CHAPTER 6

RELEVANCE OF PONDICHERRY EXPERIENCE TO INDIA

Pondicherry, which is now often called as Window of French Culture, was the part and parcel of India (Bharat Desh) in the ancient period. The Britishers, when they ruled India made us to follow the Anglo-saxon System by changing our culture and attitudes. We, even after our independence, are made to feel that Anglo-saxon System continues to dominate in our legal fabric. India has a rich heritage of its own and British influence over the Indian legal system may vanish soon, once the courts stop referring to the decisions of the English courts and came out with interpretations of our laws based on Indian customs and tradition. However, Indian legal system would always like to absorb certain dictums of the English legal system, nay of any legal system with a view to find solutions to the emerging new problems of global dimension.

French legal system, though had its footprints at Pondicherry for a shorter period than the English system had in India, because of unimpeaching simplicity and quest for justice has made significant contribution for the development of the
legal system in general, and in the field of Labour Law and Administrative Law in particular. French people attempted to achieve industrial progress through the 'natural laws of economics' and did not encourage trade unionism as in their view, 'right' may take the place of 'might' and the production may not reach the optimum level, due to trade union activities. In India also, trade union membership has not been made compulsory and through 'Five Year Plans', every effort is made to increase industrial production. India is a developing country and it is very necessary to strengthen the industrial sector, which is the economic back-bone of our country. In this context, it is felt pertinent to view the problem of industrial relation in our country in order to examine the relevancy of Pondicherry experience and to suggest improvements in the system.

6.1 The Problem of Industrial Relation System in India

The Five Year Plans lay much emphasis on industrialization of India. We have accepted the establishment of a welfare State, with economic policies based on socialistic pattern of society. For accomplishment of these objectives, unstinted co-operation among workers and employers in an industry is not only highly
desirable but also necessary. The ills of the present system started with the Factory System in India. In the early days of the factory system, the employer was the absolute master and the workers were treated as commodity, which could be easily purchased and thrown out, whenever they became unnecessary. The doctrine of supply and demand governed their employment position. The employer who followed the path of 'hire and fire' virtually dictated wages and other conditions of service to the workers. This freedom of contract and liberty in employment relations were being abused and misused and thus social and industrial ills became manifest. Economic injustice meted out to the workers by their employers made them to group themselves and the gap between the workers and employers became wider. Ideological differences came to the surface and the industrial climate became turbulent. The industrial conflicts became the order of the day. The employers attempted to stall the growth of trade union movement.

The only law in force at that time to settle trade disputes was the Employers and Workmen (Disputes) Act, 1860. However, the provisions of the Act were applicable only to disputes relating to wages. The Act was more favourable to employers than workers, as any breach of the contract on the part of the workmen was to be treated as a criminal offence.

2. Employers and Workmen (Disputes) Act, 1860.
Even after independence, it was not realized at the first instance that to maintain harmonious industrial co-operation between employer and employees must be encouraged and that it would not suffice, if merely conflicts are settled through adjudication. Courts also held in the beginning\(^1\) that industry is something which the employers ordinarily create or undertake. The objects enshrined in the preamble to the Industrial Disputes Act, 1947 would reveal that the provisions in the Act are mainly for the investigation and settlement of industrial disputes with a view to maintain industrial harmony and peace. Supreme Court in a later decision\(^2\) realized the necessity of giving equal importance to the workman and stated in clear terms that without the two, namely, employer and workmen there can be no industry. In Bangalore Water Supply and Sewerage Board's case\(^3\), Supreme Court used the term 'co-operation between employers and employees' to define the concept of industry. However, apart from the psychological and sociological differences between workmen and employer, loopholes in the legislations have contributed for the confused atmosphere in the industrial arena leading to several industrial conflicts.

The very purpose of establishing legal control over industrial relations, so that the workmen, who are the partners to production and profits would live with dignity and status in

\(^1\) Madras Gymkhana Club Employees' Union v. Gymkhana Club (1967-II-LL.J. 720 SC.).

\(^2\) Safdarjung Hospital v. Kuldip Singh Sethi (1970-II-LL.J. 266 SC.).

society is thwarted due to several drawbacks in the system itself. India could not develop a good industrial relation system of its own. When the first Trade Disputes Act was passed in 1920, it only provided for Courts of Inquiry and Conciliation Boards and prevention of strikes in public utility service concerns. No machinery for settlement of industrial disputes was provided. The legal measures were only to overcome the situations created by the First World War. The Act of 1929, \(^1\) which repealed the earlier enactment, gave the power to the Government to intervene in settlement of industrial disputes and provided for conciliation machinery to bring about peaceful settlement of industrial disputes. The Act was also not used extensively and the Government policy was one of laissez faire. Later, to meet the exigency created by the Second World War, the Government of India promulgated the Defence of India Rules. The rule was mainly intended to provide quick remedies for industrial disputes by compulsorily referring them either to conciliation or adjudication. The rule also made the awards legally binding on the

---

1. Trade Disputes Act, 1929.
parties. With the end of the war, the above rule was due to lapse on 1 October 1946. However, the operation was extended by promulgating the Emergency Powers (Continuance) Ordinance, 1946. When the Industrial Disputes Bill, 1946 was introduced on 8 October 1946 most of the provisions contained in the Defence of India Rules relating to labour were incorporated which became the law in 1947.

In our country, the 'law relating to industrial disputes' called as 'industrial law' as the legislation only determines the industrial harmony and peace by providing for settlement of conflicts between labour and capital. Since the legislation was mainly based upon the Defence of India Rules promulgated to meet the emergent situation, which was a temporary phase, could not foresee the future industrial conditions of our country and could not become an effective instrument to regulate the industrial relation. The piecemeal amendments carried on depending upon the necessity did not change the basic structure. War like situations prevailed during the post-Independence period due to migration of people from
Pakistan, integration of Princely States etc., made the country to continue the system for a longer period.

An attempt is therefore made in this chapter to analyse certain drawbacks in our legislation in respect of settlement of industrial disputes in the light of the experience gained by Pondicherry during French regime. Certain basic concepts like industry, industrial dispute, workman, defined in our legislations need modifications and it is therefore proposed to analyse the same at the first instance.

6.2 Conceptual Analysis of Definition of Industry

As it is well known, a simple nevertheless desired to be exhaustive definition has been laid down in Section 2(j) of the Industrial Disputes Act, 1947 which reads as follows:

'Industry means any business, trade, undertaking, manufacture or calling of employers and includes any calling service, employment, handicraft or industrial occupation or avocation of workmen'.

Though the above definition was amended by the Amendment Act of 1982, the amended provision relating to industry has not been brought into force though the Act was brought into force with effect from 21 August 1984. The reasons for not bringing into force the amended provisions, even though

four years have lapsed after the President of India has put his seal, appears to be a big mystery. No doubt the definition has become virtually redundant. While interpreting the definition of the word, 'industry', Justice Krishna Iyer said,\(^{(1)}\) "A definition ordinarily is the crystallization of legal concept promoting precision and rounding off blurred edges but alas! the definition in Section 2(j) viewed in retrospect has achieved the opposite."

The definition has undergone a seeming change in the hands of judiciary between 1953\(^{(2)}\) and 1978.\(^{(3)}\) The interpretation of the words by the judiciary have changed the literary meaning of the words used in the definition. While deciding as to whether municipal corporation is an industry,\(^{(4)}\) the word business was given the commercial sense viz., the inclusion of the profit element. However, later it was held\(^{(5)}\) the term need not be understood in the commercial sense and it would be enough, if it is analogous to trade etc. While describing the term 'industry' by using analogous words like business, trade, undertaking, manufacture etc., the Parliament to its wisdom must have thought it feasible to call the industrial activity as an 'industry', if the said activity would be coming within the ambit of any one of the terms used, though the word, 'or' has not been used in the drafting. It is submitted that the confusion was unnecessarily

created by different interpretation given by different courts. Though an attempt has been made to redefine the definition, the confusion is still surrounding as the legislative pronouncement is yet to see the light of the day. The decision in Bangalore Water Supply's Case has confounded the confusion further by bringing the activities like educational institutions, co-operatives, hospitals, etc., within the ambit of 'industry', which were held earlier by the courts otherwise. The separate judgement given by Justice Shri Jaswant Singh and Justice Shri Tulzapurkar, have also given rise to certain apprehensions and has led to divergent opinions by High Courts later. The Parliament also has expressed the opinion by introducing separate bills covering educational institutions and hospitals and by making an express provision in the Amendment Act of 1982, excluding educational institutions from the purview of 'industry'. Certain provisions in the amended definition which is yet to come into force may also give rise to multiplicity of proceedings, as number of persons in case of professional and co-operative institutions appears to be arbitrary, as the limit is not based on any statistical information. Thus, the definition of 'industry' as existing at present in the statute book has become virtually redundant.

Under the French law, though no precise definition as such

2. Ibid.
is laid down, professional activities and all commercial activities, whether it is carried on by public or private agencies, wherever there is an element of employer and employees' relationship are governed by the provisions of the Labour Code (Code du Travail) and accordingly has to be considered as an industry. France was the first country in the world, which recognized the right of the individual worker to get his grievances redressed and accordingly Conseils de Prudhommes were created as early as in 1806, (1) which were conferred with original jurisdiction over controversies that arise in connection with individual contracts of employment. Conseils are constituted for industrial work, professional work, agricultural work, and miscellaneous work. Conseils are established for particular trades, industries, and profession. In 1958, the conseils' jurisdiction was further expanded to include all controversies respecting individual contracts of employment and arising between employer and employee. Thus, the forum is clearly specified and an employee can move the matter directly without any procedure wrangles to get his grievances redressed. On the other hand in India, before a dispute is entertained by the competent authority, a preliminary objection has to be decided as to whether the establishment in

---

1. Law of 1806.
which the workman is working is an industry and at times, he has to further prove that he is entitled to claim as a workman. It is therefore suggested that a simple definition of industry in the light of French experience can be adopted in our country to include 'all kinds of establishments, wherein service is rendered for remuneration'.

6.3 The Concept of Industrial Dispute

Another drawback in the present scheme of industrial relation is the definition of the word, 'Industrial Dispute' used in Section 2(k) of the Industrial Disputes Act. It is submitted that two important aspects of industrial relation system as exists in our country namely, voluntary trade unionism and settlement of individual disputes, have not been taken into consideration while putting this definition in our statute book. No serious thought appears to have been given, while borrowing the definition from the repealed Trade Disputes Act, 1929 which in its turn was a reproduction of the Industrial Courts Act of 1919 of the United Kingdom. (1) It must be clearly noted that in our country, we have adopted the voluntary trade unionism and the position in United Kingdom is entirely different. Compulsory unionism has existed in some trades in Great Britain for over two centuries. (2) However, it was not achieved through law. At no time, the law made union membership compulsory in United Kingdom but rather sanctions

1. Section 8 of Industrial Courts Act, 1919.
involved in the closed shop agreements determined the position of membership. This means that a person may be persuaded to join a specified union because of a threat of dismissal by his employer if he does not do so, and the employer makes that threat because he has agreed to do so or because he would be threatened by industrial action, if he did not. (1) But an employer cannot be compelled by law to enter into a closed shop agreement nor can it be prevented. A workman in India has a right to remain independent and not to become a member of any trade union, though the practical situation may be different due to politicalisation of trade unions. By using certain interpretative technology, it may be possible to say that the plural word (workmen) used in the definition include singular (workman) and the language is wide enough to cover a dispute between an employer and a single employee, the scheme of the Act appears to contemplate that the machinery provided therein should be set in motion to settle only disputes which involve the rights of workmen as a class and that a dispute touching the individual rights of a workman was not intended to be the subject of any adjudication under the Act. (2)

6.3.1 CONCEPT OF INDIVIDUAL DISPUTE IN INDIA

The concept as laid down in the Industrial Disputes Act


has its origin in England, where it did not have any uniform or well-settled connotation. The 'trade disputes', as terms used were not the subject matter of the common law of England. In 1875 for the first time, the words were put in the statute book by incorporating in the Conspiracy and Protection of Property Act. Later, with certain minor changes, the definition was adopted in the Trade Disputes Act, 1906 and then in the Industrial Courts Act, 1919. The same phraseology were used in the National Arbitration Order, 1940 and the industrial Disputes Order 1951. It was held that an 'individual dispute' was not 'trade dispute' within the meaning of that order because the whole tenure of the Order of 1951 and the fact that throughout that order, the word 'employer' in the singular is used in conjunction with the word 'workers' in plural, indicates the intention that these words should be interpreted literally and in consequence, Section 1(i) of the Interpretation Act, 1889 should not apply. However, earlier construing the provisions of National Arbitration Order of 1940, Lord Goddard had held that the definition of the term 'trade dispute' had to be read in the light of Section 1(i) of the Interpretation Act of 1889 and so 'individual dispute' would be included in the purview of the expression 'trade dispute'. Hence, the dispute between one employer and one workman was a 'trade dispute' within the meaning

of Order 1940. Section 1(i) of the Interpretation Act of 1889 provided that unless contrary intention appears, words in singular should include the plural and the words in the plural shall include singular.

In Australia also the expression 'industrial disputes' was construed to be confined to only 'collective disputes'.

In India, though the words used in the definition of 'industrial disputes' are plural, High Courts and Industrial Tribunals had given different interpretations in this regard. Madras High Court had held as early as in 1949 that a dispute between an employer and a single workman cannot be an industrial dispute. Calcutta High Court also had held the same view. Though it was on a different context, the decision in United Commercial Banks' case also can be cited as supporting the view taken by Madras High Court in this regard. However, Allahabad High Court, the judgement of which was reversed by the Supreme Court later took the view that an individual dispute can be industrial dispute. Labour Appellate Tribunal also


adopted the same view prior to the decision of the Supreme Court. A third view was shared by some of the High Courts, namely, individual dispute cannot be per-se an industrial dispute, but may become one, if it is espoused by a trade union or number of workmen. (1) The Supreme Court tried to set at rest the conflicting opinions in this regard and held in Patwardhan's case (2) that individual worker cannot raise an industrial dispute. The position was reiterated in Dharam Pal Prem Chand's case, (3) wherein the court held that individual dispute becomes industrial dispute, if sponsored by union of workmen or by appreciable number of workmen. In Dharam Pal Premchand's case the court also expressed the view that apart from safeguarding the interests of the working class in this country, it was essential to have development of Trade Union movement on healthy Trade Union lines and in this context, it was necessary that the dispute between employers and employees should be settled on a collective basis. Thus, it is clear that the courts by using interpretative technology could not improve the definition of 'Industrial Dispute' incorporated in the statute book. As stated earlier, (4) the words used in the definition of 'Industrial Dispute' (section 2 (k) ) were


lifted from the Industrial Courts Act, 1919(1) which were used for defining the trade disputes as follows:

'A trade dispute means any dispute or difference between employers and workmen or between workmen and workmen, connected with the employment or non-employment or the terms of employment or with conditions of labour of any person'.

The word 'trade' was substituted by the word 'industrial' and the dispute between 'employers and employers' were added. No thought was given to understand that the background and philosophy in bringing the words 'trade dispute' to the statute book in England was totally different. At common law, a trade union was regarded as being in restraint of trade(2) and any agreement between the workmen was unenforceable. On the contrary, the workmen could have been held liable for conspiracy. In order to avoid any conflicting opinions, the concept of 'trade dispute' was defined for the first time in 1906.(3) In England, disputes between 'employers and employers' are still excluded from the definition of trade dispute and are not within the protection of the Act.(4) However in India, the definition includes disputes between 'employers and employers', though no such disputes have come

1. Section 8 of the Industrial Courts Act, 1919.
3. Section 5 of Trade Disputes Act, 1906.
before the courts. It was observed by the Supreme Court(1) that when the employers may have certain interest like matters connected to wages, the disputes between employers and employers may have relevance. The definition of 'Trade Union' as laid down in Trade Unions Act, 1926 was borrowed from the Trade Union Acts of 1871, 1876, and 1913, and the definition of 'Trade disputes' as incorporated in the Trade Union Act, 1926 was made up of the provisions contained in the above mentioned Trade Union Acts and the Trade Disputes Act, 1906 and without taking into consideration the Indian situation, the provisions were incorporated in our statute.

The prevailing situation in England at the time of bringing the aforesaid legislative measures were entirely different. Any combination of workmen could have been punished for the offence of conspiracy. The intention of the legislature in enacting Section 3 of the Trade Union Act, 1875 was to exclude the law of Conspiracy from trade disputes but their intention was defeated due to the development of common law and the extension of the doctrine of conspiracy into the realm of civil law as a separate species of tort by the courts. It was very necessary to protect the interests of the workmen vis-a-vis trade unions by providing immunity from criminal conspiracy earlier and later from civil conspiracy. Accordingly, Trade

2. Quinn v. Leathem (1901) A.C. 495.
Disputes Act of 1906 was passed in England. In India, no such problems were faced by the trade unions. The provisions which were tailored to tackle a particular situation as existed in England, cannot be considered suitable for India. Disputes between workmen and workmen also did not arise in our country, though some of such disputes had to be dealt with in England.\(^{(1)}\) National Commission on Labour appointed by the Government of India\(^{(2)}\) had suggested in 1969 for the constitution of Industrial Relations Commission as an apex body to determine the industrial disputes. Following the recommendation of the National Commission on Labour, provisions have been made in the Trade Unions and the Industrial Disputes (Amendment) Bill of 1988 for setting up of Industrial Relations Commission both at the State level and the Centre. Provision also has been made for inclusion of a technical member in the commission, who will be a person of eminence in the field of industry, labour or management. However, it is most uncertain that the Bill would be passed in the near future and the measures suggested would be adopted. As such, it could be seen that the concept of 'industrial dispute' in our country has been totally misconceived and has lead to confusion.

The decision in Patwardhan's case caused a stir in the

\(^{1}\)White v. Riley (1921 - I -Ch.D.)

minds of the working class and to appease them, as amendment was brought into force with effect from 1 December 1965\(^{(1)}\) which inserted a new section viz., Section 2-A to the Industrial Disputes Act, 1947 which states as follows:

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

From the above amendment, it is clear that the Parliament while passing the Industrial Disputes Act, 1947 never intended to include individual dispute within the purview of industrial dispute. The amendment did not bring any satisfactory solution to all the individual disputes as it has done only lip-service to workmen. On the contrary, it has created confusion in the growth of trade unionism in our country. It is true that in reality, the individual workman deprived of any independent means of livelihood and being the seller of the most perishable commodity, is no match for his employer either in the bargaining skill or in the knowledge of the trade and market conditions or in economic resources and waiting power. However, in enacting

the above provision, the intention of the legislature was that an individual workman, who was discharged, dismissed or retrenched or whose services were otherwise terminated, should be given relief without its being necessary for the relationship between the employer and the whole body of employees being attracted to that dispute and the dispute becoming generalized one between labour on one hand and the employer on the other. (1) Apart from the fact that courts had settled the principle that the individual disputes would not per-se become industrial dispute, it was also opined by the courts that when a dispute concerning individual workman is taken up by the union, of which the workman is a member, as a matter affecting workmen in general and on that basis a reference is made under the Industrial Disputes Act, the individual workman cannot ordinarily claim to be heard independently of the union, (2) and in exceptional circumstances like the one, wherein the office bearer of the union representing the case has certain prejudices against workman, may be permitted by the Tribunal to be represented by the co-workmen. (3) Due to intra-union rivalry, it could not be said that every case of the individual workman would be represented effectively by the Union. In order to protect the interest of the individual workman against


the action taken by the employer, which are of greater degree of serious consequences, Parliament in its wisdom, thought it feasible to bring the aforesaid amendment to the Industrial Disputes Act. However, the constitutional validity of the amended provision was challenged before the Delhi High Court on the ground that Entry No. 22 in List-III, Seventh Schedule of the Constitution, must be construed to exclude disputes relating to individual workman and that it is beyond the legislative competence of the Parliament, by a deeming provision to convert the discharge, dismissal, retrenchment or termination of services of an individual workman and a dispute or difference between such workman and his employer connected with or arising out of such discharge, dismissal, retrenchment or termination into an industrial dispute without other workmen or union of workmen being party thereto. It was also argued that the Parliament has no power to change the meaning and concept of the expression 'industrial dispute' which had acquired a fixed meaning at the time, when our Constitution was drafted. However, the court held that Section 2-A merely serves as a sort of an explanation to Section 2(k) of the Act, which defines the expression 'industrial dispute' and that the amended provisions are constitutionally valid. In Janardhana Shetty's case, it was contended that Section 2-A is violative of Article 14 of


the Constitution of India and therefore it must be struck down. It was held by the court that Section 2-A did not offend Article 14 of the Constitution as there is an intelligible differentia which distinguishes an individual workman, who is discharged, dismissed, retrenched or whose services have been terminated and individual workman who has some other grievance in regard to his employment or conditions thereof and as the discharge, dismissal or retrenchment or termination of service of a workman is of graver consequence to a workman than any other grievance in regard to other terms or conditions of employment and accordingly it is open to the Legislature to provide a special remedy in respect of action which are of greater degree of grievous consequence.

By virtue of the insertion of Section 2-A, it was held that in respect of discharge, dismissal, retrenchment or otherwise termination of the service, there is no necessity for making a demand and rejection by the employer before a reference is made under Section 10(i) of the Industrial Disputes Act.(1) In such circumstances, disputes are to be treated as individual disputes and dealt with accordingly.(2) Further the


courts have given conflicting opinions,\(^{(1)}\) as to whether bonus, gratuity etc., which are connected to the service rendered by the employee, whose service has been terminated would come within the purview of Section 2-A.

Due to adversary system adopted in our country in matters of civil disputes, it would be difficult for the individual worker to defend himself effectively before the civil courts. The civil litigation apart from being cumbersome and time consuming also is a costly affair for the poor workman. The amendment proposed in 1982\(^{(2)}\) provides for setting up of a Grievance Settlement Authority for the settlement of industrial disputes connected with an individual workman employed in the establishment, in which 50 or more workmen are employed on any day in the preceding 12 months. Further, the obligation is cast on the appropriate Government to refer the individual disputes to the Grievance Settlement Authority and refer the matter for adjudication under Section 10 of the Industrial Disputes Act only when the decision of the Grievance Settlement Authority is not acceptable to any of the parties to dispute.

From the above proposition, it is clear that the

\(^{(1)}\) Joseph Niranjan Kumar Pradhan v. Industrial Tribunal Orissa (1976 - Lab. I.C. 1396 (Orr.) (D.B.) and Mathur Aviation v. Lt. Governor, Delhi (1977-II-LL.J. 225 - Del.).

\(^{(2)}\) Industrial Disputes (Amendment) Act, 1982 (Section 9-C).
Government also intended to give equal importance to the individual disputes. However, the reasons for withholding the enforcement of this provision by not notifying in the Gazette are not known.

Another important step taken in this direction also is worthy to note. In a recent note circulated by the Government, the following certain suggestions have been made proposing amendments to Industrial Disputes Act, 1947 and Trade Union Act, 1926. The relevant portion reads as follows:

D. "Procedure for dealing with disputes - Industrial Disputes".

Direct reference by individual workman in individual disputes relating to discharge, dismissal, retrenchment or otherwise termination of service referred to in Section-2-A may be allowed. This direct access will not bar the workers from raising disputes with the conciliation machinery. It may however, be provided that if a workman raises his dispute with the conciliation machinery and the conciliation does not result in settlement or arbitration within a period of 60 days from the date of raising the dispute, the conciliation should be deemed to have failed and the workman should be at liberty to approach the labour court. Section 2-A is available in case of such disputes on dismissal, termination etc., which are raised by the

workman himself. Such disputes raised by the trade unions or otherwise, collectively do not get this facility of direct access. It should also be open to the Union to take up such disputes of dismissal, termination, etc., directly to the Labour Court. Further, it should also be provided in their case that if the conciliation proceedings do not result in settlement or arbitration within the period of 60 days, the conciliation will be deemed to have failed and the sponsoring union or group of workmen may take up the case directly with the Labour Court.

As in the case of government servants (including industrial workman) covered by the Administrative Tribunals Act, 1985 the facility of direct access to a Labour Court may also be provided to a workman in disputes relating to his conditions of service, such as:

1. Remuneration (including allowances, pension and other retirement benefits;
2. Tenure including confirmation, seniority, promotion, reversion, premature retirement, and superannuation;
3. Leave of any kind;
4. Disciplinary matters; or
5. Any other matter whatsoever.

The suggestions contained in the above note if implemented certainly will go a long way in protecting the interests of individual workman. However, the suggestions do not spell out
ways and means to improve the mechanism and the strategy to be adopted for settlement of individual disputes.

It was also suggested in the note that collective disputes would be resolved through mutual discussions and where collective bargaining fails, the parties shall avail of conciliation, arbitration and adjudication.

The National Commission on Labour also recommended that the Government should restart where it is likely to be over pursuasive.\(^1\) The Industrial Relations Bill, 1978 which has been put into the cold storage, also had proposed that if the parties have chosen to refer the matter to arbitration, the Government shall encourage them to do so and in respect of such matters, the Government shall not resort to adjudication. The Government also in principle has agreed while submitting the policy statements to the International Labour Organization, that conciliation is the best technique to settle the labour disputes which would not disrupt the industrial harmony and peace. However, in the recent past, referring to adjudication has become a rule than to encourage parties for bipartite settlement or voluntary arbitration.

6.3.2 VOLUNTARY TRADE UNIONISM AND THE RIGHT OF THE INDIVIDUAL WORKER

It is submitted that the concept of voluntary trade unionism, as it prevails in our country justifies the need for protection of the right of the individual worker. Trade union is any combination of workmen and the formation of a trade union is purely voluntary. Certain rights and freedoms have been guaranteed under our Constitution and compulsory membership of a union is an infringement of the right of the individual worker to work with any employer, if the employer so accepts him. It would not be fair, if for any reason, a worker does not like to join the union to deprive him of his right to enjoy the benefits of labour legislation. The voluntary trade unionism can be justified on the ground that it protects individual's right and dignity of labour. On the other hand, compulsory trade unionism has many drawbacks. It may take away the right of the worker to be critical either of unions policy or leadership. It is also said that compulsory membership would swell the ranks of the union with mere cardholders, who may not show that loyalty and devotion to the union activity, which are so very essential for its cohesion and effective working. The compulsory membership may sow the seeds of decay of union democracy. It may suppress criticism and corruption may also creep in. Assured of stable membership the efficiency of the union may go down and the
quality of services provided by the union may also deteriorate. The closed shop agreements on the pattern existing in England may not be suitable for our country, which may diminish the supply of labour particularly in the skilled trades.

Many of the States in United States of America have started outlawing closed shop agreements. Labour Management Relations Act, 1947 of United States of America also has outlawed closed shop agreements. In England, the position of 'closed shop' and 'union shop' agreements which continued for a long time has been modified to a great extent in 1974.\(^1\)

The Indian Trade Unions are not in a position to demand a closed shop because of their division along the political lines. National Commission on Labour, after considering the pros and cons of compulsory unionism came with the conclusion that the practice of closed shop is neither practicable nor desirable.\(^2\) Commission also recommended that Union Security clauses should be allowed to evolve voluntarily on the basis of mutual negotiations and discussions rather than be introduced by law in this country.\(^3\) By accepting voluntary trade unionism on one hand and stating that individual worker cannot raise an industrial dispute on the other hand would be a difficult proposition to reconcile. The spirit of the labour legislation is to protect the interest of the worker against all kinds of

---

1. Section 18 of Trade Union and Labour Relations Act, 1974 (England).
3. Ibid.
exploitation, victimization or unfair labour practice and as such exclusion of any worker from the benefit of remedial measures does not appear to be a healthy devise.

6.3.3 ENFORCEABILITY OF COLLECTIVE AGREEMENTS

The enforceability of all collective agreements before the civil courts is doubtful in our country. Traditionally, the collective agreements had been looked upon as private agreements not enforceable in a court of law i.e., law did not look upon them as civil contracts, which, in case of a party breaking out of the obligations of the contracts could be legally enforced. Section 2-A brings discharge, dismissal, retrenchment and termination of individual workman within the purview of deemed industrial dispute. But, it leaves still a large number of cases of individual grievances outside the purview of industrial dispute. The obvious reason appears to be that those matters would be included in the collective agreements. The main sanction behind a collective agreement is supposed to be the economic strength of the parties. In case of reluctance of a party to abide by and fulfill its commitments under the agreement, the other party can resort to economic pressures to compel parties, which, at the back of signing of the collective agreement, is also the main instrument for its implementation.
Many countries are not prepared to have this freedom to parties to resort to economic warfare in order to secure the implementation of a collective agreement, though some of them are prepared to permit the right to engage in economically coercive measures in order to arrive at an agreement. Since, collective agreements now cover the terms and conditions of employment of such a large number of workers spread over all kinds of industries and employments permitting the parties to resort to strike and lockout for securing the implementation of collective agreement, they have become patently wasteful, uneconomic and unnecessary. Therefore in some socialist countries, a trend has developed to treat collective agreements as solemn contracts to be enforced by courts of law in case a party so desires, i.e., collective agreements tend to cease to be private agreements and become agreements with public and social consequences. Collective agreements have secured a limited degree of enforceability in India also. Under the Industrial Disputes Act 1947, if a collective agreement is registered with the appropriate Government, it becomes a settlement and the violation of the settlement becomes a penal offence under the Act.\(^{(1)}\)

Thus, it could be seen that in our country the concept of industrial dispute is clouded with obscurities. Unless a clear

definition of this basic concept is stated, many labour disputes may be left unresolved, which may cause continued threat to industrial harmony and peace. In this perspective, it is submitted that the concept of industrial dispute, as understood under the French labour law, and prevailed at Pondicherry earlier may require consideration. Under French law, a clear cut distinction has been made between individual dispute and collective dispute. Both are however considered as industrial disputes. Equal importance is given for settlement of individual as well as collective disputes. Labour courts have been empowered to adjudicate the individual disputes which are concerned mainly with the rights of the individual worker. Since the Labour court is presided over by professional judge, the legal rights involved in a dispute can be analysed thoroughly. The decision would be binding only on the parties and ordinarily will not cause any impact on the industrial relation, even if the verdict is not in favour of workman. However, the French judges because of the practical training and the orientation they receive before their appointment are in a position to investigate and render justice to the parties. More so, the judgement is pronounced by a collegial body
which is accepted as a guarantee of impartiality and reflections. (1)

The collective disputes, which are termed as 'interest disputes' are settled through conciliation or arbitration. As the collective disputes will not only cause upheavals in the relation of the employer and employees but also affect the social and economic interest of the society. Taking into above factor, elaborate scheme would be worked out with the help of the experts and final decision is arrived at, keeping in mind the industrial harmony and peace, and the interest of the society as well.

By adopting the French model, it would be possible to settle many of the disputes at the grass root level. The matters, which are affecting the individual worker in relation to working conditions should be termed as individual disputes and Section 2-A of the Industrial Disputes Act, 1947, should be modified to include all kinds of individual disputes. Those matters, which are affecting the workmen as a class must be distinguished from individual disputes and be termed as 'collective disputes'. Section 2(k) of the Industrial Disputes Act requires to be modified. The Industrial disputes may be classified into two parts viz., individual disputes and collective disputes and be defined appropriately.

6.4 The Dispute Settlement Mechanism

The dispute settlement mechanism followed in our country in comparison with other developing country or industrialized country may require certain improvement. In a welfare State like India, State intervention in labour disputes can be well justified but by encouraging bipartite settlement with an effective supervision and State control, it would be possible to maintain better industrial harmony and relation between the workmen and employer. The provisions contained in Section 10 read with Section 17-A of the Industrial Disputes Act, 1947 have given vast powers to the appropriate Government in settlement of industrial disputes. Though the power is not absolute and unfettered, in a political democracy, there would be every possibility of misuse and abuse of such powers.

6.4.1 COMPULSORY ADJUDICATION

Since the passing of the Industrial Disputes Act, 1947 the settlement of labour disputes by referring to the adjudication machineries has become very common. The proviso to Section 10 of the Industrial Disputes Act reads as follows:

"Provided that where the dispute relates to any matter specified in the third schedule and is not likely to affect more than one hundred workmen, the appropriate Government may, if it so thinks fit, make the reference to a Labour Court;"
Provided further that where a dispute relates to public utility service and a notice under Section 22 has been given, the appropriate Government shall, unless it considers that the notice has been frivolously or vexatiously given, or that it would be inexpedient so to do, make a reference under this sub-section notwithstanding that any other proceedings under this Act in respect of the dispute may have commenced.

Further, Section 10-A(i) of the Industrial Disputes Act, 1947 states that, 'Where any industrial dispute exists or is apprehended and the employer and the workmen agree to refer the dispute to arbitration, they may, at any time before the dispute has been referred under Section 10 to a Labour Court or Tribunal or National Tribunal, by a written agreement refer the dispute to arbitration...'

The vast majority of Indian workmen are illiterate and whatever may be the strength of the union or their political affiliation, the management holds an upperhand in our country in labour relations. The adjudication mechanism followed in our country is neither expeditious nor cheap. The adversary system followed by the adjudicating machinery is certainly advantageous to the management, since the conclusions are drawn on the weighty evidence produced by the parties to the dispute. The management being the custodian of the documents and better sense
the workmen's stand before the conciliation machinery treating as a rehearsal before the main drama is staged before the Labour Court or Tribunal. It has been tested that voluntary arbitration is a better technique than compulsory adjudication. However, prevailing position is otherwise. Even when the parties have chosen to refer the matter to arbitration, they must do so, before the appropriate Government refers the matter to adjudication. Further, if the parties have already referred the matter, the action of the appropriate Government in referring the dispute to adjudicating machinery will have the over-riding effect. The above provision would certainly discourage voluntary arbitration.

The Industrial Relations Bill introduced in the Lok Sabha in 1978 certainly preferred voluntary arbitration to industrial adjudication for settlement of disputes. The Industrial Relations Bill provided that, 'Where an industrial dispute has been referred to a Labour Court, Tribunal or National Commission for adjudication and the parties to that dispute agree in writing for the withdrawal for such reference and reference of the dispute for arbitration by such arbitrator as may be specified in the agreement and forward a copy of such agreement to the appropriate Government or the Central Government, as the case may be, that Government may withdraw the dispute from the Labour Court, Tribunal or National Commission and refer the dispute for arbitration to the arbitrator so specified.'

4. Section 100(3) of the Industrial Relations Bill, 1978.
reference of the dispute from the Labour Court, Tribunal or National Commission, as the case may be and refer the dispute for arbitration by the arbitrator, so specified'. Further, it also provided that, \(^{1}\) 'On receipt of a report under sub-section(5) of Section 98 by the appropriate Government or where the appropriate Government is of opinion that any industrial dispute exists or is apprehended and, in either case, no other proceedings under the Act in respect of the dispute have commenced and have not concluded, it may, at any time by order refer the dispute...' etc. The above Bill was not passed as it met with strong opposition by the Trade Unions due to certain provisions in the Bill excluding the outsiders from becoming the members of the Trade Union. By the time, the general debate was taken up, the change of Government took place and the Bill was finally shelved. It is submitted that most of the provisions proposed in the above Bill was based upon the recommendations of the National Commission on Labour and even though the Bill could not find the light of the day, the fact speaks that there was a proposal to encourage voluntary arbitration and to minimize adjudication. The note \(^{2}\) circulated in March 1987 also is a move in this direction.

6.4.2 COLLECTIVE BARGAINING

Compulsory arbitration had been introduced as a temporary

2. Referred to at p. 229.
measure by executive order during Second World War. The Industrial Disputes Act took over some of its features and provided the future legal framework for industrial relations. In the statement of aims and objects it was noted that 'industrial peace will be most enduring where it is founded on voluntary settlement'. With this in view, the State Governments were given the power to require the setting up of works committees in industrial establishments employing 100 persons or more. The duty of a works committee was mainly to promote measures for securing amity and good relations between the employers and workmen... and to endeavour to compose any material difference of opinion' between them. But the hope that these committees would help to settle differences and prevent disputes in industry was not realized, for there were obvious limitations to their effectiveness. Further, Section 18 of the Act(1) laid down that settlements reached during conciliation proceedings would be binding on all parties to the dispute, and by amending the section 18 in 1956, a clause was inserted(2) making settlement 'by mutual agreement between employer and workmen otherwise than in the course of conciliation proceedings' binding upon the parties to the agreement. Even so, this clause did not make such agreements binding on employees who were not members of the signatory

1.Industrial Disputes Act, 1947.
union, although a settlement arrived at in the course of conciliation proceedings is binding not only on the parties but on all persons employed in the establishment or part of it to which the dispute relates and on all subsequently employed there. It has become the practice in some companies therefore to invite the conciliation officer to countersign it after reaching an agreement, so as to make it a settlement under conciliation and binding upon all the employees in the establishment. (1)

Though the voluntary settlement of disputes is accepted as a better technique and the Government is committed to the support of the principle of collective bargaining, no serious attempt has been made in our country to encourage it by legislation. The Industrial Relations Bill of 1950, which suggested to make voluntary settlements binding in the same way as tribunal awards but with the dissolution of the Constituent Assembly, the Bill was allowed to lapse. The Industrial Relations Bill of 1978 also could not find the light of the day due to stiff opposition from the trade-unionists. Shri V.V. Giri, one time Central Labour Minister said, 'Internal settlement cannot find its fullest scope so long as compulsory arbitration looms in the background'. (2)

Multiplicity of trade unions, internal and intra-rivalries

1. Sur Mary - Collective Bargaining

among the trade unions have also caused serious problems to collective bargaining. It is now a well established principle that independence of trade unions is a pre-requisite to effective collective bargaining and an integral part of freedom of association. The above principles have been accepted by all the member countries of the International Labour Organization. (1) However, in India, statutory recognition of the unions for the country as a whole and enforcement of collective agreements by providing a proper forum is yet to be contemplated by the Central Government. The amendments proposed to the Industrial Disputes Act in 1988 are doubtful of getting into the statute book, as the Government does not appear to be giving serious consideration in this regard. The collective bargaining is often considered as curtailment of the prerogatives of the employer and when the Government also is showing only lip-sympathy, this measure is not likely to be an effective instrument for settlement of labour disputes in our country.

6.4.3 DISCRETIONARY POWER OF THE GOVERNMENT

The discretionary powers given to the appropriate Government have led to frequent interferences, which is not very healthy for setting up industrial democracy. The conciliation and arbitration have not been made mandatory. Basically, the parties do not have any faith in adjudication because they think that it is difficult to get the matter settled in a court of law in the manner conducive to industrial harmony and peace. The present industrial relation system in our country has been tilting towards compulsory adjudication, the reference to which is routed through the appropriate Government, which has been armed with vast discretionary power. It is true that the discretion given to the 'appropriate Government' under Section 10(1) of the Industrial Disputes Act is not an unfettered or uncontrolled or unguided one and as such, provisions in this regard are not unconstitutional. But the role of the appropriate Government in becoming the sole arbiter of settlement of industrial disputes cannot be fully appreciated. Though, there is every necessity for the State to

intervene, the question is as to whether should it be direct and substantial as it is today or should it be indirect, holding of course, the key for settlement of labour disputes vis-a-vis discharging the constitutional mandate. In United States of America, the State intervention is indirect. The State has enacted legislation for ensuring the workers' right to organize and bargain collectively and has constituted an independent authority to administer and interpret legal provisions and decide on complaints regarding unfair labour practices.\(^1\)

Whenever, there is actual or threatened work stoppages affecting the national economy, the State has been intervening. In the United Kingdom, whenever, certain important economic and social objectives were not sufficiently furthered or were frustrated by collective bargaining, the State intervention has been sought. In Japan, the State can intervene directly whenever there are strikes, which might jeopardize the national economy and public life. The collective bargaining system has been promoted in Japan through legislation and the right to collective bargaining has been guaranteed under the constitution. When industrially developed countries like United Kingdom, United States of America, and Japan, have devised various means and measures contemplating inter-party settlement of labour disputes, it is submitted that India also being an industrially developed

---

country must encourage inter-party settlement and resort to State intervention only when public interest so demands.

Section 10 of the Industrial Disputes Act, 1947 as amended from time to time has given vast powers to the Government. The appropriate Government alone can form the opinion as to whether there is an industrial dispute existing or is apprehended.\(^{(1)}\) Even if the opinion is formed, the Government can not be compelled to refer the dispute.\(^{(2)}\) The reference can be made at any time by the appropriate Government, so far as the dispute is existing or is apprehended. The reference made by the Government to adjudicatory machineries can be amended or corrected.\(^{(3)}\) In respect of Essential Service Industries, the Government has been armed with the power to compel the parties for adjudication, even though the parties have chosen otherwise earlier.\(^{(4)}\) Having had such a discretionary power in the first stage of reference, the Government has been vested with much more powers in the second stage. The award of the adjudicatory machinery can be modified or nullified at the discretion of the appropriate Government on public grounds affecting national economy or social justice.\(^{(5)}\) The concept of social justice has

4. Proviso to Section 10(i) of the Industrial Disputes Act, 1947.
a very wide connotation and the discretionary powers justified on the above ground in a political democracy may lead to pressure tactics and cause delay in settlement of disputes.

It is therefore felt that the intervention by the appropriate Government should be minimized and that the system has to be properly modified.

6.4.4 CONSTITUTION OF THE MACHINERY

In our country, majority of the labour disputes are settled by the Labour Courts or Labour Tribunals, as the case may be. The qualifications for the presiding officer of the Labour Court or Labour Tribunal are:\(^{(1)}\)

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

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

In case of Labour Court, qualification has been further relaxed to include the person who has held any judicial office in India for not less than seven years; or who has been the presiding officer of a Labour Court constituted under any Provincial Act or State Act for not less than five years.

Legal knowledge and judicial acumen are necessary for appreciating the evidence adduced by the parties to a dispute and to draw conclusion. However, Labour disputes are special

1. Section 7 and 7-A of the Industrial Disputes Act, 1947.
kinds of disputes which are of technical in nature and they are required to be handled with certain amount of skill and expertise in the field. The object of settlement of labour disputes is not only to render justice to the parties but also help maintenance of industrial harmony and peace. The judicial officers who served as District Judges or High Court Judges would naturally develop a legalistic frame of mind and bound to drive the facts to conclusion by interpreting and applying the hard provisions of law. More so, with the adversary system followed by our country, there would be any choice left to the judges to apply their discretion.

Majority of the cases are decided in our country through adjudication before the labour courts or tribunals, as the case may be and unless the above drawbacks are removed, the settlement mechanism will not be effective.

6.5 Role of Trade Union in Settlement of Disputes

Trade Union movement as it exists at present practically took shape in India after the First World War. The legislations have been brought in with a view to confer rights on the workmen to form union and thereby bargain collectively with the employer to redress their grievances.(1) However,

---

1. Trade Union Act, 1926.
attempts in this regard have not been fruitioned due to unhealthy state of political thinking and politicization of trade unions.

The trade union movement was nurtured by the political climate of the country during the last quarter of the last century and the first quarter of this century. However, when the political parties were divided due to ideological differences, the impact was felt on trade union movement. The party factions based on regionalism, casticism, and individualism, gave rise to inter-union and intra-union rivalries and dominion of unions by the outsiders. Like the political leadership, education, professional experience were relegated to the secondary position and vested interests were developed in the trade unionism. A survey conducted in this regard reveals that the educated leaders are less than 10 per cent and that those who had professional training are less than 15 per cent.\(^1\) The right to form trade union has been guaranteed under the constitution as it was felt that the workers' interest can be safeguarded only when there is a strong union. Trade unions are formed only at the behest of some political parties. The Trade Union's office is being used only

as a party office to further the interest of a political party. The workers are used as tools to show the strength of the concerned political parties and legitimate interests of the workers are never cared for. Inadequate finance has not only weakened the trade unionism in our country but also made them to surrender to the vested interests operating from outside. The Trade Union Law has not gone beyond making provisions for registration of unions. The participating of outsiders in the trade union activities is seldom helpful to protect the genuine interest of the workmen. In our country, trade unions are the creatures of the political party, maintained by the political party and as such, they ordinarily cater to the interests of the political party.

As early as in 1956, the Supreme Court held (1) that even an individual dispute would become an industrial dispute, provided the same is espoused by a trade union. Trade Union Act, 1926 conferred certain statutory powers on the trade unions to do any lawful act to protect the interests of the workmen. Certain immunities and privileges have been granted to the trade unions to effectively discharge their duties towards the workmen. However, the amendments made in 1947 (2) regarding the recognition of trade unions were never put into operation due to

2. Section 28-A to 28-I of the Trade Union Act, 1926.
political considerations. The proposed amendments in 1988 to the Trade Union Act are facing stiff opposition. The collective form of settlement of industrial disputes has been advocated in India with a view to develop strong unionism. However, collective bargaining has not been encouraged and on the contrary, the Government has established more and more control in settlement of labour disputes, dwindling the strength of the trade unions. The right to strike is not conferred on the individual worker in India. The individual worker's action in our country is not considered as strike. The definition of the word 'strike clearly states that there should be cessation of work by a body of persons employed in any industry acting in combination or a concerted refusal under a common understanding of any number of persons who are or have been so employed to continue to work or accept employment. (1) Because of the above situation, the worker is not in a position to effectively participate in the settlement of disputes and on the other hand, the trade unions in our country due to the political rivalries among themselves are unable to make any significant contribution for settlement of disputes.

1. Section 2(q) of the Industrial Disputes Act, 1947.
6.6 Pondicherry Model as an Alternate Devise

It is humbly submitted that the present legislations governing the industrial relations in our country are required to be modified to suit the present needs to build up a healthy and sound industrial relation system. As such, it is necessary to think of an alternative model. The system, which prevailed at Pondicherry during the French regime for nearly 150 years has many good provisions to offer which may be considered for incorporation in our system. Because of the geographical location of Pondicherry even though it remained as a French territory until 1954, the habits and customs of the people of Pondicherry were never different from that of people of rest of India. Pondicherry, which was considered as an overseas territory by the French Government was governed by the same French laws and rules with certain minor modifications to suit the local needs. In this perspective, it is stated that the following provisions existed in the 'Pondicherry model' may become relevant for our country.

6.6.1 RECOGNITION OF INDIVIDUAL DISPUTES

The right of the worker not to join a union has been guaranteed under French law.\(^1\) The position is also the same in India, as no worker can be compelled to join a union against his will. French revolution believed that association was the very denial of individual liberty. Further under the French

Criminal Code, any obstruction or interference with a person's freedom to work is considered as crime. In India also, utmost regard has been given to protect the individual's rights and freedom. In view of the fact that the loyalty of the workers to their firms as well as to unions on one hand and the functions of the trade unions on the other hand are totally politicised in our country, it would be in the interest of better industrial relations that the individual workman is given a right to raise industrial dispute and a right to protest, which may include strike, to redress his grievances.

Contribution made by the trade union either in protecting the interests of the workmen or in settlement of disputes is minimal in our country and as such, a worker, who is not a member of any trade union, or whenever trade union is not espousing the cause of the member worker, should be allowed independently to avail the remedies provided under various labour laws. It is in this perspective, the method adopted under the French law, which was also implemented at Pondicherry may be suited to our system as well.

The Labour Courts, which are now adjudicating all kinds of disputes may be reconstituted. The individual disputes, which normally encompasses the rights of individuals may be allowed to be tried by a single judge, who may be a judicial officer and the presiding officer should be allowed to have experts to advise him in respect of any technical matter involved in the dispute. The Labour Court must be directed to attempt

1. Article 414 of French Criminal Code.
conciliation in the first instance and failing which the matter be adjudicated. The practice of referring the matter to conciliation officer, who is not having any technical qualifications to handle labour matters nor who has judicial experience should be done away with. In other words, the individual disputes must also be recognized as industrial disputes and the settlement method adopted at Pondicherry during French regime with certain modifications as suggested above would satisfy our present day needs.

6.6.2 CONCILIATION TECHNIQUES

In our country, settlement of labour disputes by conciliation has been considered as an important method. Conciliation has been proved to be the best technique of settlement of labour disputes as it encourages bipartite settlement and also minimises the tension between the parties. In India, the Government in most of the cases, refers the cases to conciliation and on receipt of the 'failure report' of the conciliation officer, refers the dispute to adjudication. In respect of the 'public utility industries', the conciliation proceeding is deemed to have commenced, the moment the notice of strike or lockout is received by the conciliation officer.\(^1\)

Inspite of all the importance given to conciliation machinery, it has not been very successful in our country. The personnel

---

1. Section 22 of Industrial Disputes Act, 1947.
involved and the technique adopted by them are the main reasons for the failure of this machinery. In France, Personnel Departments are more staffed with psychologists instead of lawyers. Managers are reminded by their chairman that human resources are the main wealth of the enterprise. Often, the companies, which follow these lines, have succeeded in having no unions (1) and many of the problems are settled at the 'enterprise level'. The French experience can be taken note of to improve this mechanism. The Government draws a panel of technically qualified persons and from among them conciliation officers are appointed. In respect of collective disputes, every effort is made to reconcile the disputes. In our country, in most of the cases failure reports are submitted by the conciliation officer because of his non-committal attitudes. However, under the French law, the conciliation officer is committed to settle the disputes and render justice. There is no possibility of using the conciliation machinery as a rehearsal of a drama and the conciliation officer's report would be the basis for the expert to work out a detail plan to protect the interest of the parties, as well as the society. As such, it is submitted that by accepting the conciliation machinery as an important mechanism to settle the labour disputes, it must be made effective on the model existed at Pondicherry by

1.Y. Delmotte - Industrial Relations in France in the past ten years - Bulletin of Comparative Labour Relations 1987 - p. 73.
prescribing proper qualifications for the post of conciliation officer, orienting the persons so appointed before he takes up his job and making his tenure for life. Appointing an executive for the post of conciliation officer, which is the present practice in most of the States must be abolished.

### 6.6.3 AVAILABILITY OF EXPERT ADVICE

The object of the Industrial Disputes Act is to investigate and settle labour disputes in our country. The idea to get the matter investigated by an independent authority is similar in India as well as in French system. However, in our country, the machinery namely, 'the Court of Enquiry' has not been properly made use of. The appointment as the chairman of the court of enquiry is made from among the executives of the Government and the functions carried out by them would become more of administrative in nature. Under the French system, whenever the conciliation fails, the collective disputes are referred to expert and the matter would be proceeded further in accordance with the detailed plan to be suggested by the expert, who investigates the matter thoroughly and suggests measures for settlement. The expert can understand the labour problems and can take note of the societies' interest as well. He shall have the conciliation officer's report before him, so that the evidence produced and also the stand taken by the respective
parties can be considered before drafting the strategy for settlement. As such, the system existing in our country may be modified on the French model so that, the experts may be appointed to the court of enquiry and the court of enquiry should be asked to investigate all labour disputes, which are of technical in nature. The report of the court of enquiry should be made as the basis for taking further action in regard to settlement of such disputes.

6.6.4 PROCEDURE ADOPTED BY THE SETTLEMENT MACHINERY

The procedure adopted in our country in settlement of labour disputes are very complex and lengthy. The labour disputes are adjudicated by the labour court judges on the same line the civil disputes are tried by them. The lengthy procedures and the consequential delay in disposal have caused economically poor labourer more inconvenience and misery. Most of the workers are illiterate and the language of court is seldom understood by them. No time limit is laid down in disposal of special disputes like the labour disputes. Wherever the time limit is fixed, proviso has been provided to give exemption to the rule. No personal liability is fixed on the personnel for their negligence or delay in discharging their duties. The workmen in our country have therefore reasons to lose faith in the settlement machinery. It is an admitted fact
that the procedure needs modification. It is in this perspective, suggestion is made to consider for adoption the simple and expeditious procedure followed at Pondicherry during French regime to resolve the labour disputes. The worker was allowed to represent his grievance to the Greffier in his own regional language. Even, he could make an oral representation, which has to be put down in writing by the Greffier. The whole settlement is time bound and any delay would result in punishment to the official concerned. The approach of the settlement machinery is equitable and more so in an informal manner, the proceedings are conducted. Since the workers representatives are sitting as judges, more confidence is reposed in the system. Workmen can submit his petition free of cost.

It is submitted that if the 'Pondicherry model' is accepted as an alternate model, the procedure would become simple, the proceedings expeditious and the settlement mechanism as a whole would become more effective. The parties are treated on equal footing with the result the conflicts can be settled in a more equitable manner. Technical expertise would be available for the settlement machinery so that, the decision can be broad-based and protect the social interest as well. The normative approach by the personnel involved in settlement of
disputes would render justice to parties, which would help in maintaining harmonious industrial relation, which would go a long way to achieve industrial progress in our country. It is in this perspective, the Pondicherry experience becomes relevant to our country.