C.1018, held,

"It is only where the conciliation machinery fails to bring about settlement between the parties that the Act contemplates compulsory adjudication of the industrial disputes by labour courts and tribunals as the last alternative". Id., p.1021.

See also infra, Chapter 13.
TABLE XXVIII

Number of settlements by Conciliation Proceedings in the six Districts in the State of Andhra Pradesh.*

(West Godavari, Krishna, Guntur, Prakasam, Nellor and Kummum Districts)

<table>
<thead>
<tr>
<th>Year</th>
<th>Total Number of Industrial Disputes</th>
<th>Number of settlements (conciliation)</th>
<th>Number of Failures</th>
<th>Otherwise settled.</th>
</tr>
</thead>
<tbody>
<tr>
<td>1981</td>
<td>69</td>
<td>4</td>
<td>22</td>
<td>43</td>
</tr>
<tr>
<td>1982</td>
<td>81</td>
<td>7</td>
<td>24</td>
<td>50</td>
</tr>
<tr>
<td>1983</td>
<td>161</td>
<td>5</td>
<td>42</td>
<td>114</td>
</tr>
<tr>
<td>1984</td>
<td>124</td>
<td>9</td>
<td>17</td>
<td>98</td>
</tr>
</tbody>
</table>

* Source: Records of the Assistant Labour Commissioner (Central), Vijayawada.
Voluntary Arbitration

Voluntary arbitration which may be regarded as an alternative method for adjudication, was an outcome of the efforts of Mahatma Gandhi in settling the disputes in the textile industry in Ahmedabad. Though resorting to this method is not obligatory on the part of the parties concerned, trade unionists support voluntary arbitration. However the number of disputes referred to voluntary arbitration is not quite promising as is revealed by the following table.

43. See Chapter 10.

44. Late Shri V.V. Giri, went a step further and said that adjudication should be done away with so as to ensure whole-hearted co-operation from the parties at a conciliation or arbitration. He observed,

"Unless compulsory adjudication is totally removed from the Statute book, lock, stock and barrel, the parties, during mutual negotiations or voluntary arbitration, will not place all their cards on the table but will reserve the 'ace' for the final game of compulsory adjudication".

TABLE XXIX

Number of Industrial Disputes referred to Conciliation, Arbitration and Adjudication during 1969 - 1974.*

<table>
<thead>
<tr>
<th>Year</th>
<th>No. of Industrial Dispute referred to Industrial Relations Machinery.</th>
<th>No. of failure reports</th>
<th>Number of Disputes referred to Adjudication.</th>
<th>Number of Disputes referred to Arbitration</th>
</tr>
</thead>
<tbody>
<tr>
<td>1969</td>
<td>35,941</td>
<td>9,391</td>
<td>5,540</td>
<td>171</td>
</tr>
<tr>
<td>1970</td>
<td>31,784</td>
<td>8,176</td>
<td>4,858</td>
<td>176</td>
</tr>
<tr>
<td>1971</td>
<td>49,834</td>
<td>11,476</td>
<td>7,416</td>
<td>321</td>
</tr>
<tr>
<td>1973</td>
<td>47,847</td>
<td>12,188</td>
<td>8,226</td>
<td>110</td>
</tr>
<tr>
<td>1974</td>
<td>56,543</td>
<td>15,471</td>
<td>9,662</td>
<td>140</td>
</tr>
</tbody>
</table>

The approach of the First Five Year Plan reflects the policy that disputes over wages and other conditions of service "should, as far as possible, be left to be settled by conciliation or voluntary arbitration".45

In order to provide for voluntary arbitration, as a statutory method, the Act was amended.46 The amendment enabled the employer and employees to refer the disputes voluntarily to arbitration by a written agreement. Nevertheless, due to the continued reluctance of the parties, the machinery remained inactive. In the Indian Labour Conference held in 1962 the need for voluntary arbitration was reiterated. The Conference felt, "whenever condition fails arbitration will be the next normal step except in cases where the employer feels that for some reasons he would prefer adjudication".47


46. Industrial Disputes (Amendment) Act 1957 (Act No.36 of 1957), S.8, incorporating S.10.A, w.e.f.10.3.1957. S.10.A(1) reads,
"Where any industrial dispute exists or is apprehended and the employer and the workmen agree to refer the dispute to arbitration, they may, at any time before the dispute has been referred under Section 10 to a Labour Court or Tribunal or National Tribunal by a written agreement, refer the dispute to arbitration and the reference shall be to such person . . . ".

An arbitration award becomes binding on the parties to the agreement and also on others provided the notice under section 10 A (3A) has been issued.

Once the arbitrator makes an award, the Government has to publish it in the Official Gazette within thirty days. An arbitration award passed by an arbitrator

48. See the Industrial Disputes Act 1947, S.18 (3), supra, n.16.

49. Id., S.10 A (3A) reads,

"Where an industrial dispute has been referred to arbitration and the appropriate Government is satisfied that the persons making the reference represent the majority of each party, the appropriate Government may, within the time referred to sub-section (3) issue a notification in such manner as may be prescribed; and when any such notification is issued, the employers and workmen who are not parties to the arbitration agreement but are concerned in the dispute, shall be given an opportunity of presenting their case before the arbitrator or arbitrators".

50. Industrial Disputes Act 1947, S.10 A (3) reads,

"A copy of the arbitration agreement shall be forwarded to the appropriate Government and the conciliation officer and the appropriate Government shall, within one month from the date of the receipt of such copy, publish the same in the Official Gazette."
become enforceable on the expiry of thirty days from the date of its publication. 51

In order to make voluntary arbitration more acceptable to the parties, the Government has set up a National Arbitration Promotion Board which is a tripartite body. The intention behind the constitution of such a body was to examine the factors inhibiting wider acceptance of voluntary arbitration and to suggest

51. Id., S.17 A. Divergent views were expressed by different High Courts as to the mandatory nature of the procedure prescribed under the Act. In K.P. Singh v. S.K. Gokhale, [1969] Lab.I.C. 725 (Mad) the High Court held that the procedure prescribed under Section 10A (3) was mandatory. The Full Bench of the same High Court in R.K. Steels v. Their Workmen (1977) I L.L.J. 382 (Mad.) held that non-publication of the agreement under Section 10.A(3) would not invalidate the arbitration agreement. However, in Madras M.T. Manufacturers v. Special Dy. Labour Commissioner, [1980] Lab. I.C. 329 (Mad.) the High Court of Madras explained the Full Bench decision by saying that the said decision referred to the arbitration agreement and not to the award but non-publication of the agreement and the award would invalidate the award. When this question came up before the Madhya Pradesh High Court, in Modern Stores v. Krishnadas, [1970] Lab.I.C.196 (M.P) it held that the requirements of Section 10A (3) are partly mandatory and partly directory. The Court in Aftab-e-Jadid, Urdu Daily News Paper v. Bhopal Shramjivi Patrakar Sangh, [1985] Lab.I.C. 164 (M.P), further clarified the position and held that the time of publication specified in the Sections, was merely directory, but the agreement has to be published.
measures to make it more acceptable. This body was also duty bound to evolve principles, norms and procedures for the guidance of parties to the arbitration and the arbitrators. 52

In spite of the Governmental efforts to promote voluntary arbitration as a method of dispute settlement, the process showed only a slow progress. The National Commission observed,

"We are constrained to observe that voluntary arbitration has not taken root in spite of the influential advocacy for it in different policy making forums". 53

The causes 54 for the retarded progress of this process inter alia included, easy availability of adjudication, lack of suitable arbitrators who command the confidence of both parties, absence of recognised representative unions of workers, the fact that no appeal lies against an arbitrator's award, the lack of a simple procedure and the cost involved.

53. Ibid.
54. It is on the basis of the evidence before the National Commission that these drawbacks were recorded. Ibid.
As rightly observed by the National Commission, "With little progress made in collective bargaining, which pre-supposes the existence of a recognized union representing all the employees and a responsive employer who together build up over a period an attitude of mutual trust and an acceptance of bona fides on the two sides, it is perhaps not a matter for surprise that voluntary arbitration has so far had little success in India". 55

There is a common feature for conciliation and arbitration proceedings. Both requires an amount of voluntariness and co-operation. In the case of conciliation both parties must be willing to forego and to compromise. In the case of voluntary arbitration the very setting in motion of the machinery depends on agreement between the parties. The success of these systems, therefore, depends to a substantial extent on the prevalence of the spirit of co-operation between the parties.

55. Ibid.