CHAPTER-III

A CRITICAL AND COMPARATIVE STUDY OF AUSTRALIAN AND INDIAN INDUSTRIAL DISPUTE SETTLEMENT LAWS
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Labour dispute settlement is part of the larger problem of dispute settlement in society. Labour dispute settlement cannot be viewed in isolation to other problems facing the society. A labour dispute involves delicate question of balancing the rights of the parties involved in production. Disputes are common to human society; they occur at different levels in society. The approaches to settle disputes vary according to the type of problem, the status of parties and the legislative mechanism. The three main methods evolved for the settlement of any type of dispute are:

(a) Judicial settlement or adjudication by courts of law

b) Conciliation and mediation and

c) Arbitration

The method of judicial settlement is well known and in every country in the world, a judicial system exists within which the courts of law operate. Traditionally
the businesses of the courts have been to adjudicate upon the rights of the parties by application of law and enforcement of their decisions through the aid of the power of the sovereign.

Conciliation, mediation and arbitration are used in disputes, which may be amenable to judicial settlement, as well as in other categories of dispute arising from a wide variety of causes. Conciliation and arbitration have been frequently used in civil and commercial cases because of the parties' interest in avoiding the costs and delays normally associated with the judicial procedure. However, it is in the fields of labour relations and international relations that the application of conciliation, mediation and arbitration in dispute settlement has been of special significance. Conciliation and mediation are regarded as synonymous and used interchangeably. In this context, there seems to be a considerable lack of clarity as to the scope of the words 'mediation and conciliation'.

Black's Law dictionary also fails to resolve this distinction, if any, by defining the word 'conciliation' as,

"The adjustment and settlement of a dispute in a friendly, ...

unantagonistic manner, used in courts with a view to avoiding trial and in labour disputes before arbitration."

Prof. Davey has observed:

"In theory, the distinction is almost hair-splitting. In practice, conciliation shades into mediation the differences between the two are essentially differences of degrees rather than nature."

French arbitrator Prof. Charles Jarroson says,

"There is a subtle difference between mediation and conciliation - Mediation is a more proactive form of conciliation, the latter being more passive in the sense that the conciliator has an evaluative ideas opposed to the facilitative role of the mediator. Unlike a mediator who has to be active and see that justice is done, the conciliator is a withdrawn neutral."

In conciliation and mediation, the responsibility for settling dispute rests with the parties themselves. In

\(^2\) H.W. Davey, Contemporary Collective Bargaining (1959) p 294
\(^3\) Business Line (The Hindu on line edi) dt. 2.7.2001 Mad. p 1
arbitration, the centre of gravity shifts from the parties to the third party who is called in as arbitrator. The word "arbitration" is derived from the Latin word arbitrary, meaning "to give judgment" or "to make a decision." Conciliation, mediation and arbitration were used in the settlement of disputes between nations before the world became acquainted with type of labour dispute generated by the industrial revolution.

1. Political and industrial background of Australia

The Commonwealth of Australia was founded in 1901 as a Federation of the former British colonies of New South Wales, Victoria, Tasmania, South Australia, Queensland and Western Australia as States. It is a country with a wealth of mineral and energy resources and is not highly populated. The British colonial government agreed to establish the Commonwealth of Australia with a new Federal government under the Constitution of the Commonwealth of Australia (1901).

*Supra n 2
Most of Australia's population is concentrated in two widely separated coastal regions. By far the largest of these, in terms of area and population lies in the southeast and east. The smaller of the two regions are in the southwest of the continent. In both coastal regions, the population is concentrated in urban centres, particularly the State and territory capital cities. Half the area of the continent contains only 0.3% of the population and the most densely populated 1% of the Continent contains 84% of the population.
The distribution of Australia's population is shown in map.\(^1\). POPULATION DISTRIBUTION, AUSTRALIA 2000

Australia today is a stable, democratic society with a skilled workforce and a strong, competitive economy. With a population of just over 19 million, Australia is the only nation to govern an entire continent and is sixth in the world in land area. Australia’s

multicultural society includes its indigenous people and migrants from more than 160 countries worldwide.

2. The Conciliation and Arbitration Act, 1904

The Australian national industrial relations system was founded with limited jurisdiction to the Federal government to enact industrial laws only with respect to 'conciliation and arbitration for the prevention and settlement of disputes extending beyond the limits of any one state', as provided under section 51(xxxv) of the Commonwealth Constitution of Australia.

The passing of the Commonwealth Conciliation and Arbitration Act, 1904, was not a smooth affair. The first attempt to enact the law failed because of the labour party with drawing its support for the bill. The proposed Act had caused the fall of three governments in the first four years of federation; these governments had fallen over peripheral provisions in the bill, e.g. its application to railway servants and preference to unionists. The Act was passed and

received the royal assent on 15th December 1904, and commenced on the same date. 

The Conciliation and Arbitration Act 1904 established a court of conciliation and arbitration as "the primary instrument for achievements of its objects" the court was composed of a justice of the High court who as President of the court, was appointed for seven years.

The chief objects of the Act (s.2) were:

1. To prevent lock-out and strikes
2. To constitute a Court of Conciliation and Arbitration.
3. To provide for the exercise of the jurisdiction of the court by conciliation and arbitration in default of amicable agreement between the parties,
4. To enable States to refer industrial disputes to the court.
5. To facilitate and encourage the organization of representative bodies of employers and employees, and,
6. To provide for the making and enforcement of industrial agreements.

*Sources of Australian labour law, International Journal of Comparative Law (1995) p 83*
Commenting, about the Act, the Court wrote,

"The Act makes a strike or a lockout an offence if the dispute is within the ambit of the Act— if the dispute is one that extends beyond the limits of one State. In other words, the process of conciliation with arbitration in the background is substituted for the rude and barbarous processes of strike and lockout. Reason is to displace force; the might of the state is to enforce peace between industrial combatants; and all in the interest of the public."\(^9\)

The Conciliation and Arbitration Act, 1904, is a very lengthy Act of almost two hundred sections; it was continuously being amended and re-amended. (Until it was replaced by the Industrial Relations Act, 1988.) The Act tries to conciliate between accommodating parties rather then force an award on the parties. However, as a last resort it is prepared to foist compulsive awards on warring parties. The Act also sets out to encourage, safeguard and supervise organization.

\(^9\) R v. Commonwealth Conciliation & Arbitration Commission; Ex parte Transport Workers’ Australia (1969) C.L.R. 529
of employers and employees registered under the Act. The Act establishes Federal industrial machinery, namely, the 'Australian Conciliation and Arbitration Commission' the body that carries out the actual conciliation or arbitration between the disputing parties.

Employers did not welcome the court with open heart. They regarded the court as a hostile entity, which appeared as an intrusion and as a direct threat to their material well being. The Conciliation and Arbitration Act, 1904, forced the employers to recognize unions registered under the Act and empowered these unions to make claims on behalf of all employees within an industry. Under the Act the employees could force employers to Court even if they were unwilling to negotiate, and once the Court made an award, its provisions were legally enforceable.

10 Prior to the amendment of the Conciliation and Arbitration Act in 1956, it was known as, Commonwealth Court of Conciliation and Arbitration.
3. Conciliation and Arbitration in Australian Industrial Relation

The Commonwealth Constitution of Australia very specifically chooses the means of conciliation and arbitration alone to settle and industrial disputes extending beyond limits of any one State. The Commonwealth Conciliation and Arbitration Act 1904 created Federal industrial machinery as back as 1904. The two parts of the machinery are a non-judicial statutory body, a Commission, and judicial body, a Court. The Australian Conciliation and Arbitration Commission is the body that actually prevents or settles industrial disputes by means of conciliation or arbitration.

Conciliation has been linked with arbitration as the primary procedure for the settlement of industrial dispute in Australia. There is a conception under the Act that conciliation should be attempted before arbitration is practiced. Among the five chief objects of the Act, as expressed in its contents are:

11 Supra n 7
12 Sec.2 of Conciliation and Arbitration Act, 1904
(b) To encourage conciliation with a view to amicable agreement, thereby preventing and settling industrial disputes;

c) To provide means for preventing and settling industrial disputes not resolved by amicable agreement, including threatened, impending and probable industrial disputes."

A Commissioner appointed under section 28 of the act is enjoyed in his duties towards settlement of industrial disputes to first use the method of conciliation, and only in the event of its failure or likelihood of failure, he can use arbitration as a method for settlement of dispute. The Courts in Australia also have stressed that the tribunals engaged in settlement of industrial disputes shall first undergo the process of conciliation and than arbitration as a matter of procedure.\textsuperscript{13} To summarize, the components of the Commonwealth's industrial machinery are:

i) The arbitration commission that actually makes the industrial award.

\textsuperscript{13} \textit{Australian Railways Union v. Victorian Railways Commissioners & others} (1930) 44 C.L.R. p 325, \textit{supra} n 7 at 527
The industrial division of the federal court of Australia that backs up arbitration commission.

Some of the early litigation in the Arbitration Commission was with reference to "common rule" and "non disputant employers". Common rule simply means a rule common to all employers and employees in a given industry, regardless of the fact whether there is a dispute between the employees and employers or not.

The following case laws are relevant to examine the interpretation of the above terms by the Courts in Australia:

i) **The Whybrow's case**

In this case, the Australian Boot Trade Employees' federation obtained an award against Whybrow and some other employers in the boot-trade. At this point the proceedings were legitimate: an award that bound party-disputants only. Subsequently, however, the employers' federation asked that the award be made a rule common to all employers in the boot trade. That is, the federation was now seeking to have the award extended by the Commonwealth Court of Conciliation and

14 *Australian Boot Trade Employees Federation v. Whybrow & Co others* (1910) C.L.R. 11
(P.H.Lane cases p 213)
Arbitration to those employees who were not parties to the earlier dispute out of which the award originated. The High court refused to permit this extension of the award to the later non-disputant employers. The following rule was founded in the case (later affirmed in *R.v.Kelley*):

"An arbitral award is permitted to bind only those persons (i) who are in dispute, and (ii) who are also parties to the proceedings arising out of that dispute. Both conditions must be fulfilled".

One of the things suggested from the above decision was that non-unionists were beyond the reach of the court. Therefore, the employer could not be bound to pay them either award rates, or to follow, with respect to them, the conditions of employment prescribed by awards.

ii) *Burwood Cinema Ltd. v. Australian Theatrical Amusement Employee's Association*

In this case the Australian theatrical etc, employees association filed claims against two sets of employers: one the Burwood cinema and others who employed members

5 *Infra*
6 *(1925) 35 C.L.R. p 528 supra n 7 at 216*
of the association and the other theatrical employers who employed no members of the association at that time; but subsequently these employers did employ a few members of the association. The High Court held that the association could be in dispute with both employers so as to obtain an award binding on the employers, on the first set of employers immediately, on the second set of employers if and when they employed members of the disputant association. The Court said,

"The nexus is to be found in the industry ... an organization registered under the Act is not a mere agent of its members: it stands in their place and acts on their account and is a representative of the class associated together in the organization'.

Thus according to Burwood cinema, particular employer-employee relations were not relevant, even if they were non-disputants or, on the other hand, just non-existent at a particular stage. It was the group and the organization that mattered.
In *Metal traders* the Amalgamated Engineering Union sought better conditions and pay for "all persons employed by" the members of the Metal Traders Employers' Association. In fact, the association was asking for better conditions and pay for unionists and non-unionists in its industry, i.e. the metal trades industry. The High Court held that the resultant award could be made to cover or affect the employment of non-unionists by an employer who is in dispute with the employee organization if the matter of applying the proposed award to these non-unionists be an issue in the dispute.

Thus, it is for the union to enforce its legal rights in respect of the non-unionists, if the union wishes. But the non-unionists themselves have no legal rights, that is, no rights under the award, which they can enforce on their own motion.

While the *Whybrows* case had limited the doctrine of common rule only to those disputants who were parties to the proceedings, the *Burwood cinema* extended this

*(1935) 54 C.L.R. p 387 supra n 7 at 217*
rule to non-disputant employers and non-unionists in Metal trade case. However at the end of it all the rule in Whybrows case was affirmed in R.v.Kelly.

iv) R v. Kelly; ex parte Victoria

In this case common rule was sought from the Arbitration Commission. The Australian Meat Industry Employees Union disputed with the Meat and allied Trades Federation of Australia. One Mr. Kelly (conciliation commissioner) acting under the Act, made an award binding on the union and the federation and their respective members. The award so far was valid as it bound only the party-disputants. Later, however the employers’ federation applied to the Conciliation Commissioner for an order that the existing meat and allied traders award “shall be a common rule of the industries of butchering and the sale of meat in Victoria, New south Wales, south Australia and Queensland.” The Employer’s Federation was asking for extension of the award to persons who were not parties to the original dispute. The Commissioner in fact made the order resulting in a common rule and thereby extending the award to all those who were not original

*(1950) 81 C.L.R. p 64 supra n 7 at 231
disputants. The State of Victoria then went to the High court to seek a prohibition against the operation of the award of Mr. Kelly. The High Court granted prohibition, pointing out that,

"the constitutional power is limited to conciliation and arbitration between disputing parties, and to make a common rule is to go outside the scope of conciliation and arbitration and to assume a function of general industrial legislation, and that to attempt this was to go beyond the limits of sec.51 (xxxv) of the constitution."

4. Industrial Disputes Legislation in India

India, like many other countries focused its attention on resolving labour dispute, through an inexpensive and expeditious system of labour dispute resolution law. The Industrial Disputes Act, 1947 it is said, is the charter of industrial jurisprudence in India. Like the Conciliation and Arbitration Act (Australian), this Act provides the machinery for regulating the rights of the partners in production and to facilitate the

investigation and settlement of industrial dispute in peaceful and harmonious atmosphere. The Act provides for two types of mechanism for the settlement of disputes, one by bipartite means and the other by interventions by the courts.

It is said that the Employers and Workmen Disputes, 1860 is the genesis of the Industrial Disputes Act, 1947. Under the Act Magistrates were empowered to make a summary disposal of dispute in certain industries, particularly public utilities viz., canals, railways and public works. It can be said that the government at that time in history itself realized the need for maintaining peace in the public utilities sector and therefore empowered the magistrate to settle the dispute at the earliest. The seriousness of the Employers Workmen Disputes Act, 1860, in maintaining production is illustrated by one of the provisions of the Act which provided that any person who voluntarily engaged himself to work for a stipulated work and refused to perform would be liable to a fine or simple

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20 Act No. X of 1860
22 Supra n 21
A commission on labour led to the repealing of the above legislation in the year 1932.\textsuperscript{23}

The Industrial scene in India after the First World War (1914-18) witnessed violent forms of strikes. A large number of disputes occurred in Bombay and Bengal, which led to the setting up of two committees, one in Bombay and the other in Bengal to investigate into the matter and to suggest remedial measures. The Bombay committee opined that when the differences between labour and management seemed to be serious or irreconcilable, a Court of Inquiry should be appointed followed by an Industrial Conciliation Board, if necessary. It also recommended, "that no outside agency and in particular the agency of the State should be used until all other means have been employed and failed."\textsuperscript{24}

The Central Government prepared a Bill based on the recommendations of the Bombay Committee, which led to the enactment of Trade Disputes Act, 1929. The Act provided for Conciliation Boards and Courts of Inquiry to bring about peaceful settlement of industrial disputes. The board would consist of an independent chairman with several members. A court of inquiry would consist of

\textsuperscript{23}Gurbakhsh Singh, \textit{Industrial Disputes and Manchinery for settlement in India} (1972) p 26

\textsuperscript{24}Supra n 23 at 27
one or more persons. They had to report on the specific matters referred to them. It had provisions to prohibit strikes in public utility services without giving a notice in writing. The Act was meant to be an experimental measure and it was in force for five years.

It was made permanent by the Trade Dispute (Extending) Act; 1934. The Act did not contain any provision or a mechanism or authority for settling industrial disputes. However, it set the trend for State intervention in the settlement of industrial disputes. The Act was subsequently amended in 1938, following the recommendations of the Whitely Commission (also referred to as the Royal Commission on labour). The Whitely Commission recommended, inter alia, that:

"The question of providing means for the impartial examination of disputes in public utility services should be considered. The possibility of establishing permanent courts in place of ad-hoc tribunals should be examined, and every provincial government should have an officer or officers whose duty it would be to undertake the work of conciliation"
The Government of India accepted the recommendations and introduced a Bill in the Legislative Assembly in 1936 to give effect to them. The Bill was passed in 1938. It was called Trade Disputes (amendment) Act, 1938. The amendment provided for conciliation officers as recommended by the Royal Commission with a duty of mediating in or promoting the settlement of trade disputes. The term trade disputes was to include difference between employers and employers in water, transport and tramways in the public utility services and made the provision concerning illegal strikes and lock outs less repressive.

The government, both Central and Provincial, were granted power to appoint Conciliation officers entrusted with the duty of mediation in or promoting the settlement of trade disputes in any business, industry or undertaking. Provision was also made to the effect that discharged workers should be regarded as workmen for the purposes of the Act. The Act still suffered from some drawback, there was no permanent machinery for dealing with the disputes, and findings
and the decisions of the inquiry were not binding on the parties of the disputes.

4.1 The Second World War and the introduction of compulsory adjudication system

The Second World War led to chaotic conditions in the Indian labour scene. In 1942, the representatives of employers and workers organizations were invited by the government to participate in the tripartite Indian Labour Conference (ILC). The ILC functioned to fulfil the following basic objectives;

(i) To promote uniformity in labour legislation,

(ii) Lay down a procedure for the settlement of industrial disputes, and,

(iii) Discuss all matters of all-India importance between employers and employees.

There was large-scale exploitation of labour during this period. The trade union was worried over declining real wages and preferred a dependent relationship with the government. This set the stage for governments' involvement in the industrial
The war condition forced the government to take some emergency measures.

In January 1942, the government of India, by a Notification, added Rule 81-A to the Defence of India Rules, in order to restrain strikes and lockouts. The government was now empowered:

- To prohibit, by general or special order, strikes or lockout in connection with trade dispute unless reasonable notice was given;
- To refer any dispute to conciliation or adjudication.
- To require employers to observe such terms and conditions as might be specified; and
- To enforce the decisions of adjudication.

One of the notable features of the rule was that strikes and lockouts were prohibited when a trade dispute was referred to a statutory enquiry or for conciliation or adjudication, during the entire period of the proceedings and after two months of the conclusions of such proceedings. Rule 81-A proved to be a giant step towards State intervention in Industrial disputes in India. The Industrial law in India was
guided by this rule. Rule 81-A was to lapse on October 1, 1946, but it was kept in operation by the Emergency Powers (continuance) Ordinance, 1946.

4.2 The Birth of the Industrial Disputes Act, 1947

After the termination of the war, a comprehensive legislation governing the rights of the workmen and employers took birth in the form of the Industrial Disputes Act. The Act was passed in March 1947 and came into force from 1st April 1947 replacing the Trade Disputes Act, 1929. The Act has been enacted on the lines of (Australian) Commonwealth Court of Conciliation and Arbitration Act 1904. The Act combines the investigation and conciliation principle of 1929 Act with the compulsory adjudication principle of Rule 81(A) of the Defence of India Rules. The Industrial Disputes Act, 1947 investigates and settles industrial disputes through persuasive, voluntary and coercive process. It provides various machines for the investigation and settlement of industrial disputes. At the lowest level in works committee, the other machines are; (a) conciliation (b) arbitration, and (iii) adjudication. Further the Act provides for court
of enquiry to enquiry into an existing or apprehended industrial dispute.

5. The Concept of Industry under the Australian and Indian Laws.

The Commonwealth of Australia Constitution Act 1900 in sec.51 (xxxv) states,

"The parliament shall... have power to make laws with respect to... conciliation and arbitration for the prevention and settlement of industrial disputes beyond the limits of any one State".

In India, the Constitution under Article 246, gives power, both, to the Central and the State Government to legislate on matters of industry.

The concept of industry, as it appears in the phrase "industrial disputes" as used in the Australian Commonwealth Constitution has special references. Any activity or occupation, which does not fall within the category of "industry", cannot avail the rights available under the Conciliation and Arbitration Act, 1904. The employers or employees whose occupation or enterprises which cannot be described as "industrial"
cannot register a union or association under the Act. The benefits of federal industrial award also cannot be extended to the "non-industrial" activities. Industry has been defined under the Conciliation and Arbitration Act, 1904, in an inclusive manner. It says 'industry' includes -

(a) Any business, trade, manufacture, undertaking, or calling of employers;

(b) Any calling, service employment, handicraft, or industrial occupation or vocation of employees; and

(c) A branch of an industry and a group of industries;

It can be seen from the above that the definition of industry depends upon the two words employers and employees.

A similarly worded definition of the term "industry" can be found in the Industrial Disputes Act, 1947 under section 2(j) in the following manner,

"Any business, trade, undertaking, manufacture nor calling of

25 Part I sec. 4 of Conciliation and Arbitration Act, 1904
employers and includes any calling, service, employment, handicraft, or industrial occupation or avocation of workmen”. (This definition is substituted by the Industrial disputes (Amendment) Act, 1982 with effect from date yet to be notified.)

Not only is the definition similar but also some of the leading decisions of the courts in India on the concept of “industry” are influenced by the Australian decisions. Some of the decisions of the courts are herein analysed to bring out the similarities.

It is very clearly established through the various Australian case law that the first general guide to the meaning of industry is concerned with production maintenance or distribution of foods. Further more the case laws have pointed out that profitable organizations, projects, ventures, theatrical employees journalists may be engaged in industry. Manual labour or unskilled works a financial business, an insurance banking business too, are industries, which attract section 51(XXXV) of the Constitution.
The Professional Engineers Case

In this case the Federal union—the Professional Engineers' Association filed a claim on behalf of its members (who were engaged by private and public enterprises) to the arbitration commission. The New South Wales State departments of instrumentalities engaged the union members in the public enterprise, viz., (i) the dept of public works, the dept of main roads, the metropolitan water, sewerage and drainage board, the water conservation and Irrigation Commission, etc and (ii) the State Brickwork and Dockyard, the Maritime Services Board, the Sydney City Council, etc.

The Arbitration Commission was prepared to make an award in covering the category (ii) not (i), as it said the employees in the first category were engaged in some "great public purpose". The Professional Engineers' Association sought mandamus in regard to the first category in order to complete the coverage of their award. The relevant departments and instrumentalities sought prohibition in regard to

26 R. v. Commonwealth Conciliation and Arbitration Commission; ex parte Association of Professional Engineers, Australia (1959) 107 C.L.R. p 208
second category in order to stop any coverage at all by an award.

The High Court in the writ proceedings before it attempted to make a distinction between government functions and industry. The court considered making a definition from the point of view of employees' occupation and employer's undertakings. The court found that the initial industrial complexion of employees' occupation is not altered by the employers' undertakings, with the result that the court held that professional engineers employed by any of the departments or instrumentality in category (i) or (ii) could be in industry. The Court said,

"The question is not to be solved by asking is a particular activity governmental; because, for the matter in hand, the assumed complete antithesis between industrial and governmental activities does not exist". 7

Despite the decision in Professional engineers case, there are nevertheless some functions peculiar to government which have been found not to be industrial, such as, clerking in the treasury, land or law.

7 Supra n 7 at 225
department of a State (or Commonwealth) the administration of justice, the assessment of land for etc.  

A similar approach to a similar problem is illustrated in the Indian case of D.N. Banerji v. P.R. Mukherjee. In this case the Supreme Court of India was called upon to decide whether a municipality is an industry within the meaning of the Industrial Disputes Act, 1947? The Court held the Act was enacted to meet the situation arising out of clashes between workmen and employers and it is consequently necessary to give the terms employed in the Act referring to such disputes as wide an import as reasonably possible. In this case the Court held that though municipal activity could not be truly regarded as "business or trade", it would fall within the scope of the expressions "undertaking". Hence, the non-profit undertakings of the Municipality were included in the concept of industry even if there is no private enterprise.

In the case of Federated State School Teachers' Association of Australia v. St. of Victoria it was specifically held that teaching in the State school

29 A.I.R. 1953 S.C. 58
30 41 C.L.R. (1929) 509 supra n 7 at 227
system was not an industry. However, it was held that the same cannot be true if it is done outside the system "in the pursuit of profit". What the Court said, was that the activity be it in public or private enterprise should fall within the meaning of industrial activity. Pure governmental work as described above and certain professional work such as teaching, nursing, doctors and lawyers do not fall within the scope of industry.

In India the Supreme Court of India had a similar approach to a problem presented in the case of University of Delhi v. Ram Nath. The University contended that it was not carrying on an industrial activity and therefore need not pay retrenchment compensation to the bus drivers it had employed and later removed from employment. The Court commented that,

"It could not have been the policy of the Act that education should be treated as industry for the benefit of a very minor and insignificant number of persons who may be employed by educational

\[1\] (1964) 2 S.C.R. 703
institutions to carry on the duties of the subordinate staff”.

Further it said,

“Education in its true aspect is more a mission and a vocation rather than a profession or trade or business, however wide may be the denotation of the two latter words under the Act”.

6. Similarities in the concept of Industrial Dispute in Australia and India

The labour power of the Commonwealth of Australia can only be exercised for the prevention and settlement by conciliation or arbitration of disputes, which are “industrial”. The ‘industrial’ quality must be found in the parties as well as the subject matter of the dispute. The parties should stand in an “industrial relationship” to one another. Even under the Industrial Disputes Act, 1947, under section 2(k) only those disputes qualify to come within the purview of the Act which contain the essential requisites in the definition as follows—“industrial dispute” means any dispute or difference between employers and employers, or between employers and workmen, or between workmen
and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person.

In the case of *R. v. Commonwealth Court of Conciliation and Arbitration and Australian Builders' Labourers' Federation* 32 commenting on the concept of industrial dispute, the Court said,

"The concept may be thus formulated: industrial disputes occur, when, in relation to operations in which capital and labour are contributed in co-operation for the satisfaction of human wants or desires, those engaged in co-operating dispute as to the basis to be observed, by the parties engaged, respecting either a share of the product or any other terms and conditions of their co-operation".

In India in the landmark decision of the Supreme Court in the case of *BWSSB v. A. Rajappa* 33, the Court while laying down the triple test for determining an industrial activity used the same words as mentioned in

32 (1914) 18 C.L.R. 224 *supra* n 7 at 235
33 A.I.R. 1978 S.C. 548
the above Australian decision. The Court very specifically mentioned,

"Industry, as defined in Section 2 (j) has a wide import...where (i) systematic activity, (ii) organised by co-operation between employer and employee (iii) for the production and or distribution of goods and services calculated to satisfy human wants and wishes (not spiritual or religious but inclusive of material things services geared to celestial bliss i.e. making on a large scale prasad or food) prima facie, there is an industry in that enterprise."

In Australia in the case of Metal Trades Employers' Association v. Amalgamated Union\(^4\), the Court held that a dispute is constituted when there is a disagreement between the partners in the industry over certain industrial matters. Proper matters for an industrial dispute are those matters, which directly affects the employer-employee work relation. An "industrial matter" is closely associated with employment; it benefits employers at the expense of employers or vice versa; it

\(^4\)(1935) 54 C.L.R. 387 (P.H.Lane, Australian Constitutional law p 217)
arises during (current or interrupted) employment; and finally it is not entirely the employers' own business or the employees' own concern. It has been observed by the High Court in Union Badge case\(^5\) that the true test as between employer and employed is whether the given matter touches the "employment", that is whether it affects the mutual business relation connecting the respective parties concerned.

In India the decision of the Supreme Court in the case of Shambhu Nath Goyal v. Bank of Baroda, Jullundur\(^6\) clarified the basic requirements for an industrial dispute in the following manner,

"An industrial dispute comes into existence when the employer and the workmen are at variance and the 'dispute or difference' is connected with the employment or non-employment or the terms of employment or with the conditions of labour. In other words, a dispute or difference arises when a demand is made by the workman on the employer and rejected by him".

\(^5\) Australian Tramways Employees' Association v. Prahran & Malvern Tramway Trust (1913) 17 C.L.R.

\(^6\) (1978) I L.L.J 484 (S.C.)
Another important element in section 51(xxxv) of the Commonwealth Constitution of Australia is that a dispute “extending beyond the limits of any one state” is only qualified for conciliation and arbitration. One of the important cases in which the criteria for “extending beyond the limits of any one State” was laid is the Builders’ Labourers’ case. In this case, five separate State Unions of Builders’ labourers had been in dispute with their members’ respective employers in the five states. There were thus five intra-State disputes. The State unions then combined to form a federal body, the Australian Builders’ Labourers’ Federation. The new body served a claim on the employer. The arbitration court made an award settling the resultant disputes. However the employers sought a High Court prohibition directed to the arbitration court and the builders’ labourers’ federation. The employers argued (i) that there were five separate intra-state disputes, and (ii) that there could not be a dispute extending beyond the limits of any one State.

"R. v. Commonwealth Court of Conciliation and Arbitration and Australian Builders’ Labourers’ Federation (1914) 18 C.L.R. p 224"
in the building industry, an occupation that was
localised on several sites. The High court observed,

"Industrial disputes may originate
in one part or several parts of
the Commonwealth just as a
physical eruption may originate in
one or several portions of the
body and spread or they may
originate as in the present case
by a synchronous growth all over
the area affected".

In India it is the 'appropriate government', which has
the power to refer disputes for adjudication. The
Industrial Disputes Act, 1947 section 2(a) defines the
term "appropriate Government" form the point of view of
the Central Government and the State Government. The
industries that are owned or controlled by the agency
of the Central Government the appropriate Government
would be the Central Government itself. In relation to
any other industries it would be the State Government,
which would be the appropriate Government. It is the
appropriate Government, alone which has the power to
refer any industrial dispute for adjudication.
According to the definition of the term appropriate
Government in cases where the entire business of an
establishment is confined to the territories of a State
and which is not owned or controlled by the Central Government, the Government of that State alone will be the appropriate Government. However difficulties arise when the employer has business establishments in more than one State. The Act does not contain any provision in this connection. The Courts in India to solve such problems have relied upon the principles governing the jurisdiction of Civil Courts to entertain actions or proceedings. In the case of Workmen of Sri Ranga Vilas Motors (p) Ltd. v. Sri Ranga Vilas Motors (p) Ltd. the Head Office of the Company was situated in Krishnagiri in the State of Madras and it had a Branch at Bangalore in the State of Mysore where the concerned workmen were employed. The service of one workman was terminated at Bangalore but the dispute was sponsored by the workmen at Krishnagiri which gave it the character of an "industrial dispute". It was pointed out to the Court that since the dispute became an 'industrial dispute' at Krishnagiri, the State of Madras and not the State of Mysore was the "appropriate Government". The Supreme Court held since there was separate establishment at Bangalore where the concerned workman and number of other workman were working and

*(1967) II L.L.J. 12 (17) (S.C.)*
the impugned order had to operate on the workman at Bangalore, therefore the Mysore Government was the "appropriate Government". The ratio of this case is that the place where the impugned order operated on the service of a workman is the place where the 'cause of action' arose and the State in which that place is situated will be the "appropriate Government".

Strictly speaking, Australia has strong State structure and weak Central structure, because historically the States conceded power to the Centre and formed a Federal Government. In India, it is the opposite hence there is a need to properly define appropriate government with a strong bias towards Central government.

The Conciliation and Arbitration Act 1904 underwent several amendments before the Industrial Relations Act, 1988, replaced it. Some of the important amendments were as follows:

(i) The Court of Conciliation and Arbitration consisting of a president and deputy presidents was remodelled in 1926 when Chief Judge and several other judges were appointed to replace the president and deputy presidents.
The 1947-amending act, with its new emphasis on conciliation, provided for the appointment of conciliation commissioners to take over some of the powers of the court of conciliation and arbitration. Wide discretionary powers were vested in the conciliation commissioners. The main idea behind the proposal was to place the arbitration process for each group of industries in the hands of a person who had and could develop a specialized knowledge of their peculiar problems. However the basic tasks such as handling of the basic wage, annual vacations, working hours and female minimum wages were still with the court.

A major restructuring in the Act occurred in the year 1956. As a result of the judgment of the High court in the *Boilermaker's case*, wherein the court ruled that "arbitral" and "judicial functions" could not be vested in the same tribunal, the old court i.e. the Commonwealth Court of Conciliation and Arbitration was abolished and replaced by the Commonwealth Conciliation and Arbitration Commission and the Commonwealth Industrial court. The Commission retained the earlier power of arbitration vested in the court. The

[^9]: *R v. Kirby; ex parte Boilermakers' Society of Australia (1956) 94 C.L.R. 254*
system of allocating industries for commissioners was retained, but provisions made for appeals and disputes deemed to be of national importance, to be heard by three members of the commissions.

(iv) In 1967 another major amendment took place was that the title of the Principal Act was changed from "An Act relating to Conciliation and Arbitration for the prevention and settlement of Industrial disputes extending beyond the limits of any one State and for other purpose" to "An Act relating to the Prevention and settlement of certain industrial disputes, and for other purposes".

(v) The 1976 amendment Act transferred the jurisdiction of the Australian Industrial court to the Federal court of Australia and a proposal was made for its abolition.

(vi) The Act was further amended in the year 1977 which established an Industrial relations Bureau as an independent statutory body. The Bureau was the third arm of the conciliation and arbitration machinery. The main role of the Bureau was to secure the observance of the Conciliation and Arbitration Act and the regulations made under it, together with the awards of the Conciliation and Arbitration Commission.
Section 7 prescribes the qualification for the appointment of Presidents, Deputy presidents.

Section 8 prescribes the salaries and travelling expenses of the Commission.

Section 9 and 10 permit the appointment of a deputy president to act as president during the absence from duty of the President.

The tenure of the commissioners is set out in sections 13-15 and section 16 provides for the salary and allowances of commissioners.

Under the Industrial Disputes Act, 1947 the Conciliation officer heads the process of conciliation. He is a person appointed by the appropriate Government under section 4(1). Any number of persons can be appointed as Conciliation officers. 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.40

40 Sec. 4 (2) of the Industrial Disputes Act, 1947
7.1 Powers and functions of the Conciliation and Arbitration Commission and the Conciliation officer

Division I of Part III of the Conciliation and Arbitration Act, 1904, sets out the powers and functions of the commission. The principle of "task force" introduced by 1972 amendment Act is achieved by section 23 of the Act. Each panel of the commission has a group of industries assigned to its and the Presidential member organizes his task force so that disputes arising in those industries are promptly handled by a member of the team. Since it is very clear from the terms of the Act that conciliation is to be first attempted before recourse to arbitration is taken, the task force system provides that each member should specialize in the particular difficulties associated with their own group of industries. As already discussed that, for the exercise of conciliation or arbitration power it is necessary that the parties and the subject matter of the dispute relate to an industry, the Act requires that the first duty of a member of the Commission before whom a dispute comes is to record the parties in dispute and
the subject matter of the dispute. He has also to determine whether there is an industrial dispute.41

Section 25 lays down the four steps in the handling of a dispute in the following manner - notification, identification, conciliation and arbitration. Once the matter reaches the Commission the member has to fulfill his duties with respect to conciliation process.

Section 26-28 lays down the power and duties of the member of the Commission. The member has to do all that is necessary and proper in order to assist the parties to reach an agreement on terms for the prevention or settlement of the disputes. Under these sections the member of the commission can arrange for conferences of the parties or their representatives either presided over by himself or he could remain absent. Incidental powers such as directions for attendance of parties connected to the industrial dispute etc can also be exercised by the member of the commission. The course of the process of conciliation culminates by virtue of section 28, which provides for the making of an award where a successful conciliation results in a settlement of the dispute before an arbitration of the matter in

41 Sec.24, Div I of Part III of the Conciliation and Arbitration Act, 1904.
issue is reached. The member of the Commission under section 28 can be requested to certify the memorandum of settlement or to make and award or order giving effect to their agreement. The member of the commission can refuse to certify an agreement or make an award if the necessary constitutional elements are absent such as,

(a) The terms are not in settlement of an industrial dispute;
(b) Any of the terms is a term that the commission does not have power to include in an award; or
(c) It is not in the public interest that he should certify the memorandum or make that award or order.

Commenting on the power of the Commission under section 28(2) the Court said in R v. Kirby; Ex parte Transport Workers' Union of Australia,

"... For if there was no dispute or no dispute extending beyond the limits of the any one State in settlement of which the agreement was made it is difficult to see how for any purpose the agreement could have acquired any of the

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42 Sec. 28 (2), the Conciliation and Arbitration Act, 1904.
43 (1954) 91 C.L.R. 159
attributes of an award by a purported certification under the Act

The awards made in conciliation process are limited in its operation to the parties to the dispute in settlement of which the award is made. The point at which conciliation process is completed, arbitration becomes necessary, is indicated by section 29. Under this section the conciliation process is deemed to have been completed if there is an agreement reached on the whole of the dispute or where the parties have not reached an agreement and the member of the commission is satisfied that there is no likelihood of conciliation or further conciliation resulting in an agreement between the parties. Further if the parties have informed the Commission, that there is no likelihood of agreement, or further agreement, on matters in dispute, the conciliation is deemed to have been completed.

If a dispute is not settled by conciliation, than the matter goes to arbitration in the Commission. Section 30(1) gives power to the commission to process with an unresolved industrial matter by arbitration.

44 Sec. 28(4), the Conciliation and Arbitration Act, 1904
45 Sec. 29 (2), Conciliation and Arbitration Act, 1904
respect to the same industrial matter.\textsuperscript{46} Most of the dispute are arbitrated either by the President member in charge of the industry in which the dispute occurs or by a Commissioner allocated to that industry. Some industrial matters, because of their importance or the extent of the operation of the award are reserved to be arbitrated by a full bench of the Commission.\textsuperscript{47} Matters such as uniformity in wages, uniformity of hours of work, holiday and a general condition throughout an industry is decided by a full bench of the commission.

Another important provision in the Act relating to the conciliation and arbitration is the provision for the constitution of Boards of reference. Section 50(1) is as follows:

"The commission may, by an award or by an order made on the application of an organization or person bound by an award—

a) Appoint, or give power to appoint, for the purpose of the award, a Board of reference consisting of one or more persons; and

\textsuperscript{46} Sec.22, Conciliation and Arbitration Act, 1904.  
\textsuperscript{47} Sec.31, Conciliation and Arbitration Act, 1904.
b) Assign to the Board of reference the function of allowing, approving, fixing, determining or dealing with, in the manner and subject to the conditions specified in the award or order, a matter or a thing which, under the award, may from time to time require to be allowed, approved, fixed, determined or dealt with by the board.

(2) A Board of reference appointed under this section may consists of or include a commissioner”

Pursuant to section 50 Boards of reference had been constituted under a large number of federal awards.48 Boards of reference usually composed of a Chairman and an equal number of representatives of the employers and the unions who are parties to the award. Decisions of a board are final unless the award itself allows an appeal from the board to the commission. A board of reference cannot be authorized by an award to exercise any judicial powers of the commonwealth. Board of reference played an active role expeditiously and informally deciding minor disputes, which arise in the industry, covered by the award.49

48 Supra n 7
49 Supra n 39
The foregoing discussion on handling of disputes in conciliation in India bears resemblance to the process adopted in Australia under the Conciliation and Arbitration Act, 1904.

The object of conciliation system under the Industrial Disputes Act, 1947, is to create an atmosphere, which is conducive to settlement of dispute through democratic means. It is mandatory upon the Conciliation officers to hold conciliation proceeding if a dispute relating to a public utility is apprehended, and for which a notice under section 22 of the Industrial Disputes Act, 1947, is filed. In other cases the officer may exercise his discretion whether or not to hold such proceedings. The conciliation process involves a diplomatic procedure by assisting parties to come to a voluntary settlement of the dispute or difference between them.50

As soon as a notice of dispute is received from a union or body of workmen, the Conciliation officer calls for the remarks of the opposite party on the representation received, a copy of which is sent to the opposite party. On the receipt of the remarks of the other

party the Conciliation officer calls the parties for discussion/enquiry into the matter on a date and time specified by him. The parties to the dispute are supposed to meet the Conciliation officer if the parties do not turn up, another date is fixed and notices are again issued to both the parties. The issues in dispute are then discussed with the parties and the Conciliation Officer records the same. After discussion, if any settlement is reached, the Conciliation Officer records the same otherwise he submits his failure of conciliation report to the government under section 12(4) of the Industrial Disputes Act, 1947.

The Conciliation Officers can use their discretion and decline to intervene in industrial disputes in spite of a request from one or both the parties in situations; (a) where the issues are vague or do not relate to the conditions of employment or non-employment, (b) where issues are covered by a subsisting settlement or award, (c) where a mutual settlement under Section 18(1) of the Industrial Disputes Act, 1947, is already in force between the management and the union recognized under the code of Discipline, (d) where any of the issues raised is already covered by conciliation settlement
under section 12(3), (e) in case of issues which are covered by statutory obligations and (f) where implementation can be secured by recourse to enforcement machinery. Further, issues which had been once taken up for conciliation and in which adjudication had been declined by the government may not be taken up in conciliation again unless any new facts are brought to notice which were not considered in the earlier conciliation demands which although covered by a statutory obligation seek benefits higher than those provided in law.

The Conciliation officers are instructed to settle the disputes as expeditiously as possible but no time limit has been specifically laid down. The Government once in a quarter is however, making a review in respect of cases delayed beyond three months. The Labour Commissioner is to take note of cases delayed beyond three months after the initiation of conciliation proceedings and sends his report to the government. The Government, after reviewing the delays, issues instructions to the concerned conciliation officers to dispose of long pending cases expeditiously.
If the Conciliation officer is not successful in his efforts to bring about settlement between the disputant parties, the appropriate government, upon receipt of the officer’s report, may refer the dispute to the Board of Conciliation, the Court of Inquiry, or the Tribunal, or decline to take any further action. If the government decides not to proceed any further into the matter, it must communicate to the parties concerned its decision and the reasons there of. This is a statutory duty of the government. The failure report of the Conciliation officer contains 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 there of, 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, this failure report serves as an investigative report made by a government officer, which informs the government regarding the gravity of the industrial dispute. The Conciliation officer under the Industrial Disputes Act, 1947 is said to be the custodian of industrial peace in India.

51 Sec.12 (5) Industrial Disputes Act, 1947.
view of the importance placed on the report of the conciliation officer, it is supposed to be unbiased.

The refusal of the government to refer the matter for further resolution through other machinery under the Act it is said results in "pre-mature death of the industrial dispute" because the parties have no other course open for settlement of their dispute through industrial law. The parties to the dispute however are made available with constitutional remedies by way of writs to the said written refusal and have it quashed on the ground that the said reasons refusal are based on considerations which are irrelevant, extraneous or not germane to the question in dispute or the reasons are not the reasons as contemplated by law. They may keep on approaching the government requesting or pressurizing it to change its opinion in the matter and make a reference as under section 10 of the Act. Conciliation officers have also been entrusted with enforcement of labour law in their respective jurisdiction. Some of the States in India which have entrusted their Conciliation officer to enforce labour laws in their respective jurisdiction in addition to conciliation work feel that the "practice of combining
enforcement work with conciliation work is somewhat helpful in the investigation of the disputes, in securing attendance in conciliation proceedings by the parties and bringing labour settlement.\(^5^4\)

The Industrial Disputes Act, 1947 provides not only for the appointment of Conciliation officer but also for the constitution of Board of Conciliation by the appropriate government for promoting settlement of industrial disputes. It is constituted as an ad hoc body by an appropriate and to induce the parties to come to a fair and amicable settlement.

The appropriate government may constitute the Board by a notification to that effect in the official gazette. It consists of a chairman who shall be an independent person i.e.: - (unconnected with the dispute or with any industry directly affected by such dispute) and two or four members, as the government thinks fit, who shall be appointed to represent the parties.\(^5^5\) If any party fails to recommend any name within the prescribed time, the appropriate government shall appoint such persons as it thinks fit to represent that party.


\(^5^5\) Sec.5 (2), *Industrial Disputes Act, 1947*
The Courts of Inquiry are also an ad hoc body and consist of one or more persons appointed to it by the appropriate government for each case. Its judicial powers are practically the same as those vested in the board of conciliation. It can inquire into matters connected with or relevant to an industrial dispute, but not into the dispute itself. It is given a period of six months to inquire into an industrial dispute, and its report must be published by the government within thirty days of its receipt but, unlike the Board of conciliation, the Court is not empowered to make any recommendation as to how the dispute could be resolved. During the pendency of proceedings before the conciliation, a lock out or a strike must not occur. No such prohibition applies when the Court of inquiry seizes the dispute.
8. Representation of parties before the Conciliation and Arbitration Commission under the Conciliation and Arbitration Act, 1904 and before various authorities under the Industrial Disputes Act, 1947

The most important of the provision governing the rights of appearance before the tribunals is found in section 63 of the Conciliation and Arbitration Act, 1904-

(1) In proceeding before the commission, a party or intervener-

(a) Being an organization, may be represented by a member, officer or employer of the organization; and

(b) Not being an organization, may be represented by-

(i) an employee of that party or intervener; or

(ii) a member, officer or employee of an organization of which that party or intervener is a member, but, subject to sub-section (1A) and (2) a party or intervener shall not be represented by counsel, solicitor or paid agent except- (a) leave of the commission and with the consent of all parties; or (b)
by leave of the commission, granted upon application
made by a party, on the ground that, having regard to
the subject -matter of the proceedings, there are
special circumstances which make it desirable that the
parties and interveners may be so represented.

The section does not exclude legally qualified members,
officers or employees of organizations appearing before
the commission provided the relationship to the
organization is bonafides.

Similarly under the Industrial Disputes Act, 1947
section 36 speaks about representation of parties
before various authorities under the Act. For the sake
of noting the similarities the section is reproduced as
follows: -

Section 36 (1) a workman who is a party to a dispute
shall be entitled to be represented in any proceeding
under this Act by-

(a) Any member of the executive or other office
bearers of a registered trade union of which he is a
member;
(b) Any member of the executive or other office bearer of a federation of trade unions to which the trade union referred to in clause (a) is affiliated;
(c) Where the worker is not a member of any trade union, by any member of the executive or other office bearers of any trade union connected with, or by any other workman employed in, the industry in which the worker is employed and authorized in such manner as may be prescribed.

(2) An employer who is a party to a dispute shall be entitled to be represented in any proceeding under this Act by-

(a) An officer of an association of employers of which he is a member:
(b) An officer of a federation of associations of employers to which the association of employers to which the association referred to in clause (a) is affiliated;
(c) Where the employer is not a member of any association of employers, by an officer of any association of employers connected with, or by any other employer engaged in, the industry in which the
employer is engaged and authorised in such a manner as may be prescribed.

(3) No party to a dispute shall be entitled to be represented by a legal practitioner in any conciliation proceedings under this Act or in any proceedings before a Court.

(4) In any proceeding before a Labour Court, Tribunal or National Tribunal, a party to a dispute may be represented by a legal practitioner with the consent of the other party to the proceeding and with the leave of the Labour Court, Tribunal or National Tribunal, as the case may be.

Thus it can be observed that both in Indian and the Australian legislation there is no absolute bar for representation thorough legal practitioner. Under the Industrial Disputes Act, 1947 section 36(3) there is a complete ban on the parties being represented by legal practitioners in any conciliation proceedings, a Conciliation officer or the Board of Conciliation or in the proceedings before a Court of Enquiry. The conciliation proceedings held by a Board or a conciliation officer are mainly concerned with mediation for promoting settlement of industrial
disputes. The proceedings before a Court of Enquiry are of an investigatory nature and therefore the presence of legal practitioner in conciliation or investigation may divert attention from the subject matter of dispute.

9. Awards under the Conciliation and Arbitration Act, 1904 and under the Industrial Disputes Act, 1947

The Conciliation and Arbitration Act 1904, very specifically casts an obligation on the members of the Commission to keep abreast of industrial affairs. The Commission is not authorised to act on its own and without hearing the parties or without allowing proper representation, an award cannot be passed. The obligation to inquire into the matters in dispute is to be carried on in accordance with the principles of fairness and natural justice. Section 39 of the Act not only positively requires the commission to hear the parties but also to consider public interest in the making of an award. It is necessary to quote section 39(1) here, which is self explanatory.

56 Sec.18-21, Div I, Conciliation and Arbitration Act, 1904
57 Boilermakers' Case supra
"In relation to an industrial dispute with which the Commission is dealing, the Commission shall, in such manner as it thinks fit, carefully and expeditiously hear, inquire into and investigate the dispute and all matters affecting the merits of the dispute and the right settlement of the dispute.

(2) In proceedings before the commission under section 31, 34, 35 or 36A of this Act, the commission shall in considering the public interest, have regard, in particular, to the state of the national economy and the likely effects on that economy of any award that might be made in the proceedings".

It is significant to note from the above that national interests have to be kept in mind by the Commission in making an award. The Conciliation and Arbitration Act, 1904, gives scope for making an interim or a provisional award relating to any or all of the matters in dispute. The statutory prescriptions of the contents of an award are laid in sections 51-53, 55. They are as follows:

58 Sec.41 (1) (b), Conciliation and Arbitration Act, 1904
Section 51 - in determining an industrial dispute, the Commission shall provide, as far as possible and so far as the commission thinks proper, for uniformity throughout an industry carried on by employers in relation to hours of work, holiday and general condition in that industry.

Section 52 - in determining an industrial dispute in which the rates of pay or conditions of employment applying to apprentices in an industry are in question, the commission shall take into consideration any scheme of apprenticeship provided by or under the law of any state or territory of the commonwealth.

Section 53 - in determining an industrial dispute, the Commission shall take into consideration the provision of any law of a State or territory of the Commonwealth relating to the safety, health and welfare of employees (including children) in relation to their employment.

Section 55 - in making an award in relation to an industrial dispute, the Commission is not restricted to the specific relief claimed by the parties to the industrial dispute, or to the demands made by the parties in the course of the dispute, but may include in the award any matter or thing which the Commission
thinks necessary or expedient for the purpose of preventing or settling the dispute or of preventing further industrial dispute.

It is clear from the above provisions that in making an award the Commission shall basically confine it self to the dispute in question and other appropriate relief which is general to the purpose of the settlement of the industrial dispute. The Commission has the power to vary an award for the purpose of removing any ambiguity or uncertainty in the award. However, an award cannot be varied so as to have operation beyond the parties to the dispute in the settlement of which the award is made.

Under the Industrial Disputes Act, 1947, an 'award' means "an interim or final determination by an Industrial Tribunal of any industrial dispute or any question relating thereto." This definition was substituted by the Industrial Disputes (Amendment and Miscellaneous Provisions) Act, 1956 (36 of 1956), with effect from March 10, 1957. Under the amended definition, besides Industrial Tribunals and Labour Courts, National Tribunals have also been added as

59 Sec.59, Conciliation and Arbitration Act, 1904.
60 Sec. 2(b), Industrial Disputes Act, 1947

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adjudicating authorities. An arbitration award made under section 10A is also included in the definition. Thus, an order shall be deemed to be an award in terms of section 2(b) of the Act, if:

(i) It is interim or final determination of an industrial dispute, or

(ii) It is an interim or final determination of any question relating to such disputes, and

(iii) The said interim or final determination is made by a Labour Court, and Industrial Tribunal or a National Tribunal, or

(iv) It is an arbitration award under section 10A

9.1 Framing and operation of awards

In framing an award it is mandatory for the Australian Industrial relation Commission to express the award in such a manner so as to indicate the decision of the Commission without unnecessary technicalities. An award takes effect after the expiry of 28 days from the date of the making of the award, unless all parties to the industrial dispute consent otherwise or the

1 See 56, Conciliation and Arbitration Act, 1904
commission directs otherwise. With regard to the tenure of the award section 58 speaks as follows:

(1) subject to section 59, an award determining an industrial dispute continues in force—(a) except where paragraph (b) applies for a period specified in the award, not exceeding five years from the date on which the award comes into force; or (b) in the case of a memorandum which, under section 28, is deemed to be an award—for a period specified in the memorandum, not exceeding three years from the date on which the memorandum, a certified under that section, comes into force.

An award remains in operation even after the expiration of the above said period unless the Commission otherwise orders. Further, there is scope for the commission to make an award in spite of an award being in force, and a further industrial dispute between all or any of the parties to the first mentioned award, with or without additional parties and whether or not the subject-matter of the further industrial dispute is the same in whole or in part as the subject-matter of

62 Sec.57, Conciliation and Arbitration Act, 1904  
63 Sec.59, refers to varying or setting aside any terms of an award  
64 Sec.57(2), Conciliation and Arbitration Act, 1904
the industrial dispute determined by the first-mentioned award.\footnote{Sec.58(5), Conciliation and Arbitration Act,1904}

As already discussed the awards can be made binding only on the parties to the dispute, finds statutory recognition in section 61 of the Conciliation and Arbitration Act, which provides:

"An award determining industrial disputes is binding on

(a) All parties to the industrial dispute who appeared or were represented before the commission;
(b) All parties to the industrial dispute who were summoned or notified, either personally or as prescribed, to appear as parties to the dispute, whether they appeared or not;
(c) All parties who, having been notified, either personally or as prescribed, of the industrial dispute and of the fact that they were alleged to be parties to the dispute, did not, within the time prescribed, satisfy the commission that they were not parties to the dispute;
(d) In the case of employers, any successor to or any assignee or transmittee of, the business of party
including any corporation which has acquired or taken
over the business of such a party;
(e) All organizations and persons on whom the
award in binding as a common rule; and
(f) All member of organizations bound by the
award” Organizations refereed in Para (f) are only
those organizations who were “parties” to the dispute.

Once the award is made in settlement of a dispute,
section 60(1) of the Conciliation and Arbitration Act,
1904, endeavours to make the award final and
conclusive, subject of course to the provision of
appeal against the award provided by section 35. The
Commonwealth Constitution of Australia 66 vests in the
High court original jurisdiction and therefore the High
Court has the power to correct an excess of or want of
jurisdiction by ay of prerogative writ.67

An award can be cancelled or suspended by a full bench
of the Commission for reasons such as, non-observance
of rules under the Act, defunct union, refusing to
accept employment by a large body of members as per the

66 Sec. 75(v) of the Commonwealth Constitution of Australia, provides three specific remedies,
namely, mandamus, prohibition and injunction.
67 R v Hickman; ex parte Fox (1945) 70 C.L.R.
The suspension or cancellation may be limited to specified persons or classes of persons, to a specified branch of the organization, or to specified localities.

Sub-section (1) of section 17 of the Industrial Disputes Act, 1947 provides that an award shall be published in such a manner as the government may think fit with in a period of thirty days from the date of its receipt. However, mere non-publication within the time mentioned in sub-section (1) would not invalidate the award itself. There is nothing in the Industrial Disputes Act, 1947 to indicate that publication contrary to the provisions of sub-section (1) would go to the root of the award itself or make the award illegal or void. Delay in publishing the award only postpones its finality under section 17(2) of its becoming enforceable under section 17 A of the Industrial Disputes Act, 1947. If an award is not published, it never becomes effective. By the express words of sub-section (2) of section 17 of the Industrial Disputes Act, 1947, the award of the tribunal is final. There is no right of appeal to the

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6 Sec. 62, Conciliation and Arbitration Act, 1904
9 Sec. 62(3), Conciliation and Arbitration Act, 1904
High Court. The Supreme Court of India has held in the case of Workmen of Kettelwell Bullen & Co. Ltd. v. Kettlewell Bullen & Co. Ltd.,\(^7\) that in the exercise of its supervisory jurisdiction, the High Court cannot convert itself into a Court of appeal and correct errors of fact, errors in the appreciation of oral and documentary evidence and errors in drawing inferences or omission to draw inferences.

Sub-section (1) of section 17A of the Industrial Disputes Act, 1947, provides that on the expiry of thirty days from the date of its publication under section 17, an award, including an arbitration award, shall become enforceable. Some exceptions to this general rule have, however, been provided. The exceptions are to the effect that if, in the opinion of the appropriate government or the Central government, in the cases specifies, it is inexpedient on public grounds affecting the national economy or social justice to give effect to the whole or any part of an award, the government concerned may declare that the award shall not become enforceable on the expiry of the said period of thirty days.\(^7\) After such a declaration

\(^7\) 1960 II L.L.J 189 (SC)

\(^7\) Sec. 17 A (1) (a) (b), Industrial Disputes Act, 1947.
has been made, sub-section (2) of section 17A of the
Industrial Disputes Act, 1947 provides that the
appropriate government or the central government may,
within ninety days from the publication of the award,
make an order rejecting or modifying the award.

The benefits conferred by an award may relate to a
period prior to the award. According to sub-section (4)
of section 17A read with subsection (1) of the
Industrial Disputes Act, 1947 the date with effect from
which its terms shall come into operation may be
mentioned which may be a pat date, but the period from
which those terms can be enforced will be the period
from mentioned in sub-section (1) of section 17A of the
Act.

Once an award is published it becomes enforceable on
the expiry of period of thirty days from the date of
publication off the award and such an award is binding
on all the parties to the industrial dispute. It may be
binding, to all other parties who might have been
summoned to appear in the proceedings as party to the
dispute. It may be binding on the successors of
employer and the employee who might have been employed
subsequent to the date of reference. Thus it is evident
from the scheme of the Industrial Disputes Act, that the award is binding not only on the parties to the award or all the parties summoned to appear in the proceedings as party to the dispute but also on the successors or assignees in respect of the establishment to which the dispute relates. An award remains in operation for a period on one year from the date on which the award becomes enforceable under section 17A. However the appropriate government may reduce the said period and fix such period as it thinks fit. In fixing such a period the total period of operation of any award shall not exceed three years from the date on which it came into operation.

Section 29 of the Industrial Disputes Act, 1947, provides for the punishment of any person who commits a breach of any term of an award, which is binding upon him under the Act. The punishment provided for is imprisonment for a term, which may extend to six months, or fine or both.

An amendment in the year 1956 to the Industrial Disputes Act of 1947 divided the adjudicatory machinery
into three categories—(a) labour court, (b) tribunal, and (c) national tribunal. All these three are on the same footing, in as much as an appeal from one to another cannot be preferred. The division is based mainly on the nature of the dispute and the industry involved. Labour courts and tribunal are the main bodies constituted by State government; the National tribunal is constituted by the Central government.

The Labour Court consists of one person only to be appointed by the appropriate government. A person cannot be appointed as the presiding officer of a Labour court unless he is or has been a judge of a High Court, a District judge or Additional judge for a specified period. The second schedule of the Act specifies those matters, which may be referred by the appropriate government for adjudication by the labour court. The matters, which come under the jurisdiction of the court, are those dealing with:

1) The propriety or legality of an order passed by an employer under the standing orders;

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74 The Industrial Disputes Act, 1947, Act No XIV of 1947, Ss 7 and 10 (1) (C), substituted by Act No XVI of 1956, Sec 4
75 Sec. 7 & B, Industrial Disputes Act, 1947.
76 Sec. 7 (2) (3), Industrial Disputes Act, 1947.
2) The application and interpretation of standing orders;

3) Discharge and dismissal of workmen including reinstatement of or grant of relief to, workmen wrongfully dismissed;

4) Withdrawal of any customary concision or privilege;

5) Illegality or otherwise of a strike or lockout; and

6) All matters other than those specified in the third schedule, which are within the jurisdiction of industrial tribunals.

In addition, any dispute specified in the third schedule, and involving less than a hundred workers may also be referred to the Labour court.

A Tribunal consists of one person only to be appointed by the appropriate government.7 Any matter specified in the second schedule (as noted above) or in the third schedule may be referred to the tribunal. The third schedule specifies the following matters:

1) Wages, including the period and mode of payment;

2) Compensatory and other allowances;

7 Sec. 7A (2), Industrial Disputes Act, 1947.
(3) Hours of work and rest intervals;

(4) Leave with wages and holidays;

(5) Bonus, profit sharing, provident fund and gratuity;

(6) Shift work otherwise than in accordance with standing orders;

(7) Classification of grades;

(8) Rules of discipline;

(9) Rationalization;

(10) Retrenchment of workmen and closure of an establishment;

Any other matter that may be prescribed.

The matters specified in the third schedule are mostly those, which form a new demand and give rise to industrial disputes over a new contract. These are the matters, which affect the finances of an industry.

Any matter prescribed in the second or the third schedule, which involves the industrial establishment of more than one state or which is of national importance, may be referred by the Central government to the National Tribunal when the national seizes a case, no other Labour court or Tribunal can exercise jurisdiction over it, and if the matter is pending
before any Labour court or Tribunal, it is required to locate the proceedings usually the labour court, or the tribunal or the national tribunal is constituted of one person but one or more assessors may be called to advice it.\textsuperscript{78}

The above survey of different authorities under the Industrial Disputes Act, 1947, points out that these authorities are set up with different ends in view and are invested with different powers and duties necessary for the purposes for which they are set up. The appropriate government is invested with discretion to choose one or the other authority for the purpose of investigation and settlement of industrial disputes and its choice depends upon its appraisement of the situation of a particular industrial dispute.

One of the important powers that the appropriate government hold under the Industrial Disputes Act, 1947 for the peaceful settlement of the industrial disputes is the power of reference of disputes for adjudication to any of the bodies noted above.\textsuperscript{79} The failure report given by the conciliation officer serves as an important document for the government to refuse or make

\textsuperscript{78} Sec 7 (A), (B) & 11(5), Industrial Disputes Act, 1947.

\textsuperscript{79} This provision was made by the British Government under the Defence of India Rule-81 and now contained in Sec. 10 of Industrial Disputes Act, 1947.
a reference of a dispute for settlement. The Government in any case may make a reference either when the dispute is apprehended or when it actually takes place. The Government without conciliation proceedings can make a reference. A lapse of six years since originally refused to refer by the government can again be referred by the government as the principle of resjudicata does not apply since the power to refer is a positive one which does not get exhausted and does not lapse merely because the government has refused to refer the disputes as held in the case Western India match co Ltd v. Western Indian match Workers Union⁶⁰ and Avon services (Production) Agencies Pvt. Ltd, v. Industrial Tribunal⁶¹. Once a reference is made the government cannot either amend, nor can it cancel the reference as held in the case of State of Bihar v. D N Ganguly.⁶² It can however, transfer the reference from one tribunal to another. It an also add some new items to the existing reference. However in purporting to refer a dispute which it had earlier refused to refer, it cannot refer altogether a different dispute for adjudication as held in the case of Sindhu Resettlement

⁶⁰ A.I.R. 1970 SC 1205
⁶¹ A.I.R. 1979 SC 170
⁶² 1958 II LLJ 634-44 SC
In the case of *State of Bombay v. PK Krishnan*\(^6\), the Supreme Court has observed that in making a discussion has to whether it should make a reference or not, the Government need not confine itself to the conciliation officer’s report.

The government enjoys discretionary power to make or refuse to make a reference order. The government has to consider whether or not there is a prima facie case fit for reference. The government’s decision not to make a reference does not prelude it from changing its mind subsequently. But reference must be made with in a reasonable time as held in the case of *Shalimar works Ltd, v. It’s Workers*.\(^5\)

The power of reference under section 10(1) of the Industrial Disputes Act, 1947, is so absolute that no other body or authority can refer an industrial disputes for adjudication under the industrial disputes act even the High Court or the Supreme Court of India cannot refer any industrial disputes for adjudication to a Labour court, Tribunal, National tribunal.\(^6\)

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\(^5\) 1968 I LL J 834 SC  
\(^6\) A.I.R. 1960 SC 123  
\(^7\) 1959 II LL J 265 SC  
\(^8\) Rajiv Khanna, “Reference of Industrial Disputes”, Labour Adjudication in India, (2001) p 201
However the situation is not the same in Australia, but it is necessary in the Indian context.

The 1956 amendment to the Industrial Disputes Act, 1947, introduced the principle of voluntary arbitration of industrial disputes by mutual agreement between the parties. Section 10A of the Industrial Disputes Act, 1947, provides that where any industrial dispute exists or is apprehended the employer and the workmen may at any time before the dispute is referred to a Labour court, Industrial tribunal or a National tribunal, refer the disputes to arbitration by mutual agreement. Any agreement between the parties to arbitrate the dispute must be made in writing and copies of the agreement must be submitted to the appropriate governmental agencies and the area conciliation officer. The arbitrator furthermore is required to submit his award, not to the parties concerned but to the government, which must publish it within 30 days of its receipt unless the government opposes the award; it becomes operative 30 days from the date of publication, or on the date specified in the award.
10. Changes in the law on labour dispute resolution in Australia and the need for change in the Indian Law

The Australian system of conciliation and arbitration has often been held upon as a model for the world. A major contributing factor in its success is its ability to constitute itself in the way most appropriate to the particular dispute with which it is dealing. The process and nature of award making ensures uniform standards of working conditions thereby ensuring industrial peace. Under the Australian system the methods by which the parties in the industrial relation deal with each other include collective bargaining, compulsory conciliation, voluntary arbitration, and compulsory arbitration. However, the fact that compulsory arbitration exist as a last compulsory arbitration exist as a last resort undoubtedly influences and modifies the result of other methods of disputes settlements.

Conciliation, as an effective technique in the maintenance of industrial peace in Australian has not matched with arbitration. It is the opinion that conciliation, has proved to be a relative failure in
Australia. Some of the reasons expressed for the ineffectiveness of the conciliation system were:

1) The practice of conciliation process lacks compulsion in arriving at a settlement. The most that can be required in pursuance of compulsory conciliation is the attendance, and continued attendance, of the parties of the dispute.

2) There is no compulsion to reach an agreement inspite of the diplomacy or the pressure of the conciliator, the parties cannot be complied to accept or concern with settlement terms that may be afford or prospered to them.

3) Conciliation under the Australian system in associated with or identified with arbitration as factors in the settlement of industrial dispute. The parties to the dispute know that arbitration are designed to follow the conciliation conference.

4) The attitude of the employers at the conciliation meeting is un encouraging; they have refused to make concession, or to suggest compromises. They have deemed it preferable to let the maters at stake go to

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arbitration. They hope that the award to be made in
determination of the disputes will grant less to the
union. Then the union would have to be prepared to be
accepting at the consolation stage in settlement of the
claims submitted. Despite the emphasis on conciliation
as the first step towards settlement of industrial
disputes, under the Australian law the emphasis
continued to rest on arbitration. The approach of the
Conciliation Commissioners, when they learn of the
existence of an industrial dispute or when an
industrial dispute was reported to them, was to summon
the parties to a compulsory conference and order them
to discuss among themselves, the claims that
constituted the basis of the dispute. The conference
has in most cases is held in private. Further the
Commissioners made little or no attempt at constructive
mediation. When a Commissioner came to the conclusion
that there was no likely hood that an agreement would
be reached between the parties, he proceeded to formal
arbitration. The Commissioner seems to be already
believe that there was little that could be achieved by
conciliation, and that the determination of industrial

88 Supra n 87
dispute of any importance would be effected all most only through the process of arbitration.

5) The Conciliation and Arbitration Act 1904, lacks uniformity in so for it is aims at placing the functions of conciliation and arbitration in different persons.

6) The process of conciliation involves delay in convenience and expenses, when a commissioner succeeds a conciliator in dealing with an unresolved dispute, which has been refereed to him for arbitral action, the commissioner proceeds with case de novo in satisfaction of formalities of procedure.

There was a felt need in Australia since the mid 1980's to change the industrial relations arrangements. There were three competing reports, which proposed changes to the existing system.

The Hawk labour government was elected to office in 1983 and soon it appointed the Hancock committee of review to access the changes required developing a more effective system of industrial relation. The committee

\[ Supra \ n 87 \ at \ 97 \]

\[ M \text{Edward Davis, D Russell Lansbury, "Industrial Relations in Australia", The International Comparative Industrial Relations (1993) p 120} \]

\[ \text{Former Prime Minister of Australia} \]
submitted its report in 1985, which argued strongly for the retention and consolidation of the existing system with certain important modifications. The proposal for change was with reference to restructuring of the Federal tribunal. It suggested that Federal tribunal may be composed of two bodies, an Australian Industrial Relations Commissioner with powers similar to the existing commission and a new labour court to replace the industrial division of the Federal Court. It also proposed widening the new Commission's power to deal with all disputes, which arose between employers and employees. The Committee was unconvinced that dismantling of the existing structure and greater reliance on bargaining would be of benefit indeed this was described as a lead in the dark.

The Australian council of trade unions (ACTU) submitted a report "Australia reconstructed" in 1987. It etched the Hancock report and supported the relation of centralised wage fixing.92

The Business Council of Australia's report, entitled "Enterprise-based bargaining: A better way of working", was a challenge to the supporters of the centralised

92 Supra n 90
system. The Business Council of Australia argued that the key to improved competitiveness was a shift to enterprise-based negotiation. Moreover it argued that the traditional focus on industrial relations should be abandoned and replaced by an employee relations 'mindset'.

In 1988 the labour government in Australia replaced the Conciliation and Arbitration Act, 1904 with the Industrial Relations Act, 1988. The Act commenced operation on 1 March 1989. The Act was similar in approach in many ways to its predecessor. The Act constituted a new Australian Industrial Relations Commission in place of the former Australian Conciliation and Arbitration Commission. Under the new Act, all federal unions were required to register with the arbitration authorities (represented by the industrial registrar) in order to gain access to the tribunal and to enjoy full corporate status under the law. In order to register them under the Act it was prescribed that unions must have a minimum of 1000 members and be industry based. Its reason for such a high number of members was to stop the growth of small, craft-based unions. This number was increased in the

93 Supra n 92
1990 amendment to the Act to 10,000 members, which was later reduced in 1993 to 100 in order to comply with International Labour Organisations convention No.87 on freedom of association and the right to organise, which had been ratified by Australia.

Under the Act, if there is already in existence a union, to which the employers can conveniently join, a new union in the same industry cannot be registered. This it is felt has helped to reduce inter union disputes, it has also inhibited the development of new unions and helped preserve some whose principal industry has declined.\footnote{Supra n 90} A greater flexibility is created under the Act to enable parties to reach their own particular terms for a settlement by providing for certified agreements. The Industrial Relations Reform Act 1993 made significant changes to the Industrial Relations Act 1998, completely reshaping the federal industrial system. The primary emphasis in the new system is on enterprise bargaining supported by a network of awards and minimum requirements for lawful termination of employment and for redress is also prescribed under the Act. The Act also established the Industrial Relations Court of Australia. Inspite of the
reforms carried on to the Industrial Relations Act, 1988 in the year 1993 by way of Industrial Relations Reform Act, 1993, the political opponents to the labour government in Australia regarded it as 'pro-union', and unsuccessful in delivering flexibility to Australian workplaces. In order to address the failings of the Industrial Relations Reform Act, 1993, the John Howard Government of Australia in the year 1996 brought the Workplace Relations Act, replacing the earlier legislations.

10.1 Australian Industrial Relations Chronology

1. 1901-Commonwealth of Australia founded

2. 1904-Commonwealth Conciliation and Arbitration Court established under the Commonwealth Conciliation and Arbitration Act.

3. 1926- Chief judge and other judges replaced the President and Deputy president of the Court.

4. 1947-Appointment of Conciliation Commission to take over some of the Courts functions.

5. 1956-The Court of Conciliation and Arbitration abolished and replaced by Commonwealth Conciliation and Arbitration Commission and the Commonwealth Industrial Courts.

*Prime Minister of Australia*
6. 1976- The Commonwealth Industrial Court abolished and jurisdiction transferred to Court of Australia.

7. 1988- Industrial Relations Act, replaces the earlier Conciliation and Arbitration Act, 1904.

8. 1993- Industrial Relations Reform Act, 1993 passed


As can be seen from the above discussion, the Australian industrial relations law has undergone several changes since the first legislation in the year 1904. The changes/amendments have been carried on in order to meet the challenges of the changing political, economical and social environment. The results of these changes in law are best reflected in the reduction in number of working days lost over the period 1970 to 1996 from 6.3 million (in 1974) and 0.5 million (in 1994).\(^\text{96}\)

10.2 A critical review of the dispute resolution machinery in India

The dispute resolution machinery in India consists of four levels i.e., bipartite negotiations, conciliation, arbitration and adjudication. Conciliation is no doubt

recognized as important machinery in almost all-industrialised countries, to resolve labour disputes but it functions under government aegis. The office of the conciliation officer has served only a limited purpose. The conciliation machinery was generally found inadequate because the role of the conciliation officer was merely to arrange meetings between labour and management representatives and share or exchange information. An employer goes to the conciliation proceedings with more or less a closed mind and adopts dilatory tactics. His effort is mainly to persuade the conciliation affair to make a report in his favour so that the matter is closed at the conciliation stage itself. The delay in conciliation is one of major factors for making the conciliation in effective. This is not only unhealthy from the point of view of labour law. it is also not in conformity with section 12 (b) of the Industrial Disputes Act, 1947, which requires that a "a report under section 12 shall be submitted within fourteen days of the commencement of conciliation proceedings or within shorter period as may be fixed by the appropriate government." What is true about the functioning of conciliation officer is even more so about conciliation board. The office of
conciliation board is stated to be a superfluous one in industrial bargaining since it is merely adds to the delay in the ultimate settlement of the dispute. In order to enable the conciliation machinery to play an efficient role in the settlement of industrial dispute, the first National Commission on Labour made some significant recommendation as under: 97

(a) Conciliation can be more effective if it is freed from outside influence and the conciliation machinery is adequately stopped. The independent character of the machinery will alone inspire greater confidence from the parties.

(b) There is need for certain other measures to enable the officers of the machinery to function effectively. Among these are: (i) proper selection of personal, (ii) adequate pre-job training and (iii) Periodic in-service training.

Speaking on voluntary arbitration the Supreme Court in the case of Komai Leather Kormacharis Sanghatan v. Liberlg FactNear Co.Regd98 observed,

98(1990) Lab IC 301, 307 SC
“Voluntary arbitration’s appears to be the best method for settlement of all industrial disputes. The disputes can be resolved specially and in less than a year, typically in a few months. Arbitration is also cheaper than litigation with less legal work and no motion, rotics. It has limited discovery with quicker hearing and is less formal than trials...”

Though various commissions and committees including the Indian labour conference have recommended voluntary arbitration as the preferred made of dispute settlement, yet for various reasons it has not become popular. O.P. Malhotra points out that,

“Voluntary arbitration as envisaged by section 10 A is arbitration in name only. In reality it is more adjudication than arbitration... the only difference between the voluntary arbitration and the compulsory adjudication left is that in the former case the parties have the liberty to make by mutual agreement a reference to a private ‘arbitrator’ or arbitrators’
of their choice apart from the presiding officers of labour courts, industrial tribunals and national tribunals. Once a reference is made there is no difference between the so-called 'voluntary arbitration' and the 'compulsory adjudication'. Thus, the efficiency of arbitration is longley buttressed by reliance on state intervention. No wonder that this method does not appear to have much attraction for Indian industry".99

In view of the above discussion, it can be said that the Indian labour law on dispute resolution is largely influenced not only by the legislative provision of Australia but also by the decisions of the Australian law courts on labour law. Though Australia has kept pace with the changing time, India has thus far has failed to take any major step in the direction of changing the law on labour dispute resolution. Therefore the Australian Workplace Relations Act, 1996 has to be studied in order to know what best India can adopt for its own purpose.