CHAPTER VI

CONCILIATION: A TEDIOUS TASK OF BRIDGING THE SUPPOSEDLY UNBRIDGEABLE
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THE SUPPOSEDLY UNBRIDGEABLE

A. INTRODUCTION

In Industrial Jurisprudence, 'Conciliation' is a complex process which requires deftness, dexterity and sincerity on the part of the Conciliator to successfully persuade the parties to arrive at a fair and amicable settlement. Apparently, the employers and workmen in an industry are like two banks of the same river never destined to meet. The only source that makes the rendezvous possible is by constructing a bridge across the river. The tedious task of constructing such a bridge for minimising the differences between the labour and management emanating from a deadlock in the bipartite negotiation is performed by the conciliator. 'Negotiation', either bipartite or tripartite, is the signature tune of all methods of achieving industrial peace. Amicable industrial relations based on co-operation and understanding between the partners in production provide a firm foundation for a strong structure of industrial peace. Such a foundation is possible only when the parties engage in free and frank negotiations and are determined to arrive at a settlement after understanding and appreciating each other's points of view. Unfortunately, industrial disputes have become "a
corporate cancer of startling proportions, which is assiduously eating away ... the very foundations of business success in India".1

A flourishing industry, "a head of the pack"2 which benefits the workers and employers is the goose that lays the golden eggs. The "hysterectomy"3 performed on it, at the instance of either of the parties, profits none. The fact is that the partners in production need each other however acute may be the antagonism between them. They have to work under the same roof after the dispute is resolved to engage in productive collaboration if they desire to survive. Therefore, even when bipartite negotiations fail and parties find themselves in the vortex of controversy involving issues of common interest, it is the conciliator who serves as a "conduit"4 between the parties to revive the lost contacts and keep alive the negotiations with a view to promote a settlement which is mutually acceptable. Obviously, "Conciliation" is "one of the highest virtues which can be practiced – the desire to understand and be just to one another".5 Moreover, it is available not

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1. Michael, V.P., *Industrial Relations In India And Workers' Involvement In Management* 101 (second revised and enlarged edn,) 1984.


3. Ibid.


as a substitute for bargaining by the parties but as a supplement thereto when such bargaining reaches an impasse.\(^6\)

'Conflicts' in any industry may prove to be disastrous. However great may be the level of understanding between the parties involved in the production process, it is unusual to expect an industry to be a 'heaven of harmony' at all times. Efforts ought to be made to eliminate or at least minimise incidents so that the smouldering differences would not erupt into industrial flames (disputes). Industrial peace would promote the interests of both labour and capital. Industrial strife would lead to severe consequences, namely, the wheels of production grinding to a halt, nation's economy getting paralysed and, more importantly, the inconvenience and hardship caused to the consumers. It is time that the Labour and Management - the two forces that shape life in industries, each feeding on the other- remember that their inabilities to know each other's problems would not augur well for them or their industry of which they are an integral and inseparable part. The parties should realise the consequences of the deadlock in negotiations. When they do not, the conciliation machinery need be relied upon because of its unique qualities, such as, "flexibility, informality and simplicity"\(^7\) to promote the settlement of the dispute.

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\(^6\) Mamoria and Mamoria, *Dynamics of Industrial Relations* 630-31 (fifth revised edn.,) 1997.

\(^7\) *Id.*, at 631.
Now, let us turn to the Conciliation Machinery under the *Industrial Disputes Act* to examine whether it is effective and can play a meaningful role in promoting fair and amicable settlements of industrial disputes so that the partners in production, the community and the nation can progress and prosper.

**B. THE PROCESSES OF CONCILIATION AND MEDIATION: APPARENT DISTINCTIONS**

Generally speaking, “to conciliate” means to “pacify”\(^8\) or to “win over from hostility”\(^9\) or to “reconcile disagreeing parties like employer and employees”\(^10\) without resorting to arbitration or adjudication.

'S Mediation', according to *Encyclopaedia Britanica*, is “the practice under which in a conflict the services of a third party are utilized as a means of reducing differences or of seeking a solution”\(^11\). In *International Encyclopaedia of Social Sciences*, the term 'mediation' has been defined as a “special form of negotiation in which a third party plays a [substantial] role... [the] import [of which] is only to restore communication and negotiation between disputants....”\(^12\)

There is, it appears, a subtle distinction between the term 'Conciliation' and 'Mediation'. 'Mediation' is “a slightly more affirmative”\(^13\) and a “vigorous

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\(^9\). *Ibid*.
\(^10\). *Ibid*.
\(^11\). *Encyclopaedia Britannica* 69 (vol. 15) 1969.
\(^13\). *Supra* note 2 at 26.
process"\(^{14}\) wherein the mediator has "the freedom to [act] as more than a 'go between'"\(^{15}\) and is empowered to make suggestions and on rare occasions, substantive recommendations as well".\(^{16}\) But, in Conciliation, if the conciliator's powers are extended to make recommendations or to impose terms of settlements on the parties then such a Conciliation is said to be "a half-truth the first half destroying the truth of the second".\(^{17}\) Thus, Conciliation is an "informal process"\(^{18}\) which is "closely related to the extension of good offices"\(^{19}\) and is basically limited to encouraging the parties to discuss their differences and to help them to develop their own proposed solutions.\(^{20}\) Whereas, 'mediation' implies "a stronger form of intervention, and a mediator may be permitted to offer to the parties proposals for settlements".\(^{21}\) Practically, there are any number of similarities that may eclipse the distinction drawn above. For example, Conciliation or Mediation would commence only when bipartite negotiations fail and the aid or assistance of a third party becomes indispensable for arriving at an amicable settlement; neither


\(^{15}\) Ibid.


\(^{17}\) *Supra* note 14.

\(^{18}\) Ibid.

\(^{19}\) Ibid.

\(^{20}\) *Supra* note 6 at 628-29.

\(^{21}\) Ibid.
the conciliator nor the mediator has power to determine the dispute and both processes are non-coercive methods adopted for promoting a settlement. Ergo, Prof. Davey has rightly observed that “[i]n theory ...the distinction is almost hair-splitting”.\(^{22}\) On the contrary, in practice, Conciliation actually “shades into mediation and the difference between the two are essentially differences of degree rather than of kind”.\(^{23}\) Therefore, in India, as in U.S.A., both 'Conciliation' and 'Mediation' are considered as one and the same and the words are used interchangeably for all practical purposes in promoting a settlement of an industrial dispute.

According to Simkin, 'Conciliation' is a “mild form of intervention limited primarily to scheduling conferences, trying to keep the disputants talking, facilitating other procedural niceties, carrying messages back and forth, and generally being a 'good fellow' who tries to keep things calm and forward looking in a tense situation”.\(^{24}\) Updegraff says, 'Conciliation' may be regarded as “an extension of a voluntary negotiation of the parties by which they are seeking to adjust the matters in which they have found themselves at odds”.\(^{25}\)

In the words of Warren, 'Meditation' is a non-coercive third party intervention, a method of persuasion, using pressures some of which are intrinsic

\(^{22}\) Supra note 6 at 627.

\(^{23}\) Ibid.

\(^{24}\) Supra note 2 at 25, 26.

\(^{25}\) Clarence, M. Updegraff, Arbitration And Labour Relations 17 (3rd edn., 1970.).
in labour disputes and some ... are created by the labour mediator.26 'Mediation',
thus, at the outset, “contemplates affirmative and positive action by the third party
to bring about settlement of dispute”.27

The common element in these definitions is the inevitable presence of a
third party on the scene for the process of Conciliation/Mediation to take off.
Moreover, the main purpose behind providing such third party intervention or
assistance is to minimise the friction ridden distance on account of various factors,
like, lack of understanding between the parties, obduracy on the part of each, so
that, each can realise the unreasonableness of its standstance and get ready to
thrash out their differences and arrive at a mutually acceptable settlement.

The primary public purpose behind the establishment and operation of this
machinery is the public desire to prevent strikes or lockouts and to terminate those
that are in existence.28 Conciliation/Mediation, in other words, is a “channel for
effectuation of public will”. Its principal task is to “seek to prevent serious
repercussions of bargaining on that portion of the public that is not involved
directly”.29 Nevertheless “[b]y emphasising the meeting of minds without resort to
economic sanctions, the mediator serves both the public interest and the best
interests of the parties”. The process of Conciliation is not supposed to be “a 'peace at any price' activity”. The Conciliator, invariably, is “a 'voice of persuasion without powers of compulsion who [strives] to further...public interest when [it] appears to conflict with private interest”. Here, it can be said that the main purpose behind the Conciliation machinery is not merely to provide a helping hand to the parties and the industry to overcome the impending crisis but, more importantly, to safe-guard the best interests of the innocent and hapless public at large.

A great deal of discussion, followed by exchange of proposals and counter proposals, is involved in the process of Conciliation. Further, the principle of 'give and take' rules the roost and contributes to the success of this machinery. Therefore, the considered opinion is that Conciliation is “not a mere formality or way-station” on the road to adjudication or arbitration but is a “process of rational and orderly discussion of differences between the parties to a dispute” under the guidance of a person or group of persons manning this agency. Parties which are reluctant to give up their stubborness and not willing to adopt an accommodative attitude to resolve their dispute with the aid and assistance of

30. Ibid.
31. Ibid.
33. Supra note 4 at 4.
Conciliation machinery are the greatest hurdles for the smooth functioning of this machinery.

Conciliation/Mediation, when used, interchangeably, does not involve power to make recommendations or to impose terms of settlements.\textsuperscript{34} Instead, it encourages the parties to the dispute to come to a decision devoid of any force or orders from the side of the mediator.\textsuperscript{35} But, it is the duty of the mediator to exert, channel and control the intrinsic pressures found in labour disputes. His duty, moreover, involves a deliberate effort to introduce and explore proposals which could lead to a settlement.\textsuperscript{36} He may suggest various alternatives but certain evaluations and judgments should be spared exclusively to the parties themselves.\textsuperscript{37}

A 'conciliator' or a 'mediator' is "confidential adviser",\textsuperscript{38} "an industrial diplomat".\textsuperscript{39} In other words, the conciliator acts like a doctor who decides what medicine (\textit{i.e.}, information) should be given to his patients (\textit{i.e.}, the parties) and determines what quantity and at what intervals it should be administered. Further, he lists out things (\textit{i.e.}, confidential matters) that should be strictly kept out of

\textsuperscript{34} Supra note 14.
\textsuperscript{35} Supra note 6 at 628.
\textsuperscript{36} Ibid.
\textsuperscript{37} Id., at 629.
\textsuperscript{38} Id., at 628.
\textsuperscript{39} Ibid.
reach of his patients for the damage they might cause in the healing process i.e., conciliation process.

'Conciliation' for some, is a "technique" that needs specialisation. As a technique, it is nothing but "a 'mode of artistic expression' or a 'manner of artistic performance'" of the conciliator in persuading the parties to restart negotiations with an intention to arrive at an amicable settlement of the dispute. Persons who put on the garb of conciliators must possess technical expertise in the field of persuasion. True emphasis is placed on 'experience' as the only effective way of acquiring sufficient mastery over Conciliation technique.41

In the light of the foregoing, it can be inferred that "conciliation has some characteristics of an art"42 and the conciliator is "a solitary artist recognising at most a few guiding stars and depending mainly on his personal power of divination".43 In the ultimate analysis, when one considers the fact that Conciliation involves "the art of listening, the art of asking questions, the art of timing, and, above all, the art of persuasion",44 it can be deduced that Conciliation is not a 'mere art' but a 'bundle of arts'.

40. Supra note 4 at 85.
41. Ibid.
42. Ibid.
43. Supra note 4 at 4.
44. Supra note 4 at 85.
Realisation of the prodigious role the Conciliation Machinery can play in minimizing industrial disputes, the Planning Commission, in its *First Five Year Plan* Report, had recommended that “the state has to step in with an offer of conciliation where the parties fail to reach an agreement and the dispute continues”.\(^{45}\) Further, “[c]onciliation should be made available in all such disputes and must be resorted to except where there is a voluntary submission for arbitration or a direct approach to a tribunal or court is permitted or prescribed”.\(^{46}\)

Additionally, for cases involving major issues, the *Commission* suggested constitution of *ad hoc* standing conciliation boards and recommended that panels of non-official conciliators be drawn up.\(^{46A}\) Unfortunately, in the subsequent *Plans*, little has been mentioned about the measures to be taken to improve the machinery and make it more effective.

The International Labour Organisation, considering the importance of Conciliation Machinery in thwarting industrial unrest, has accorded global recognition and brought on record a Recommendation regarding Voluntary Conciliation in 1951.\(^{46B}\) Countries that ratify the above Recommendation should invariably take the following steps:

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\(^{45}\) *See* Planning commission, *The First Five Year Plan* 578 (1952).

\(^{46}\) *Ibid.*

\(^{46A}\) *Ibid.*

1. Voluntary conciliation machinery, appropriate to national conditions, should be made available to prevent industrial disputes and promote the settlement of industrial disputes.

2. Where voluntary conciliation machinery is constituted on a joint basis, it should provide for equal representation of employers and workers.

3. (1) The procedure should be free of charge and expeditious; time limits for the conclusion of proceedings may be prescribed by national laws or regulations in advance and kept to a minimum.

   (2) Provision should be made to set the machinery in motion on the initiative of any of the disputants or at the instance of the voluntary conciliation authority.

4. When the disputants have consented to avail of the conciliation machinery, they should be discouraged to resort to strikes or lockouts during the pendency of proceedings.

5. All agreements or settlements arrived at after conciliation should be in writing and be regarded as equivalent to agreements concluded in the usual manner.46C

C. CONCILIATION VIS-À-VIS COLLECTIVE BARGAINING

The relationship between the process of Conciliation and Collective Bargaining is intimate. It is no exaggeration to say that Collective Bargaining is

46C. Id., at 207. See also Vaidyanathan, N., ILO Standards For Social Justice And Development of Labour 52 (1992).
the bedrock of the Conciliation process. Therefore, the primary concern of the conciliator should be to promote Collective Bargaining. A competent conciliator should strive to maximize Collective Bargaining. Basically, his job is to assist but not supplant the Collective Bargaining Process. Taking note of the substantial contribution a conciliator makes in ensuring the meeting of the minds of the parties to resolve their dispute in a friendly atmosphere under the banner of ‘compromise’, his task has been described as “an extension of Collective Bargaining with third-party assistance or simply as ‘assisted Collective Bargaining’”. Here parties should realise the important element of ‘co-operation’ in building up a healthy, harmonious, industrial environment. The conciliator/mediator normally works in a Collective Bargaining environment. Only when the ‘voices of reason’ within a bargaining arrangement require some assistance or a strike or lockout becomes more than a distant hypothetical threat, then the mediator enters the realm of Collective Bargaining to extend assistance in the agreement making process, without substituting for it.

Conciliator must know the essence of the problem presented to him and should have “sympathetic understanding” of the issues to win over the confidence of the disputants. Because, unless parties are willing to confide in him, his role will be of limited efficacy. By demonstrating the combination of qualities listed

47. Supra note 2 at 30.
48. Supra note 4 at 4.
49. Supra note 2. at 1.
below, the conciliator can make the parties realise that they are talking to a “knowledgeable neutral”. The qualities preferred in a conciliator are:-

1) patience of job,

2) sincerity and bulldog characteristics of the English,

3) wit of the Irish,

4) physical endurance of a marathon runner,

5) broken-field dodging abilities of a halfback,

6) guile of Machiavelli,

7) personality-probing skills of a good psychiatrist,

8) confidence retaining characteristics of a mute,

9) hide of rhinoceros,

10) wisdom of Solomon,…

11) demonstrated integrity and impartiality,

12) basic knowledge of and belief in collective bargaining process,

13) firm faith in voluntarism in contrast to dictation,

14) fundamental belief in human values and potentials tempered by ability to assess personal weaknesses / strengths,

15) hard-nosed ability to analyse what is available in contrast to what might be desirable and,
16) sufficient personal drive and ego, qualified by willingness to be self-effacing.50

In developing countries, especially, the conciliator must also act as a guardian of 'public interest and public policy'. While acting as a governmental representative at the bargaining table, he should don the role of an able advisor on law and public policy. He should ensure that the settlement arrived at is in compliance with law and public policy.

D. TYPES OF CONCILIATION

'Conciliation', depending upon its nature, can be divided into 'Voluntary Conciliation' and 'Compulsory Conciliation'.51 In Voluntary Conciliation, it is up to the parties to decide whether to go for Conciliation at all in case of a deadlock in bipartite negotiations. They are absolutely free to make the choice. Practically, the writ of Voluntary Conciliation runs only in developed countries where the economy is free and both workers and employers are quite matured and responsive towards each other. According to the advocates of Voluntary Conciliation, if the parties do not wish to accept the proffered Conciliation, it will be of no consequence to compel them to go through the procedure which they would do mechanically.52 Further, they feel that one can merely lead a horse to water but hundred cannot make it drink. Therefore, only the 'inner urge' of the parties to opt

50. Supra note 2 at 53.
51. Supra note 4 at 8.
52. Ibid.
for Conciliation and their honest intentions can make collective bargaining process meaningful and contribute substantially for the success of this machinery not the element of compulsion.

In Compulsory Conciliation, law compels the conciliator to take cognizance of the crisis and initiate conciliation proceedings irrespective of the inclinations or desires of the parties. Where one of the parties to the dispute, normally, the workers, is comparatively weaker at the bargaining table, this method, probably, serves a useful purpose. In developing economies, if the parties’ attitudes make the process of entering into voluntary agreement a remote possibility due to lack of adequate experience to engage in bipartite negotiations, Compulsory Conciliation can prove to be a powerful tool for educating, training and guiding them in regard to the nature and conduct of bipartite negotiations.53

Conciliation can also be a blend of compulsion and voluntarism as it is in India. Where a dispute is imminent and a strike notice by workers employed in public utility service has been served, the conciliator is obliged to commence the proceedings.54 That is, service of strike notice by the workers is an indication to seek the assistance of conciliator in resolving the impending or extant crisis. Such an act by the workers compels the conciliator to swing into action immediately. But, if the dispute relates to non-public utility services, the conciliator has the

53. Ibid.
54. S.12 (1).
discretion to decide whether to step in or not. Thus, initiation of conciliation proceedings becomes voluntary not for the parties but for the conciliator himself in this situation. However, when the overall scheme of the *Industrial Disputes Act* and the underlying objectives are taken cognizance of, even in situations where the strike or lockout notice has not been served by the trade union or employer of a non-public utility service, an implied duty on the part of conciliation officer to start the conciliation process can be discerned.

‘Preventive Conciliation’, yet another method, is essentially aimed at promoting good labour and management relations which is supposed to be the best defence against industrial disputes, just as preventive medicine aimed at promoting good health and building up the body’s defences against disease in an individual. Invariably, governments, world over, are concerned not merely with the settlement of industrial disputes after they have arisen but also about methods and strategies to prevent them. The ever evolving and changing idea of ‘preventing disputes’, initially, took the form of legislative regulations with the object, in particular, of prohibiting or postponing strikes and lockouts. ‘Penalisation’, it was contemplated, would deter the conduct defined as unlawful.

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55. *Ibid.*
56. Objectives *i.e.*, investigation and settlement of industrial disputes.
57. *Supra* note 4 at 125, 126.
58. *Id.*, at 121.
The procedure of settlement by third party intervention was relied upon as a means of preventing industrial action. Consequently, when a conciliator succeeds in persuading the disputants to arrive at a fair and amicable settlement, he has also, undoubtedly, shortened the duration of industrial action and, perhaps, prevented the parties from engaging in a costly and damaging trial of strength.

Mediation is of two types: They are:

i. Tactical Mediation, and

ii. Strategical Mediation.

'Tactical Mediation' means participation of a third party in an extant dispute. The purpose of Tactical Mediation is to bring existing non-violent conflict between the parties to a mutually acceptable result with a view to prevent 'violent action' by the parties or to ensure that the dispute does not engender violence.

On the other hand, 'strategical mediation' envisages the creation of a favourable environment for the parties to interact. Moreover, it seeks to reduce the incidence of conflict and channalises it along non-destructive lines of

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60. Ibid.
61. Ibid.
63. Mc Carthy and Ellis, ibid.
64. Ibid.
65. Ibid.
Further, its emphasis is not only on long term improvements designed to ‘structure’ the collective bargaining situation but also on the ground rules of bargaining, such as, changes in the ‘scope’, ‘forms’ and ‘levels’ of bargaining. More importantly, ‘Strategical Mediation’ should be viewed as a major force helping the introduction of the system of collective bargaining termed as “management by agreement”.

E. CONCILIATION: A HISTORICAL NOTE

Conciliation/ Mediation is said to be an ancient art of peace making. Being a human institution, it is probably as old as man’s interest in the process of peaceful resolution of conflicts. From time immemorial, the process of Conciliation, as an honourable method, has been resorted to frequently to iron out serious disagreements which threatened to rupture established relationships between husbands and wives, labour and managements, warring nations, litigants at ordinary courts, associates and friends and people in general. Since Conciliation, as a method for resolving industrial disputes is the crux of this

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66. Ibid.
67. Id., at 115.
68. Id., at 115, 116.
69. Supra note 6 at 628. See also supra note 4 at 3.
70. Supra note 4 at 3.
71. Supra note 69.
chapter, the focus would be upon the statutory origin and development of Conciliation machinery in India.

Many freedom fighters involved themselves in mediation though they were not engaged in industrial production or industrial relations as employers or trade unionists. Conciliation, in fact, was one of the earliest methods\textsuperscript{72} adopted for resolving industrial disputes in India. It was the stature and standing of the persons, acting as conciliators/ mediators which compelled the disputants to heed their suggestions and advice.\textsuperscript{73} With the advent of statutory machinery, mediation by outsiders proved superfluous and lost its significance.\textsuperscript{74} Moreover, the growth of trade unionism paved the way for a new working class leadership. This class of leadership disfavoured intervention of professional politicians mediating in labour disputes.\textsuperscript{75} Nevertheless, the complexity involved in modern industrial matters requires expertise to understand labour-management problems in a proper perspective and devise/evolve effective ways and means for resolving the same which an outside stranger may not posses.\textsuperscript{76} More importantly, at present, the scam ridden track record of some of the Indian politicians would compel the parties involved in a dispute to suspect and question the ability, integrity and

\textsuperscript{72} Punekar, S.D., \textit{Industrial Peace In India} 96 (First edn., 1952.)
\textsuperscript{73} Ibid.
\textsuperscript{74} Ibid.
\textsuperscript{75} Ibid.
\textsuperscript{76} Ibid.
impartiality of our political leaders when they assume or are called upon to play the role of mediators.

The statutory origin of Conciliation machinery as a method for resolving industrial disputes in India is traceable to the Act of 1889. This was replaced by the Indian Trade Disputes Act of 1929 which contained provisions for the constitution of the ‘Board of Conciliation’. However, there was no provision therein for appointing Conciliation Officers. The ‘Board of Conciliation’, under the Act of 1929 proved to be highly inadequate. Consequently, in 1938, section 18-A was inserted which authorised the Central and Provincial Governments to appoint Conciliation Officers to act as ‘mediators’ in ‘trade disputes’. Meanwhile, availing of the discretionary power, provided for the Provincial Government under section 18-A of the Act of 1929, the Bombay Province enacted the Bombay Industrial Disputes Act, 1938 which provided for Compulsory Conciliation for the first time. The application of this Act was restricted to major

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77. Supra note 14 at 43.
79. Ibid.
80. Ibid. See Prof. N.G.Ranga’s speech on the consideration of the clause of Trade Disputes Amendment Bill. Legislative Assembly Debates, vol.II, 1938, p.1737. See also the speech of A.G.Glow, Labour Secretary on the consideration of clauses of Trade Disputes Amendment Bill, Legislative Assembly Debates vol. II, 1938 p.1722. The “Officers were thought to be more useful instruments as watch dogs of industrial peace than 'Boards of Conciliation'”
81. Supra note 14.
industries like, the textiles, woollen, silk mills, transport, electricity and sugar.\textsuperscript{82} This Act later, in 1946, was amended and was renamed as \textit{Bombay Industrial Relations Act}.\textsuperscript{83} The very next year, the Government of India enacted the \textit{Industrial Disputes Act}, 1947, wherein, Sections 6 and 18-A of the repealed Act of 1929 were retained under Sections 4 and 5 providing for appointment of 'Conciliation Officers' and for the constitution of 'Board of Conciliation' by the Appropriate Government.\textsuperscript{84}

**F. CONCILIATION PROCESS : THE STATUTORY FRAMEWORK**

Under the Act, the Conciliation Officers are "charged with the duty of mediating in and promoting the settlement of industrial disputes".\textsuperscript{85} Power to appoint the Conciliation Officers lies with the Appropriate Government. The Appropriate Government through a notification in the Official Gazette may, as it thinks fit, appoint such number of Conciliation Officers for a specified area or for one or more specified industries, either permanently or for a limited period.\textsuperscript{86} Further, the Act also empowers the Appropriate Government to constitute a 'Board of Conciliation'\textsuperscript{87} [hereinafter referred as "Board"] as the occasion arises for

\begin{itemize}
\item \textsuperscript{82} Ibid.
\item \textsuperscript{83} Ibid.
\item \textsuperscript{84} Supra note 78.
\item \textsuperscript{85} S.4 (1). See S.2 (d) for the definition of 'Conciliation Officer'.
\item \textsuperscript{86} S.4 (1), (2).
\item \textsuperscript{87} S.2 (c) definition of 'Board of Conciliation'.
\end{itemize}
promoting the settlement of industrial disputes.\textsuperscript{88} Such a Board consists of a Chairman, who shall be an independent person\textsuperscript{89} and two or four other members as the Appropriate Government thinks fit.\textsuperscript{90} The other members that represent both the parties to the dispute on the Board should be equal in number and should be appointed on the recommendations of the respective parties.\textsuperscript{91} However, in the absence of any such recommendation, the Appropriate Government may itself appoint such persons as it thinks fit to represent that party. If there is a prescribed quorum, the Board may act notwithstanding the absence of its Chairman or any other member.\textsuperscript{92} But, when the Appropriate Government notifies that the services of the Chairman or any other member have ceased to be available due to vacancy, the Board shall not function until a new Chairman or member is duly appointed.\textsuperscript{93} Once the order of appointing either the Chairman or any other member on the Board is passed by the Appropriate Government, it shall not be called in question in any manner on the ground merely of any defect in the constitution of such Board.\textsuperscript{94} This is only a statutory provision and cannot whittle down the power of

\textsuperscript{88} S.5 (1) read with R.5, \textit{The Industrial Disputes (central) Rules, 1957}.
\textsuperscript{89} S.2 (i) definition of 'independent person'. See \textit{supra} Chapter IV pp 82-84, see also, \textit{infra} Chapter VIII pp 323-25 for the criticism of the statutory definition of 'independent person'.
\textsuperscript{90} S.5 (2).
\textsuperscript{91} S.5 (3) read with R.6.
\textsuperscript{92} S.5 (4) read with R. 14.
\textsuperscript{93} S.5 (4) proviso.
\textsuperscript{94} S.9 (1).
judicial review enjoyed by the High Courts under Article 226 of the Constitution. Thus, if the person appointed as Chairman of the Board is not an "independent" person, a writ of *quo warranto* or *mandamus* would issue. So also, when the representatives of the parties are not equal in number as the Act commands, the High Court's review power would be invokable. While the Act ordains that the person to be appointed as Chairman should be an "independent" person, it prescribes no qualification for the appoint of Conciliation Officers.

Normally, Labour Commissioners, Assistant Labour Commissioners and Labour Officers are appointed as Conciliation Officers and it is presumed that, being Government servants, they will be independent and impartial. But this presumption is rebuttable. In the selection and appointment of Conciliation Officers, the Appropriate Government would do better if it gives credence to "technical qualifications in terms of education, training and experience" and to "knowledge of relevant practice, including personnel management qualifications, as well as the technical and cultural peculiarities of their region or industries...."96

The Act, *inter alia*, prescribes the procedure to be followed and powers exercisable by the Conciliation Officers and the Boards.97 Also, the duties to be performed by the Conciliation Officers and Boards have been spelt out.98

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95. S.5 (3).
96. *Supra* note 32 at 25, para 63.
97. S.11.
Sub-section (1) of section 11 speaks about the procedures to be followed, *inter alia*, by the Conciliation Officers and Boards. While the title of the said provision mentions both the Conciliation Officers and Boards, the text of sub-section (1) of section 11 does not include Conciliation Officers. The reason for the exclusion of Conciliation Officers in the text is ununderstandable. Under this section, the Board is empowered, subject to any Rules made in this behalf, to decide about the procedure to be followed for discharging the duties assigned to it under the Act.

Under the Act, a Conciliation Officer or a member of a Board is empowered to enter the premises of an industrial establishment for the purpose of conducting an enquiry in connection with an existing or apprehended industrial dispute after giving reasonable notice.99

The Act vests in the Conciliation Officers as well as Boards certain powers, with some variations, as are enjoyed by a Civil Court under the Code of Civil Procedure, 1908 while trying a suit. Thus, Conciliation Officer can enforce the attendance of any person for examining him or to call for and inspect any document relevant to the industrial dispute or for the purpose of verifying the implementation of any award or carrying out any other duty imposed on him under

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98. Ss. 12, 13.
99. S.11 (2) read with R.23.
the Act.100 The Board, which enjoys these powers can also administer oath101 to such persons but unlike the Conciliation Officer it is devoid of the power to verify the implementation of awards. The conciliation Officer does not have power for issuing commission for the examination of witnesses but the Board is vested with such a power.102 The representatives of the parties appearing before a Board have right of examination, cross-examination and of addressing the Board when the evidence has been called.103 In the absence of sufficient cause being shown, if any party to the dispute fails to attend or ensure the attendance of his representative in the conciliation proceedings, the Board may proceed ex parte.104 The proceedings before a Board shall be held in public.105 The Board may also direct, at any stage, that a witness shall be examined or its proceedings be held in camera.106 The Board may also accept, admit or call for evidence at any stage of the proceedings and it is up to the Board itself to decide the manner in which such evidence has to be produced before it.107 Further, every enquiry or investigation carried on by a Board shall be deemed to be a judicial proceeding under the relevant provisions of

100. S.11 (4).
101. S.11 (3) (a)
102. S.11 (3) (c).
103. R.29.
104. Rules 22, 30.
105. R.30.
106. R.30 proviso.
107. R.15.
the Indian Penal Code. Questions arising for decision at any meeting of a Board shall be decided by a majority of the votes of the members thereof (including the Chairman) present at the meeting and in case of equality of votes, the Chairman shall have a casting vote. The Conciliation Officers and members of a Board should be deemed to be public servants under the relevant provisions of the Indian Penal Code.

The powers conferred on the Conciliation Officers and the Board under the provisions of the Act and Rules promulgated thereunder have been referred to. If one heeds the argument that Conciliation is nothing but the art of persuasion where no coercion can be used against the parties to the dispute, would it be proper to arm the machinery with the powers of a civil court and expose it to temptations to exercise such powers and conduct itself like a court of law? It has to be noted that disputes between workers and employers where the nation’s economic development and the interests of labour, capital and the community are involved cannot be compared with or regarded as an ordinary civil dispute where the litigants after the determination of their case would move in different directions and may not, probably, meet again. But the parties to an industrial dispute, after resolution, would have to come together to engage in productive partnership under

108. S.11 (3). See also Ss.193, 228 Indian Penal Code (45 of 1860.)
109. R.27.
110. S.11 (6). See also S.21 supra note 108.
the same roof. The art of 'Conciliation' cannot co-exist with any coercive power. Any attempt to arm the Conciliation machinery with coercive power would frustrate the very basic object underlying the Conciliation process, that is, goading, cajoling and persuading the disputants to arrive at a fair and amicable settlement. Some scholars have pleaded that the conciliation machinery be strengthened by granting it additional powers so that it can function more effectively.\textsuperscript{111} The rationale underlying the demand for grant of additional powers is not discernible nor can one make out the nature of power pleaded for.

Let us now refer to the statutory duties which the Act imposes upon the Conciliation Machinery. Under the Act, the Conciliation Officer may commence the proceedings in case an industrial dispute exists or is apprehended. Realising that "an ounce of prevention is worth a pound of cure", the legislature has proved that the statutory machineries for resolving industrial disputes can be put in motion even when the industrial dispute has not come into existence but can, on reasonable grounds, be apprehended. This is to ensure that "the smouldering dispute does not burst into flames" and mar industrial peace.

In the case of industrial disputes, existing or apprehended, in non-public utility services, the Conciliation Officer, in his discretion, has to decide whether

\textsuperscript{111} Report of National Commission on Labour 323 (1969). See also Mamaoria and Mamoira, Dynamics of Industrial Relations 587 (Second Revised and Enlarged ed., 1985). It should be, however, mentioned that in the 1997 edn, of the same book neither the authors have mentioned about this nor have given reasons for its deletion, see supra note 6.
and at what time he should start the conciliation proceedings. However, in the case of public utility services, when a strike or a lock-out notice has been received by him, the Act compels him to initiate the Conciliation process.\textsuperscript{112} It is submitted that even in case of industrial disputes relating to non-public utility services and in case of public utility services in the absence of strike or lockout notice, although a literal interpretation may prompt us to conclude that the Conciliation Officer enjoys the discretion to start or not to start the Conciliation proceedings, the underlying statutory objectives when properly appreciated leads to the inference that the Conciliation Officer must start the process in such situations. This view is tenable since there is a statutory duty cast upon the Conciliation Officer and the Board to investigate the dispute and all matters affecting the merits thereof without any delay and do all such other things as they think fit for the purpose of inducing the parties to come to a fair and amicable settlement.\textsuperscript{113} Moreover, when a settlement of the dispute or any of the matters thereto is arrived at in the course of conciliation proceedings, it is their duty to submit a report to the Appropriate Government along with a copy of the Memorandum of Settlement duly signed by the parties to the dispute.\textsuperscript{114} At this juncture, it would be better to advert to the statutory meaning of the term

\textsuperscript{112} S.12 (1).
\textsuperscript{113} Ss.12 (2), 13 (1).
\textsuperscript{114} Ss.12 (3), 13 (2).
"settlement" under section 2 (p) and discover the judicial interpretations of the term. But, before this, a short survey about the meaning of the term "settlement" in layman's language.

G. "SETTLEMENT" : MEANING OF

The word 'settle' in its grammatical or ordinary signification is used in several senses. For example one 'settles' accounts either literally or metaphorically, one 'settles' one's properties i.e., the property in question will be distributed among the heirs according to their entitlements. It also means to determine or to decide or to resolve any quarrel, question, doubt etc., and includes termination of any lawsuit by mutual agreement between the litigants. In ordinary language, what is decided through a settlement is a 'dispute' or a 'difference'.

In industrial parlance, however, "settlement" should relate to an 'industrial dispute'. Legislative history reveals that the repealed Trade Disputes Act, 1929 did not define 'Settlement'. The Industrial Disputes Act, 1947 had originally defined 'Settlement' as follows:

Settlement means a settlement arrived at in the course of a conciliation proceedings.

116. Supra note 78 at 370.
117. Ibid.
Thus, the earlier definition of settlement covered only one type of settlement i.e., "a settlement arrived at in the course of conciliation proceedings" and did not take cognisance of any private settlement or agreement reached through direct negotiations between the parties. The original definition, referred to, was amended in 1956. Presently, the definition of 'settlement' reads:

[S]ettlement means a settlement arrived at in the course of conciliation proceedings and includes a written agreement between the employer and workmen arrived at otherwise than in the course of conciliation proceedings where such agreement has been signed by the parties thereto in such manner as may be prescribed and a copy thereof has been sent to [an officer authorised in this behalf by] the appropriate Government and the Conciliation Officer....

Thus, after the Amending Act of 1956, the definition of "settlement" contains two parts. The first part speaks about the settlement arrived at in the course of conciliation proceedings and this can be considered as the denotation part. The second part which embraces " a written agreement between the employer and workmen arrived at otherwise than in the course of conciliation proceedings" in an inclusive way can be regarded as an extended connotation of the definition.

Judicial decisions establish that "settlement" in the course of conciliation proceedings means a settlement that has been arrived at with the aid, assistance

118. S.2 (p).
119. Supra note 78 at 380, 381.
and concurrence of the Conciliation Officer. Further, such a settlement should be "fair and amicable".

Under the Act, a "settlement" arrived at otherwise than in the course of conciliation proceedings is nothing but a collective bargaining agreement, plainly speaking. But, in order to be valid and binding this sort of settlement should be in writing and should be duly signed by the parties to the dispute. Further, the parties to such a settlement should jointly send a copy of the same to an officer appointed by the Appropriate Government and also the Conciliation Officer.

Under the law, though a dispute is settled through an agreement or arrangement between the parties, with or without the aid of a third person or group of persons, it cannot be concluded that every arrangement or agreement is a settlement; however, it can be argued that every settlement is necessarily an arrangement or agreement. Further, "an agreement or arrangement will not be a settlement merely because the parties to the dispute choose to call it a

120. Ss.12 (3), 13 (2) read with R.58.
122. S.2 (p) read with R.58.
123. S.2 (p) read with R.58 (4).
Because, a settlement, as declared by the Calcutta High Court, in *India Tobacco Company*, must decide-

Some part of the dispute or some matter in dispute or decide the procedure by which the dispute is to be resolved or affect the dispute in some manner or other or provide for some act or forbearance in relation to the dispute on the part of a party or parties to the dispute.

But, in the instant Case, the ‘interim settlement’ which, *inter alia*, provided for payment of interim bonus for 1964 and a clause which empowered the parties to exercise their legal rights in case of failure to reach a final settlement, Court, declared, neither decided the quantum of bonus nor the manner and time of its payment in its entirety. In the context, the disputants, through the said arrangement, had merely decided to negotiate without prejudice to their legal rights.

In *Rasbehary Mohanty*, one of the issues before the Division Bench of Orissa High Court was whether the agreement entered into by the parties in the course of conciliation proceedings for referring the dispute arising out of termination of a workman to voluntary arbitration amounts to a ‘settlement’ under

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125. *Id.*, at 89, 94.
126. *Indian Tobacco Co. Ltd. v. Govt of W.B.*, *supra* note 115.
127. *Ibid*.
128. *Id.*, at 95.
the Act. The Court's decision is more convincing and persuasive because it has ruled that as the dispute subsisted even after parties agreed to refer the same to arbitration and all that was done under the agreement was to arrive at an understanding to refer the dispute to an arbitrator it would not represent a 'settlement' under the Act. Thus, according to the Rasbehary Court, an agreement to come under the definition of 'settlement' under the Act must settle a dispute or part thereof.

It is interesting to note that the settlement under section 2 (p) does not embrace "an implied agreement by acquiescence or conduct". That is, if a settlement has been arrived at between the employer and a trade union, say "TU1", the acceptance of benefits under such a settlement by the members of another trade union, say "TU2", which is not party to the settlement, would not make such a settlement binding on the members of the "TU2" union on the ground that an implied agreement has come into existence through acquiescence or conduct. Such an implied agreement cannot be roped into the definition of settlement under section 2 (p). Thus, in Jhagrakhan Collieries, the Supreme Court has ruled, surprisingly, though, that "[a]n implied agreement by acquiescence, or conduct such as acceptance of a benefit under an agreement to which the worker

130. Id., at 226.
131. Ibid. See Indian Tobacco Co. Ltd v. Govt of W. B..., supra note 115 at 94, 95.
acquiescing or accepting the benefit was not a party, … is not binding on such a worker either under sub-section (1) or under sub-section (3) of section 18...."\(^{133}\)

But, morality demands that when the workers decide to enjoy the benefits under the settlement to which they are not parties they should also bear the burden or liabilities such a settlement imposes.

Would industrial workers, as individuals, come into the picture when a recognised union arrives at a settlement and whether such a settlement should be accepted as a whole or parts of it can be accepted and other inconvenient parts can be rejected? There is support for the proposition that when a recognised union negotiates with the employer, the industrial workers as individuals would not come into the picture. Because, it is not necessary that each worker should know the implication of the settlement since it is presumed that a recognised union which is expected to protect the legitimate interests of workers enters into a settlement in the best interests of labour. Further, the Supreme Court in *Herbertsons's*,\(^ {134}\) has ruled that "[i]t is not possible to scan [such a] settlement in bits and pieces and hold some parts good and acceptable and other bad... [u]nless it can be

\(^{133}\). Id., at 139. See Hindustan Insecticides v. Industrial Tribunal, (1976) II L.L.J. 371 (Ker.) See also Tata Chemicals Ltd v. Workmen, (1978) 11 L.L J. 22 (S.C.)

\(^{134}\). Herbertsons' Ltd v. The Workmen of Herbertsons' Ltd., A.I.R. 1977 S.C. 322. See Johnson & Johnson Ltd v. Gautam Hari Vedi, 2001 (89) FLR 95 (Bom.-Aurangabad Bench) (D.B.) (per Marlapalle, J.), "settlement between recognised union and employer has a status of binding nature applicable to all workmen... In all these negotiations based on the principle of Collective Bargaining, the industrial workman necessarily recedes to the background", id., at 106.
demonstrated that the objectionable portion is such that it completely out weighs all the other advantages gained..." Thus, the settlement, as per the Court, must be accepted or rejected as a whole.136

The Supreme Court's opinion in Balmer Lawrie137 declares that workers who accept or enjoy benefits, advantages under a settlement arrived at in the course of Conciliation process to which a representative union is a party should be prepared to incur the liabilities or other obligations under the settlement. Thus, Balmer Lawrie establishes that there should not be any division between members and non-members in respect of advantages as well as obligations and liabilities.138

The format for the Memorandum of settlement and the parties who are required to sign the same have been spelt out in the Rules promulgated under the Act.139 If the parties arrive at a settlement in the course of conciliation proceedings or otherwise, such a settlement, as per the Rules, should be in "Form-H" and the other mandatory requirements of Rule 58, such as, signing the

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135. Herbertsons' Ltd v. The Workmen of Herbertsons, id., at 326, 328. [Emphasis added].

136. Id., at 328.


138. Ibid. The settlement arrived at between the union and management is binding on all workmen even if they are not members of the union which was party to the settlement because all the workmen had received benefits under the said settlement and still continue to be workmen, see Ram Pukar Singh v. Heavy Engineering Corporation, (1995) 1 L.L.J. 214 S.C.

139. R.58 sub-rule (2).
settlement by the persons authorised under the Act should also be complied with. Here, a critical appraisal of the relevant Cases becomes necessary to examine whether the decisions of the Courts are in consonance with the statutory mandate.

In Co-operative Store Ltd. v. Ved Prakash Bhambri, one of the issues presented to the Delhi High Court was whether the settlement should be in Form H and whether provisions of Rule 58 are mandatory. According to the Court, provisions of Rule 58 and Form ‘H’ are mandatory and a settlement between individual workman and the management should conform to statutory provisions. In case of non-compliance, legal questions can be raised and would have to be disposed off by the Court in the light of the statutory injunctions. Similarly, the Bombay High Court, in M/s Agenda E. Sequeira v. Labour Commissioner, has ruled that no oral understanding can supercede any earlier but terminated settlement especially when not communicated to the Labour Commissioner and not recorded in Form H as required by Rule 58.


141. Id., at 122.

142. Id., at 123.

143. (1996) 1 L.L.J. 574 (Bom.)

144. Id., at 582.
However, in *Raghavendra Mathur v. Allahabad Bank*, the Allahabad High Court has, on the same issue, ruled that a settlement is not invalid for non-compliance with Rule 58. Again, the Punjab and Haryana High Court, in *Punjab Kesri Printing Press*, has ruled that "[i]t is not necessary that [the settlement] should ...be written or jotted down on Form H ..." Further, the Court added "[i]n each case, it will have to be seen how the settlement has been written".

Further, while promoting a settlement, the conciliation authority should ensure that the parties signing the settlement are “authorised” to do so under the Act. Thus, in *Brooke Bond India Ltd. v. Workmen* the Supreme Court has ruled:

Unless the office-bearers who signed the agreement were authorised by the executive committee of the union to enter into a settlement or the constitution of the union contained a provision that one or more of its members would be competent to settle a dispute with the management, no agreement between any office-bearer of the union...

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145. (1990) 1 L.L.J. 273 (All.)
146. *Id.*, at 275.
148. *Id.*, at 761.
and the management can be called a settlement as defined in S.2 (p).\textsuperscript{151}

The Court relying on Hindustan Housing Factory Ltd., v. Hindustan Housing Factory employees’ Union,\textsuperscript{152} further ruled;

[W]here a settlement is alleged to have been arrived at between an employer and one or more office-bearers who signed the Memorandum of settlement to enter into the settlement is challenged or disputed, the said authority or authorisation of the office-bearers who signed the Memorandum of settlement has to be established as a fact ...\textsuperscript{153}

The legal requirements of Rule 58 and the statutory mandate of recording the settlement only on ‘Form H’ are for the convenience of the parties themselves. It is quite easy to furnish the details required for the information of the parties as well as the Appropriate Government and its officials on Form-H provided it is printed in the language known to the parties rather than to permit the preparation of the ‘Memorandum of Settlement’ according to the whims and fancies of the parties. Because, parties to the settlement in most of the cases may not be experts in writing out a settlement and may fail to cover all the details required. In addition, uniformity in recording settlements can also be achieved if the prescribed

\textsuperscript{151}. Id., at 186.
\textsuperscript{152}. (1969) Lab. I.C. 1450, 1458 (Del.)
\textsuperscript{153}. Supra note 150 at 189.
format is adhered to. This apart, when the word "shall" is used in the Act, ordinarily, it need not be read as "may" by the interpretative organ, i.e., the judiciary, as is done by the Allahabad and Punjab and Haryana High Courts in the Cases discussed above.

Whether certiorari can issue when the validity of a settlement arrived at in the course of conciliation proceedings is attacked? According to the Madras High Court, in Caltex, a writ of certiorari would lie only in relation to a judicial or quasi-judicial act and the conciliation officer while acting under section 12 neither acts in a judicial nor in a quasi-judicial manner. His duty under the said provision is only to persuade or induce the parties to arrive at a settlement but not to decide the dispute and, therefore, his act of persuading the parties to arrive at a settlement was not susceptible to correction by certiorari. Later, the Kerala High Court in Workmen of Standard Furniture Company has ruled that no writ of certiorari could lie as the conciliation officer acting under section 12 of the Act is not discharging duties in a judicial or quasi-judicial manner and the fact that the conciliation officer has signed the agreement does not make it an order or decision susceptible to correction by certiorari.

154. Employees of Caltex (India) v. Commissioner of Labour, (1959) 1 L.L.J. 520 (Mad.)
155. Id., at 524, 525.
156. Workmen of Standard Furniture Co v. Dist. Labour Officer, (1966) 1 L.L.J. 236 (Ker.)
157. Ibid.
It should be pointed out here that in *Herbertson*,\(^{158}\) the Apex Court has expressed the opinion that in case allegations of mala fides, fraud, corruption or other like inducements are *prima-facie* present in a settlement, then it would be held unjust and unfair by the writ Courts.\(^ {159}\) Further, in *Brooke Bond India Ltd.*,\(^ {160}\) the Supreme Court has declared that if the settlement is signed by unauthorised officer bearers of a trade union it would not be considered as one that falls under section 2 (p) of the Act.\(^ {161}\)

For alleged breach of terms of settlement by the parties, can a mandamus issue to the conciliation officer with a view to effectuate the implementation of such terms was one of the questions presented to the Madras High Court in *The

\(^{158}\) Supra note 134.

\(^{159}\) *Herbertsons Ltd* v. *The Workmen of Herbertsons Ltd.*, supra note 134 at 326, 328. See *Workmen Represented By Andrew Yule & Co. Ltd.*, v. *Judge VIIIth Industrial Tribunal*, 1999 (82) FLR 47 (Cal) (per Satyabrata Sinha, J.) Award made in terms of settlement between management and majority union. Such Award was challenged by another minority union. Held, presumption of the settlement, referred to above, being reasonable and fair is rebuttable. Tribunal has to give a finding as to whether the minority union was able to rebut the presumption, id., at 51: *Mysore Kirlosker Mazdoor Sangh v. Management of Mysore Kirlosker Ltd.*, 2000 Lab.I.C. 250 (Kant.) (per Kumar Rajaratnam, J.) Settlement could be assailed on *mala fides* in reaching it or fraud vitiating such settlement when established. But, if challenge to settlement is rivalry between majority union and minority union, it (challenge ) cannot be sustained, id., at 252-53; *National Engineering Industries Ltd.*, v. *State of Rajasthan*, 2000 1.L.L.J. 247 (S.C.) (D.B.) (per Wadhwa, J.) Industrial dispute could be raised where settlement is not bonafide or arrived at on account of fraud, misrepresentation or concealment of facts or corruption or other inducements, id., at 264.

\(^{160}\) Supra note 150.

\(^{161}\) Supra note 150 at 186.
Workmen of Buckingham And Carnatic Mills v. State of Tamil Nadu. The Court ruled:

There is nothing either in the Act or in the rules conferring a power upon the [conciliation officer] to implement the settlement arrived at between the parties under S.12 (3).... If any of the parties to the settlement is aggrieved by the non-implementation then the remedy ...would be to move the govt for sanction to prosecute the party in breach under S.29 of the Act ... Further, in this case, the [conciliation officer] has done all that he could do within... the four corners of the Act... On receipt of the representation from the [workmen] regarding non-implementation of a part of the settlement by management the [conciliation officer] issued notice to the management. After hearing the management the [conciliation officer] felt that there was real difficulty in the [said implementation]. In the circumstances, he sent a report to the Govt recommending that the question of interpretation of [the controversial part of settlement] should be referred for adjudication... In the circumstances, no writ of mandamus can be issued... directing him to take all measures... [for implementation of ] the settlement. 163

Similarly, the Patna High Court, in Jyotish And Others v. Union of India, has ruled that enforcement of any right under a settlement cannot be enforced through a writ petition.165

163. Id., at 99, 100.
164. (1994) 11 L.L.J. 804 (Pat.)
To avoid the controversy generated in the Cases discussed above while interpreting the term “settlement”, it is better to provide a wholesome definition for “settlement” under the Act. The following draft definition of “settlement” may be considered.

A ‘settlement’ is an agreement arrived at by an industrial employer and the recognised union in an industrial dispute with the aid and assistance of the Conciliation Officer or the Board, as the case may be, in the course of conciliation proceeding and includes-

(i) an implied agreement by acquiescence or conduct such as acceptance of a benefit under an agreement to which the worker acquiescing or accepting the benefit was not a party, and also
(ii) a written agreement arrived at between the disputants in the form prescribed and duly signed by the persons authorised although such an agreement has not been arrived at in the course of conciliation proceeding provided a copy thereof has been sent by the disputants to the Appropriate Government and the Conciliation Officer.

If the Conciliation Officer is not successful in promoting a fair and an amicable settlement, he should, as soon as practicable, submit a detailed Failure Report to the Appropriate Government which shall specify the following:

i) for ascertaining the fact and circumstances relating to the dispute,

ii) steps taken by him to promote a settlement and,

165  Id., at 805.
iii) reasons on account of which, in his opinion a settlement could not be promoted.\textsuperscript{166}

The said report shall be submitted within 14 days of the commencement of the conciliation proceedings or within such shorter period as may be fixed by the Appropriate Government.\textsuperscript{167} Further, subject to the approval of the Conciliation Officer, the time for the submission of the report may be extended by such period as may be agreed upon in writing by all the parties to the dispute.\textsuperscript{168} It may be noted that a settlement shall not be declared invalid only on the ground that it was arrived at after the expiry of the period prescribed under the Act.\textsuperscript{169} The same rule applies in case of settlement reached with the aid and assistance of the Board under section 13 (5) of the Act.\textsuperscript{170}

After scrutinizing the Failure Report of the Conciliation Officer, the Appropriate Government may decide to make a reference to the Board, Court, Labour Court, Tribunal or National Tribunal.\textsuperscript{171} However, if the Appropriate Government decides otherwise, then, it shall record and communicate to the

\textsuperscript{166} S.12 (4).
\textsuperscript{167} S.12 (6)
\textsuperscript{168} S.12 (6) proviso.
\textsuperscript{169} S.9 (2).
\textsuperscript{170} Ibid.
\textsuperscript{171} Ss. 12 (5), 10 (1) (a), (b), (c), (d), (1-A).
parties concerned reasons for not making a reference.\textsuperscript{172} If the industrial dispute has been referred to a Board and the Board is unsuccessful in its endeavours, it should send a Failure Report to the Appropriate Government furnishing detailed particulars, as the conciliation officer is obliged to do under the Act.\textsuperscript{173} It has to be noted that the Act enables the Board to make recommendations for resolving the dispute.\textsuperscript{174} Such a power to make the recommendations has not been expressly conferred upon the Conciliation Officer. The Board is required to submit its Report within two months from the date of reference or within such shorter period as may be fixed by the Appropriate Government.\textsuperscript{175} The Appropriate Government, however, may, from time to time, extend the time for submitting the Report by such further period not exceeding two months in the aggregate.\textsuperscript{176} The period for filing the Failure Report can also be extended for such period as may be agreed upon in writing by all the parties to the dispute.\textsuperscript{177}

Thus, the Act casts a mandatory duty on the Conciliation Officer and Board to file a Failure Report within the prescribed date when they fail to promote fair and amicable settlements. The questions that arise in this context are: a) what

\textsuperscript{172} S.12 (5).

\textsuperscript{173} S.13 (3), \textit{infra} pp 188-92.

\textsuperscript{174} S.13 (3).

\textsuperscript{175} S.13 (5).

\textsuperscript{176} S.13 (5) proviso \textit{See also} S.9.

\textsuperscript{177} S.13 (5) proviso \textit{See also} S.9 (2).
validity would the Failure Report enjoy when it is submitted after a lapse of 14 days? b) Would the conciliation proceedings automatically terminate after 14 days from date of the commencement when the period for carrying on the conciliation proceedings has not been extended as per the statutory provisions? If there is no time limit for promoting a settlement or for filing the Failure Report, would not the workmen be deprived of their right to strike over an indefinite period? Let us now turn to the Case law to find out how the above issues have been answered by the Courts.

In *Edward Keventers*, the issue before the Industrial Tribunal was whether a Failure Report would become null and void if it is not submitted within 14 days from the date of commencement of conciliation proceedings and can the employer, alleging that such a settlement is void, disregard the mandatory requirements of section 33 ["conditions of service, etc. to remain unchanged under certain circumstances during pendency of proceeding"]? Answering in the negative, the West Bengal Industrial Tribunal has ruled that the Report submitted after the expiry of 14 days would not be null and void nor could it be held that the conciliation proceeding would conclude in law after the lapse of 14 days. Such an interpretation, according to the Tribunal, would be "absurd".179

179. *Id.*, at 525.
A similar question was presented to the Labour Appellate Tribunal in *Mahalaxmi Cotton Mills Ltd., v. Their Workmen*.\textsuperscript{180} In this case, the workmen contended that the Report was not submitted within 14 days as required by section 12 (6) of the Act and, therefore, was nugatory. They further argued that they were not bound to await the result of the recommendation made by the Conciliation Officer.

The Labour Appellate Tribunal, relying on section 20\textsuperscript{181} of the Act, rejected these contentions.\textsuperscript{182}

The Bombay Industrial Tribunal in *Surat Bus Co. Ltd., v. Their Workmen*,\textsuperscript{183} has, over an identical issue, ruled:

> [O]nce conciliation proceedings have started they continue to be validly in existence till receipt of the conciliation report by Government except in cases provided under section 20 (2) (a) and (c) ... In this view, if a worker is discharged after expiry of the period mentioned under section 12 (6) but before the receipt of the report by the Government as provided under section 20 (2) (b), it must be held that he was discharged during pendency of conciliation proceedings.

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\textsuperscript{180}. (1952) II L.L.J. 635 (LAT).

\textsuperscript{181}. S.20 (2) "A conciliation proceeding shall be deemed to have concluded- (a) ...; (b) where no settlement is arrived at, when the report of the conciliation officer is received by the appropriate Government or when the report of the Board is published under Sec.17, ...or (c) when a reference is made to a Court, ... Labour Court, Tribunal or National Tribunal... under Sec.10 during the pendency of conciliation proceedings.

\textsuperscript{182}. *Supra* note 180 at 641.

\textsuperscript{183}. (1954) II L.L.J. 75 (Bom.) (I.T.)
and section 33 will be attracted if the discharge of the worker was without permission of the conciliation officer. 184

In State of Bihar v. Kripa Shankar Jaiswal, 185 the Supreme Court has held that failure to complete conciliation proceedings within 14 days does not affect the legality of the proceedings but only amounts to a “breach of duty” on the part of the conciliation officer.

In all the Cases discussed above, the Industrial Tribunal, Labour Appellate Tribunal and the Apex Court have ruled that the provision embodied in S.12 (6) does not mandate that the conciliation proceedings be completed within 14 days despite the use of the word “shall” in the provision. It is respectfully submitted that provisions in section 12 (6) are unambiguous and, therefore, there was no warrant for the conclusion that non-submission of the Failure Report within 14 days is a mere “breach of duty” or that it is “absurd” to apply the rule of strict interpretation while interpreting this provision. Would it not be more pertinent to argue that protracted conciliation proceedings tend to be fruitless and, therefore, the time limit should be certain than to interpret the provision that imposes the time limit as directory and its violation amounts to a mere “breach of duty”? We should recall here that the Supreme Court, way back in the middle of the last century, had emphasised that “even a cursory perusal of the Act makes it clear that

184. Id., at 82, 83.
time is of the essence of the Act and that the requirements of its relevant provisions must punctually be obeyed and carried out if the Act is to operate harmoniously at all". More importantly, under the relevant provisions, the pendency of conciliation proceedings imposes a ban on the right to strike. When the workers are deprived of the right to resort to a powerful instrument of economic coercion over an indefinite period the scales would automatically tilt in favour of the economically powerful employer.

It is prudent, therefore, to apply the rule of strict interpretation and to compel the conciliation officer to complete his proceedings within the time limit prescribed under the Act. Wherever extension is sought with the approval of the Conciliation Officer through a written agreement by the parties, it should be made compulsory, through an amendment, that the disputants shall arrive at a settlement. At the same time, the Appropriate Government must demonstrate its reluctance to refer such disputes to adjudication.

Once the Failure Report is submitted, apparently, the process of conciliation comes to an end. But if one goes by the wordings of the provisions governing the process of submission of Failure Report, there appears to be considerable degree of ambiguity. Under sub-section 4 of section 12, as mentioned earlier, the conciliation officer is duty bound to "send" a Failure Report “as soon as


187. Ss.22 (1) (d), 23 (a).
practicable after the close of the investigation ...” and sub-section (6) of section 12 further requires the conciliation officer “to submit” such a Report “within 14 days of the commencement of the conciliation proceedings or within such shorter period as may be fixed by the Appropriate Government...” But, under clause (b) of sub-section (2) of section 20 of the Act, the “conciliation proceedings shall be deemed to have concluded” when the Report of the conciliation officer is received by the Appropriate Government ...” So, the question here is, whether the conciliation proceeding comes to an end as soon as the report is “sent” or “submitted” to the Appropriate Government or whether it concludes only when the Appropriate Government actually receives such a Report? If one goes by clause (b) of sub-section (2) of section 20, how can the parties come to know about the actual time of receipt of the report by the Appropriate Government? It is pertinent to note here that under the Act the workers determined to resort to strike have to wait for seven days after the conclusion of conciliation proceedings. This riddle has to be examined in the light of the relevant case law.

In Workers of Industry Colliery v. The Industry Colliery,\textsuperscript{188} one of the issues before the Supreme Court was whether the strike by the workers was illegal since it was resorted to during the pendency of conciliation proceedings? In the instant Case, the Failure Report was sent within 14 days of the commencement of conciliation proceedings. It was contended on behalf of the workers that the

\textsuperscript{188}. Supra note 186.
conciliation proceedings had terminated when the Regional Labour Commissioner (Central) sent his Failure Report within 14 days of the commencement of the conciliation proceedings. The Court, however, opined that "the word 'send' is used in section 12 (4) and the word in section 20 (2) (b) is 'received' [and this] word obviously implies the actual receipt of the report..."189 Thus, through "a legal fiction introduced by section 20 (2) (b)... the conciliation proceedings are prolonged until the actual receipt of the report by the appropriate Government".190 On behalf of the workers, it was vehemently argued that the construction accorded to the provision would possibly, enable the Government or its officers to withhold the report designedly or the report might be lost in course of transit and the workers or their trade unions would have no knowledge of the same or it might be received by the Government after the expiry of the date fixed for strike in the notice under section 22 (1).191 Further, it was also pointed out that it would not be possible for the workers to know when the report has been actually received by the appropriate authorities and the right to strike would thus be postponed indefinitely.192 The Court did recognise the "force" behind this line of argument and admitted that "an element of uncertainty" is introduced by the interpretation of

189. Id., at 192.
190. Ibid.
191. Ibid.
192. Id., at 193.
section 20 (2) (b) in the present case. The Court, however, expressed that it was devoid of the power to rewrite the law and that it "can only construe the Statute as it finds it and if there is any defect in the law it is for the other authority... to rectify the same." 

Thus, in the above case, though the Report was sent on time, it was not forwarded to the Appropriate Government by the concerned officer and, therefore, was not received by the Appropriate Government before the workers resorted to strike which had been fixed after taking into account the date on which the Failure Report could be sent by the conciliation officer to the Appropriate Government. Despite "the callous indifference or utter inefficiency and slackness apparent" on the part of the responsible Government officials, the strike, on a strict, literal interpretation of the law, was held to be illegal and the employees were made to face and bear the consequences of an illegal strike and this hardship the employees had to suffer for no fault of their own. Therefore, the Court censured the concerned authority and ordained that it should "show a greater sense of responsibility" while discharging its duties in future.

193. Ibid.
194. Ibid.
195. Id., at 194.
196. Ibid.
In *Surat Bus Co Ltd., v. Their Workmen*, the Bombay Industrial Tribunal held that “once conciliation proceedings have started they continue to be validly in existence till receipt of the conciliation report by Government except in cases provided under section 20 (2) (a) and (c) …”

Later, a three Judge Bench of the Supreme Court, in *M/s Lockmat Newspapers Pvt Ltd., v. Shankarprasad*, has ruled that termination of conciliation proceedings does not take place immediately after investigation is closed but the proceedings continue and would terminate only after the report under section 12(4) reaches the Appropriate Government.

The foregoing Cases depict situations where Failure Reports were sent on time or after the lapse of the time prescribed under the law. But, what about situations where no report has been filed by the conciliation officer despite the proceedings have ended in failure? In such cases, how should any one determine when the conciliation proceedings have concluded? Is it mandatory on the part of the conciliation officer or the Board to file the Failure Report under the Act?

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197. *Supra* note 183.
198. *Id.*, at 82.
198A. A.I.R. 1999 S.C 2423 (D.B.)
198B. *Id.*, at 2431-34.
The Bombay High Court, in *A.I.T.B.I. Employees' Federation*,
held that "omission on the part of the conciliation officer to submit the failure report under section 12, is extremely strange [and] [i]t clearly amounts to an abdication of the statutory duty". The Court added that "it is a mandatory duty [of the Conciliation Officer] to report [the] failure" and "[h]is omission to do so is culpable, if not motivated". The conciliation officer is "bound to submit a report under section 12 (4)". Whenever he fails "... he has to be compelled to discharge that duty peremptorily to preserve industrial peace and incidentally to protect the interests of the weaker section of the society, the workmen...."

An incidental question is: would the Conciliation Officer become *functus officio* after the submission of the Failure Report?

The Andhra High Court in *Praga Tools*, has ruled that even after the submission of the Failure Report the Conciliation Officer does not become *functus officio*. He can continue the conciliation proceedings to bring about an amicable

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199. *A.I.T.B.I. Employees' Federation And Other v. C.D. Dingare And Others*, (1993) 1 L.L.J 346 (Bom.)
200. *Id.*, at 348, 349.
201. *Id.*, at 349.
settlement between the workmen and the management.\textsuperscript{206} Thus, according to the Court, there is no bar to hold proceedings, afresh, notwithstanding the fact that the conciliation officer has already filed a failure report to the Government.\textsuperscript{207}

Again, in The Management A.L.P.H. Zinc Ltd., v. Hindustan Zinc Worker's Union,\textsuperscript{208} the Andhra High Court, when presented with the issue, whether the parties can arrive at a settlement after the Failure Report is submitted by the conciliation officer to the Appropriate Government, has ruled that a settlement could be arrived at either in the course of conciliation or otherwise even after submission of failure report by the conciliation officer.\textsuperscript{209}

The above decisions establish that the conciliation officer does not become \textit{functus officio} after the submission of the failure report to the Appropriate Government. The implication that could be drawn here is the Conciliation Officer can send as many Failure Reports reflecting his successive failures to promote a fair and amicable settlement. It is time, therefore, the legislature should intervene ‘to clarify’.  

\begin{flushleft}
\textsuperscript{206} Id., at 1111. \\
\textsuperscript{207} Ibid. \\
\textsuperscript{208} (1988) 11 L.L.J. 318 (A.P.) See Pix Transmissions Ltd., v. State of Maharashtra, 2001 (88) FLR 720 (Bom-N.B.) \textit{(per} Khanwilkar, J.) After the submission of Failure Report a settlement was arrived at otherwise than in the course of conciliation. Still the State Government referred the dispute for adjudication. Held, the State Government has not addressed to crucial aspect of effect of settlement, therefore, order of reference set aside and the State Government was directed to reconsider it and take into account the effect of the settlement, id., at 721-22. \\
\textsuperscript{209} Id., at 322.
\end{flushleft}
The foregoing establish the following.

1. Conciliation Officer acts singly whereas Board is a multi-member body.

2. When an industrial dispute exists or is apprehended in a non-public utility service or in public utility service in the absence of strike or lockout notice, Conciliation Officer has discretion to start the conciliation process. But the underlying statutory objectives warrant the interpretation that even in respect of industrial disputes relating to non-public utility service the Conciliation Officer should promptly endeavour to promote a settlement by initiating the conciliation process.

   In case of public utility service, where a strike or lockout notice has been served Conciliation Officer should start the conciliation proceedings immediately.

3. The Board acts only after a reference by Appropriate Government under section 10 (1).

4. Both, of these machineries, when successful, should submit a report along with the Memorandum of Settlement duly signed by the parties to the dispute.

5. Both, when unsuccessful, should file Failure Reports.

6. The Board, while filing the Failure Report can make recommendations for resolving the industrial dispute but such a power is not expressly conferred upon the Conciliation Officer.
7. Under the Act, normally, the time limit for submission of the Failure Report by Conciliation Officer is 14 days and in case of the Board, it is two months.

8. Where the Conciliation Officer submits a Failure Report, the Appropriate Government may refer the industrial dispute under section 10. If it does not, reasons for not making the reference should be communicated to the parties.

After receiving the Failure Report from the Board, the Appropriate Government has to give reasons for not making the reference only when the industrial dispute relates to public utility services.

H. PERIOD OF OPERATION OF SETTLEMENTS

A settlement, whether arrived at in the course of conciliation proceedings or otherwise, comes into operation on the date agreed upon by the parties and in the absence of any such agreement, it comes into operation on the date on which the Memorandum of Settlement is signed by the parties to the dispute. Such a settlement would be binding upon the parties for such period as is agreed upon and when no such period is prescribed it would be in force for a period of six months from the date on which the Memorandum of Settlement is signed. Further, it shall continue to be binding on the parties even after the expiry of the period aforementioned until the expiry of two months from the date on which a notice in writing of an intention to terminate the settlement is given by either of the

\[210\] S.19 (1) read with Rule 58.
parties.\textsuperscript{211} Such notice of termination of the settlement would be invalid unless it is given by a party representing the majority of persons bound by it.\textsuperscript{212} Here, it has to be noted that although a minority union has arrived at a settlement in the course of conciliation proceedings, the notice to terminate such a settlement after the statutorily fixed period expires, has to be served by a party representing the majority of persons bound by the settlement.

Some incidental and important questions are; should a written notice be required to terminate a settlement and when a settlement is terminated, what would be the basis for regulating the relations between the employer and the workmen, especially, in a situation where no new settlement is in sight? Would the terminated settlement continue to govern the relations until a new settlement takes its place? Let us turn to a few important decisions on these points.

While dealing with the above issues, the Bombay Industrial Tribunal in \textit{Garlick and Co Ltd., v. Their Workmen},\textsuperscript{213} had interpreted sub-section (2) of section\textsuperscript{19} in the following words:

\begin{quote}
... A settlement between the parties has the force of a contract and, therefore, if a settlement fixes a period for its operation it must cease to operate after such period. Law cannot fix an operational period for a valid contract when the contract itself fixes a period. It is only when the contract does not fix a period for its operation that the law
\end{quote}

\textsuperscript{211} S.12 (2).
\textsuperscript{212} S.19 (7)
\textsuperscript{213} (1952) 11 L.L.J 887 (Bom.) (I.T.)
could provide for it. Sub-section 2 [of section 19] provides for such a contingency. The words 'and shall continue to be binding on the parties after the expiry of the period aforesaid, until the expiry of two months', ... are intended to apply only to those settlements which do not provide a period for their operation and not to the settlements which provide for such a period. The words 'after the expiry of the period aforesaid' should in their context refer to 'a period of six months' appearing at the end of the clause which immediately precede [sic] it, and not to the words 'such period as is agreed upon by the parties, which appear at the end of the first clause. Besides, the use of the word 'period' in singular in the expression 'after the expiry of the period aforesaid' also indicates that word refers to the word 'period' in the preceding clause. Otherwise, the legislature would have used the plural of the word 'period' in the above expression 'after the expiry of the period aforesaid'. If the legislature desired that a settlement, where it has a period of operation agreed upon by the parties should continue to be binding on them after the expiry of the said period they would have used the words 'in either case' to precede the words 'shall continue to be binding on the parties'.

In the opinion of the Tribunal, section 19 (2) is, unfortunately, not happily worded. The Tribunal observed that to "construe section 19 (2) as meaning that a settlement continues to be binding on the parties even though an operational

\[^{214}\] Id., at 888, 889.

\[^{215}\] Id., at 889.
period fixed by agreement has expired would lead to dire results".\textsuperscript{216} The contract in such a case, the Tribunal declared, would not have its legal effect.\textsuperscript{217}

It was also urged on behalf of the Company that there was no reason why the legislature should make any difference between the binding effect of a settlement and that of an award after the expiry of their operational period and direct that an award should continue to be binding on the parties after the expiry of its operational period. The Tribunal’s response was:

[I]t is the legislature which has provided a period of operation for an award, a period which it has considered reasonable, but in the case of a settlement it is the parties themselves, fully alive to the probable result and the consequences of their agreement, that determine the period of its operation. If so the period of operation of an award must stand on a different footing from that of a settlement whose operational period is agreed upon by the parties.\textsuperscript{218}

The Tribunal, therefore, held that no notice need be given if termination of such a settlement was necessary.\textsuperscript{219}

In \textit{State of Kerala v. Antony D'Cruz},\textsuperscript{220} a settlement providing, \textit{inter alia}, for the mode of payment of wages was in operation. But, the period of operation had not been fixed. After the expiry of six months from the date of settlement, the

\textsuperscript{216} Ibid.
\textsuperscript{217} Ibid.
\textsuperscript{218} Ibid.
\textsuperscript{219} Ibid.
\textsuperscript{220} (1966) 1 L.L.J. 373 (Ker.)
concerned workmen demanded a change in the mode of payment of their wages. The employer contended that the workmen were bound by the terms of settlement as it was not terminated by a notice under section 19 (2) of the Act. In the meanwhile, workmen resorted to strike to force the employer to accept their demand. The Tribunal was of the view that the workmen by demanding a change in the mode of payment of their wages had tacitly terminated the settlement and, therefore the strike, in question, was not illegal.

The Kerala High Court was approached by the employer in the instant Case. While answering the question, whether the trade union should, before resorting to strike over a matter covered by the settlement, serve notice of termination even after the expiry of the period of operation prescribed by the Statute, the Hon'ble Court ruled that when the parties have not provided for the period of operation, the settlement would be binding for six months from the date on which the Memorandum of Settlement was signed and it should continue to be binding until the expiry of two months from the date of the service of notice expressing the intention to terminate.221 In the opinion of the Court, it would not be open to the union to terminate and unilaterally repudiate the settlement without complying with the provisions contained in section 19 (2) of the Act.222

221. Id., at 377.
222. Ibid.
In *L.I.C. v. D.J. Bahadur*, the Supreme Court had to, *inter alia*, decide whether an award or settlement would continue to regulate the relations between the parties even after service of termination notice and until the same were replaced by a new one. The Apex Court ruled that after the expiry of the specific period contractually or statutorily fixed as the period of operation for the award or settlement, the same would not become “non-est” but would continue to be binding. In the opinion of the Court:

Law abhors a vaccum and even on the notice of termination under section 19 (2) or (6) the sequence and consequence cannot be just void but a continuance of the earlier terms, but with liberty to both sides to raise disputes, negotiate settlements or seek a reference and award. Until such a new contract or award replaces the previous one, the former settlement or award will regulate the relations between the parties.

Further, “the precedents on this point, the principles of industrial law, the Constitutional sympathy of Part IV and the sound rules of statutory construction”, the Court observed, “converge to the same point”. Therefore, the Supreme Court held that the settlement under the Act does not suffer death merely because of the

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223. 1980 Lab I.C. 1218 S.C.
224. *Id.*, at 1230.
notice issued under section 19 (2) as the Act itself substantially equates an award with a settlement from the point of their legal force and no distinction in respect of the nature and period of effect can be discerned, especially when sub-sections (2) and (6) of section 19 are referred to. Further, the Apex Court declared that the award even if it ceases to be operative "qua award continues qua contract". Obviously, as per the Court, if the Act regulates the jural relations between the L.I.C. and its employees then the rights under the settlement, in question, remain until replaced by a later award or settlement.

In the light of Judicial decisions discussed above, the plausible conclusions are that a settlement for which the statute fixes the period of operation and a settlement where the parties themselves prescribe its period of operation cannot be kept on an equal footing as held in Garlick. Duty to serve notice for termination of a settlement should be imposed upon the parties bound by it only when the statute fixes the period of operation of such a settlement. When the parties themselves decide about the life span of a settlement, it is their duty to ensure that a fresh settlement or award replaces the old one, well in advance. Law

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226. Id., at 1227.
227. Id., at 1235.
228. Ibid.
229. Supra note 223 at 888, 889.
may no doubt, abhor vaccum, as Justice Krishna Iyer opines in *Bahadur*.\textsuperscript{230} But, it has to be pointed out that such a vaccum is created by the parties themselves.

It is submitted that it is not correct, in the light of the statutory provisions, to equate a settlement with an award in all circumstances. Because, 'settlement' broadly speaking, is a compromise between the disputants, whereas, an 'award' is the result of adjudication. Further, every settlement would not have the same binding force as an award.\textsuperscript{231} Moreover, the period of operation for a settlement would be fixed either by the parties or by the statute but for an award it is the statute alone that prescribes the period.\textsuperscript{232} In respect of a settlement, the period of operation cannot be extended or shortened by the Appropriate Government whereas it can be so done as regards an award.\textsuperscript{233} A Settlement can not be rejected or modified by the Appropriate Government but the adjudicatory award may be either rejected or modified by the Appropriate Government.\textsuperscript{234} A settlement comes into operation on such date as has been agreed upon by the parties or in the absence of such an agreement from the date on which it was signed by the parties to the dispute.\textsuperscript{235} An award, subject to modification, becomes

\textsuperscript{230} *Supra* note 223 at 1230.
\textsuperscript{231} S.18 (1), (3).
\textsuperscript{232} S.19 (2), (3).
\textsuperscript{233} S.19 (3), (4).
\textsuperscript{234} S.17A (2).
\textsuperscript{235} S.19 (1).
operative only after the expiry of thirty days from the date of its publication by the Appropriate Government.\textsuperscript{236}

It may be noted that the Judiciary, in an exceptional situation like the one that arose in \textit{Sirsilk Ltd.},\textsuperscript{237} suppressed the publication of award, a mandatory statutory requirement, with a view to accord greater sanctity to the outcome of bipartite negotiations \textit{i.e}, ‘settlement’.\textsuperscript{238} In the process, the possible conflict between sub-section (1) of section 18 and sub-section (3) of the same section was pre-empted by the Court.

\textbf{I. BINDING NATURE OF A SETTLEMENT}

The Act contemplates two types of settlements which, \textit{inter alia}, differ in their binding nature. A bipartite settlement binds only the parties to it\textsuperscript{239} whereas a settlement arrived at in the course of conciliation proceedings binds not only the parties to the dispute but also all other parties summoned to appear, with a proper cause, in the proceedings.\textsuperscript{240} Further, the parties, referred to under clause (b) of sub-section (3) of section 18 are: the employer, his heirs, successors or assigns and, the workmen, present and future. Whether the judicial decisions are in accord with the statutory diktat on this aspect has to be examined now.

\textsuperscript{236} S.17A (1), (2).
\textsuperscript{238} \textit{Id.}, at 163.
\textsuperscript{239} S.18 (1).
\textsuperscript{240} S.18 (3) (b).
In *Monthly-rated Workmen of Peirce Leslie and Co Ltd., v. Labour Commissioner*\(^{241}\) one of the issues before the Kerala High Court was whether the settlement arrived at in the course of Conciliation proceeding between the management and the majority union which was the most representative union in all the Branches of the establishment, except one, binds only the members of the signatory union or also the non-members working in the establishment. Without considering the Branch-wise majority of the union, a single Judge, while taking into account the broad-based majority of the union in the establishment as a whole, probably, has held that the settlement, in the circumstances mentioned above, would be binding on all the workmen of the establishment.\(^{242}\) Further, it was contended by the non-signatory union to the settlement, referred to above, that there was no negotiation as such regarding some of the demands raised which establishes that there was no conciliation in respect of those demands and therefore, the said union was at liberty to raise an industrial dispute afresh over the


\(^{242}\) *Id.*, at 504, 508.
demands not negotiated. In the absence of any evidence as to why some of the demands were not negotiated, the Court ruled that it would be improper to conclude that the demands were not conciliated upon at all especially in the light of the fact that the process of conciliation is based on the principle of give and take. Thus, the signatory union to the above settlement, the Court opined, might have decided to withdraw some of its demands when the employer agreed to fulfil the majority of the demands put forth by it in the overall interest of the workers in the establishment. However, this decision, unfortunately, did not find favour with the Division Bench which ruled that a settlement arrived at in the course of conciliation proceedings for its extended operation beyond the parties to it should have the concurrence of all the disputants i.e., workmen represented by both the unions in the instant case.

However, in *Ramnagar Cane and Sugar Co,* the Supreme Court held that the settlement arrived at between the Company and majority union in the course of

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243. *Id.,* at 512.


245. *Ramnagar Cane and Sugar Co, Ltd., v. Jatin Chakravorty,* (1961) 1 L.L.J. 244 (S.C.) *See also, Balmer Lawrie Workers' Union v. Balmer Lawrie and Co., Ltd.,* (1985) 1 L.L.J. 314 (S.C.) "However when a settlement is reached in a proceeding under the [Act] in which a representative union has appeared, the same is to be binding on all the workmen of the undertaking". *Id.,* at 325.
conciliation process would bind not only the members of the said union but all
workmen employed in the establishment on that date.\(^{246}\)

A Division Bench of the Supreme Court in *Bata Shoe Co (Pvt) Ltd v. Ganguly D.N.*, \(^{247}\) has ruled;

\[
\text{[A] settlement which is made binding under section 18 on the ground}
\text{that it is arrived at in the course of conciliation proceedings is a}
\text{settlement arrived at with the assistance and concurrence of the}
\text{conciliation officer, for it is the duty of the conciliation officer to}
\text{promote a right settlement and to do everything he can to induce the}
\text{parties to come to fair and amicable settlement of the dispute. It is}
\text{only such a settlement which is arrived at while conciliation}
\text{proceedings are pending that can be binding under section 18...} \(^{248}\)
\]

Later, the Andhra Pradesh High Court in *Syndicate Bank Staff Association*, \(^{249}\) has
held that a settlement arrived at in the course of conciliation process between the
bank and recognised union being a bonafide settlement would be binding on all the
employees under section 18 (3) of the Act. \(^{250}\) Subsequently, the same High Court
in *Praga Tools*, \(^{251}\) while referring to *Bata Shoe Co's Case* has ruled:

\(^{246}\) *Ramnagar Cane and Sugar Co., Ltd v. Jatin Chakravorty*, id., at 247.

\(^{247}\) *Bata Shoe Co. (Pvt) Ltd v. Ganguly D.N.*, supra note 121 at 1158.

\(^{248}\) Id., at 1162.

\(^{249}\) *Syndicate Bank Staff Association v. Regional Labour Commissioner*, (1968) II L.L.J. 712 (A.P.)

\(^{250}\) Id., at 723.

\(^{251}\) *Praga Tools v. Praga Tools Mazdoor Sabha*, supra note 205.
In order that a settlement reached in the course of conciliation proceedings should be valid and binding on all the employees, it is not necessary that if there are several unions, all those unions should be represented. It is enough if the settlement reached is one which concerns all the employees of the employer of a dispute common to all the employees of the employer.\textsuperscript{252}

The Apex Court, in \textit{G.M. Security Paper Mills}, has explained as to why a settlement arrived at in the course of conciliation proceedings enjoys greater sanctity and credibility:

Law ... attaches importance and sanctity to a settlement arrived at in the ... conciliation proceeding since it carries a presumption that it is just and fair and makes it binding on all the parties as well as the other workmen in the establishment or the part of it to which it relates.\textsuperscript{253}

In the recent past, the Supreme Court, in \textit{Virudhachalam},\textsuperscript{254} has reinforced the sanctity of the settlement arrived at in the course of conciliation proceedings. Here, the Court has ruled that a settlement arrived at in the course of conciliation proceedings would bind not only the members of the signatory unions but also the workmen who were represented by other unions which, though having taken part

\textsuperscript{252} Id., at 1113.


in the conciliation proceedings, have refused to sign the settlement.\textsuperscript{255} The following significant portion of the pronouncement can not be lost sight of:

It is axiomatic that if [a] settlement arrived at during the conciliation proceedings is binding on even future workmen as laid down by section 18 (3) (d), it would \textit{ipso facto} bind all the existing workmen who are all parties to the industrial dispute and who may not be members of unions that are signatories to such settlement under section 12 (3) of the Act.\textsuperscript{256}

One could find the reiteration of what the single Judge of the Kerala High Court had ruled way back in 1966 in \textit{Monthly Rated Workmen of Peirce Leslie and Col, Ltd.}\textsuperscript{256 A} in the recent decision of the Supreme Court in \textit{National Engineering Industries Ltd.}\textsuperscript{256 B} where a three Judge Bench has ruled that a settlement arrived as between management and majority union is a \textit{Package Deal} hence failure to mention demands which are left out and not pressed need not be mentioned

\begin{footnotesize}
\textsuperscript{255} \textit{Id.}, at 394.
\textsuperscript{256} \textit{Ibid.} See \textit{Birla Textile Technical Employees' Union v. Texmaco Ltd.}, 1999(81) FLR 891 (Del.) (per Vijendra Jain, J.) settlement arrived at during the pendency of conciliation proceedings and before the Conciliation Officer would be binding not only upon workers or union who have signed it but also upon those workmen who were not party to the settlement. Further, not only the existing workmen but the future workmen would also be bound by it, \textit{id.}, at 894: \textit{Workmen Represented By Andrew Yule & Co., Ltd v. Judge VIIIth Industrial Tribunal}, supra note 241 at 50: \textit{National Engineering Industries Ltd., v. State of Rajasthan}, infra pp 213-14 : \textit{Gujarat Mineral Development Corporation Employees' Union v. Gujarat Mineral Development Corporation}, supra note 241 at 462-63.
\textsuperscript{256 A} \textit{Supra} note 241.
\textsuperscript{256 B} \textit{Supra} note 159.
\end{footnotesize}
specifically. It is so because when the recognised union is involved in arriving at a settlement in the course of conciliation process it is expected to protect the legitimate interest of labour. Therefore, such a settlement, as per the Court binds all persons employed in the establishment including persons who are not parties to such settlement and even those workmen belonging to a minority union which objected to such settlement. The Court has further remarked that “[b]inding nature of a settlement arrived at in the course of conciliation proceedings is based on the principle of Collective Bargaining for resolving industrial dispute and for maintaining industrial peace” and this “principle of industrial democracy is the bedrock of the Industrial Disputes Act...”

The Case Law discussed above in respect of the binding nature of the settlement arrived at in the course of conciliation proceedings as is evident, is inconsistent.

It may be noted that a settlement arrived at in the course of conciliation proceeding binds all the workers in the establishment only when the statutory condition is fulfilled. That is, only when the Conciliation Officer or the Board summons all the unions representing other workers employed in the establishment whose interests would also be affected by the settlement being arrived at to

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256C Id., at 266.
256D Id., at 264-65. See also supra notes 241, 256.
256E Ibid.
participate in the conciliation process and not otherwise. To maintain the
importance and sanctity of the settlement being arrived at in the course of
conciliation process, the Conciliation Officer or the Board may have to ensure that
the unions which are not initially parties to the dispute are also extended an
opportunity to make their submissions. It is, however, up to the unions so
summoned to decide whether to participate in such proceedings. After such
participation, even if any of the minority unions refuse to accept the terms and
conditions of the settlement arrived at, then, despite such refusal, the settlement
would be binding upon the members of those unions also, as rightly held by the
Apex Court, in *Virudhachalam* and *National Engineering Industries Ltd.*, as
well.

**J. COMMENCEMENT AND CONCLUSION OF CONCILIATION
PROCEEDINGS**

Conciliation proceedings shall be deemed to have commenced, under the
Act, on the date on which a notice of strike or lockout under section 22 i.e., in
case of public utility services, is received by the Conciliation Officer or on the
date on which the Appropriate Government makes an order of reference of the

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257. *Supra* note 254 at 394.

257A. *Supra* notes 256B, 256C, 256D and 256E.

258. S.2 (g) definition of 'strike'. *See also Rules* 71, 73, 74.

259. S.2 (l) definition of 'lockout' *See also Rules* 72, 73, 74.

260. S.2 (n) definition of 'public utility services'.

dispute to the Board. In the absence of any such notice, under section 22 of the Act, the Conciliation Officer may, by giving a formal written intimation to the parties concerned declare his intention to commence the proceedings on the date mentioned therein. The Conciliation Officer may take a similar step when he receives information about an existing or apprehended dispute in a non public utility concern. That is, in case of non-public utility services and where a strike or lockout notice has not been served by the trade union of a public utility concern, the decision to commence conciliation proceedings shall be taken by the conciliation officer himself who shall also decide about the date on which such proceedings would begin. Thus, O.P. Malhotra's comments to draw a distinction between the date of commencement of conciliation proceedings in non-public utility services and in public utility services in the absence of strike or lockout notice in the following words are not well founded:

[I]n a non-public utility concern, from Rule 10 of the Central Rules, it appears that the conciliation proceedings will commence on the day mentioned in the formal notice given by the conciliation officer [b]ut the Act and the Rules are completely silent as to on what date the conciliation proceeding in a public utility concern where no notice of strike or lockout under section 22 is given and there is an ‘industrial dispute’ existing or apprehended can be deemed to have commenced.  

261. S.20 (1) read with Rules 9 (1), 71, 72, 73, 74.

Because, under Rule 9 (2), even in case of public utility services where no strike or lockout notice has been served, the conciliation officer can, *suo moto*, commence the proceedings after serving a formal written notice specifying the date as is done in case of non-public utility services under Rule 10. Thus, both Rule 10 and Rule 9 (2) seek to address situations where there is non-service of notice of strike or lockout, the only difference being, while Rule 10 speaks, *inter alia*, about the date of commencement of conciliation proceedings in non-public utility services, Rule 9 (2) speaks about the same in respect of public utility services. However, in the latest edition (1998) of the same commentary there is no reference to the point dealt with above.

Where the Appropriate Government is of the opinion that an industrial dispute exists or is apprehended, it may, in its discretion, refer such a dispute to the Board at any time for promoting a settlement thereof.\(^\text{263}\) The Board, unlike the Conciliation Officer, does not have the power to act *suo moto*. The machinery of the Board can be put in motion only on a written reference made by the Appropriate Government in the exercise of its discretionary power under section 10 (1). It is pertinent to note that this discretionary power the Appropriate Government enjoys under section 10 (1) in deciding to make a reference of an industrial dispute to the Board, *etc.*, would disappear when the parties, either

\(^{263}\) S.10 (1) (a).
jointly or separately, request the Appropriate Government to refer the dispute to
the Board and when the Appropriate Government is convinced that the persons
making the request represent the majority of each party.  

Incidentally, keeping in mind the nature of duties performed by the
Conciliation Officer under the Act, the question that need be considered at this
point is: whether the Conciliation Officer's decisions to initiate or not to initiate
conciliation proceedings under the Act would be amenable to the writ jurisdiction
of the High Court under Article 226 of the Constitution?

It was argued before the Division Bench of the Bombay High Court in *East
Asiatic And Allied Company*, that the decision taken by the Conciliation Officer
not to initiate the proceeding be quashed by issuing the writ of *certiorari* and
further he should be directed to started the conciliation proceedings. But the Court
expressed the view that use of the word 'may' under section 12 (1) makes it
abundantly clear that the legislature has invested the Conciliation Officer with the
discretion whether to enter upon conciliation in respect of such disputes.
Moreover, any steps taken by the Conciliation Officer for satisfying himself
whether an industrial dispute which has been brought to his notice should be
conciliated upon or not cannot be regarded as a part of the conciliation

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264. S.10 (2).
266. *Id.*, at 164.
proceedings. Instead, they are "what they purport to be on their face, only preliminary inquiries and merely because such inquiries are held, the hands of the conciliation officer cannot be said to be bound in any way..."  

The Madras High Court in *Workmen of V.M. Bus Service* has ruled that since sub-section (1) of section 12 of the Act confers discretion on the conciliation officer to decide whether he shall conciliate or not, there is no room for the issuance of a writ of mandamus. Similarly, the Orissa High Court, in *Pratap Chandra Mohanty v. Union of India*, referring to the Bombay High Court's decision in *East Asiatic* has emphasised upon the clear distinction made under the Act between disputes in public utility services and others; in case of former, conciliation is mandatory, whereas, with regard to latter, discretion is vested in the conciliation officer to start conciliation proceedings. Obviously, the use of the words 'may' in one case and 'shall' in other, as per the Court, is clearly indicative of such a position.

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267. *Id.*, at 165.
272. *Supra* note 265.
Under the Act, the conciliation proceedings shall be deemed to have concluded:

a) when a memorandum of settlement is signed by the parties to the dispute;\textsuperscript{275}

b) when a failure report sent by conciliation officer is received by the

Appropriate Government or when the failure report of the Board is

published under section 17 or;\textsuperscript{276}

c) when a reference is made to one of the adjudicatory bodies under section 10

of the Act.\textsuperscript{277}

When a settlement is arrived at, the conciliation proceedings shall be
deemed to have concluded on signing the Memorandum of Settlement by the
parties to the dispute. But, in a case, where the settlement resolves a part of the
dispute, what will be the position? Would the proceedings relating to the part of
the dispute that is settled come to an end and as regards the unsettled portion of
the dispute, would the conciliation proceedings remain pending? On a similar
issue, the Calcutta High Court has ruled in \textit{Indian Tobacco Co, Ltd., v. Govt. of
West Bengal}\textsuperscript{278} as follows:

\[T\]he conciliation proceeding [could not] be deemed to have been
concluded ... in respect of those matters in dispute which are not

\textsuperscript{275} . S.20 (2) (a).

\textsuperscript{276} . S.20 (2) (b).

\textsuperscript{277} . S.20 (2) (c).

\textsuperscript{278} . \textit{Indian Tobacco Co., Ltd., v. Govt of West Bengal}, supra note 115 at 89.
settled by the settlement … To hold that a settlement which leaves some of the matters in dispute at large will have the effect of concluding the conciliation proceeding in its entirety is contrary to good sense, for assuming that the conciliation proceeding is concluded by the settlement in respect of matters which are not settled by the settlement, the conciliation officer may and should hold conciliation proceeding de novo to resolve the dispute in respect of those matters. Such a situation will breed meaningless and unnecessary multiplicity of proceedings.279

Thus, in the opinion of the Court, the conciliation proceeding was pending in the eye of law even after the interim settlement was signed by the parties. It was pending when the application under section 33 (2) (b) was presented before the conciliation officer for his approval of the action taken against the concerned workman by the employer and it remained pending till the Memorandum of Settlement resolving the whole dispute including the subject matter of the above mentioned interim settlement was signed by the parties to the dispute.280

When a settlement is in operation, the workers are prohibited from resorting to strike in respect of any of the matters covered by the settlement.281 This prohibition also applies to an employer who intends to declare a lockout.282

279. Id., at 95.
280. Ibid.
281. S.23. (c).
282. Ibid.
Law prohibits workers employed in Public Utility Services from going on strike and employers from declaring lockout during the pendency of any conciliation proceedings before either conciliation officer or the Board and until seven days expire after the conclusion of such proceedings. But, in case of non-public utility services, the pendency of conciliation proceedings can act as a bar only when the Board is involved.

Generally speaking, Conciliation Officers do not and cannot discharge adjudicatory functions but the Act makes an exception in situations covered by Section 33.

K. CONCLUSIONS AND SUGGESTIONS

In the light of the foregoing, following are some of the necessary changes warranted to make the Conciliation Machinery effective. In this connection, the Government should first address itself to the question: who should be appointed as Conciliation Officers? What qualifications they should possess and what kind of training, etc., are desirable for them?

Persons with educational qualification equivalent to a Masters Degree in the area of Labour Laws/ Industrial Relations/ Social Work can be considered as qualified to be appointed as Conciliation Officers provided their courses are designed to enlighten them about the important aspects of Labour Laws and the

283 S.22 (1) (d), 2 (d).
284 S.23 (a).
Alternative Dispute Resolution Methods like Conciliation, Mediation, and Arbitration in labour matters. While pursuing their programmes, they must have acquired intimate knowledge about the functioning of the Conciliation and Arbitration machineries. By imposing such a requirement, the existing unwarranted distance between the academic and the practical field can also be minimised.

There should be a strict prohibition against the appointment of the enforcers of Labour Laws like, Labour Commissioners, Assistant Labour Commissioners, Labour Officers, etc., to act as Conciliation Officers as ordained in the I.L.O Convention.

After proper selection, the Conciliation Officers should be subjected to “adequate pre-job training and... periodic in-service training through Refresher courses ....” as been recommended by the National Commission On Labour. Region-wise, industry-wise Conferences, Seminars and Symposia should also be periodically organised to provide a platform for the Conciliation Officers and Experts in Labour laws / Labour Management Relations to put forth their views and suggestions and exchange their experiences for making the Conciliation Machinery more purposive and effective.

Law should provide for the creation of a separate ‘Labour Conciliation Network’ consisting of Conciliation Officers appointed after taking in to account their familiarity with the particular region as well as industry. In this context, we
can even keep the American system of Labour Conciliation and Arbitration as a role model while carving our own indigenous system by taking into account our social mores, cultural distinctions and, of course, the Indian industrial conditions. Through these, the drawbacks that have been experienced in the past by wrongly and ill-advisedly entrusting the Law enforcing authorities such as, Labour Commissioners, Deputy Labour Commissioners or Labour Officers with the task of Conciliation can also be eliminated.

Some of the powers of the Civil Courts, conferred upon the Conciliation Machinery under the Act need be withdrawn since the conciliation process emphasises upon art of persuasion and not coercion.

Whenever a dispute exists or is apprehended, whether in public utility services or non-public utility services, a statutory obligation imposed upon the Conciliation Officer to commence the conciliation proceedings would ensure pre-emption of strikes or termination of strikes already in existence. Therefore, it is suggested that a suitable amendment be introduced.

Whenever the parties, with the consent of the Conciliation Officer, seek extension of conciliation proceedings under the Act, the law should compel them to conclude a 'Settlement'. Once the extension is sought, the law should inhibit the Appropriate Government from exercising its referral power under section 10 (1) of the Act.
To wriggle out of the controversy generated in the cases discussed earlier, while interpreting the term ‘settlement’, it is advisable to consider the definition of ‘settlement’ suggested in this Chapter which *inter alia*, includes ‘an implied agreement by acquiescence or conduct, such as, acceptance of benefits accrued under the settlement in question’.

When a Failure Report is submitted to the Appropriate Government, sub-section (4) and (6) of section 12, along with clause (b) of sub-section (2) of section 20, should be relied upon, under the Act, to verify the actual date on which the conciliation proceedings have concluded. Because, if the parties want to have recourse to strike or lockout, they have to wait for seven more days from the date on which the Appropriate Government has received the Failure Report. If one goes by the wordings of the provisions mentioned above, it is rather difficult for the parties to know the exact date on which the Appropriate Government received the Failure Report and when the conciliation process has concluded. The interpretative organ too, as discussed earlier, has experienced difficulties while deciding Cases relating to these provisions. It is, therefore, submitted that the inherent ambiguities causing interpretational difficulties be eliminated.

The present ban on strikes during pendency of conciliation proceedings, even when a minority union alone is a participant, cannot ensure industrial peace since a majority union cannot tolerate the ban when a minority union is the cause for starting the conciliation process. Therefore, it is suggested that only when the
majority union, recognised by the employer is involved in the conciliation process, the law should prohibit all the workmen employed in the establishment from taking recourse to strike.

The judiciary, in its wisdom, has ruled in several Cases that the Conciliation Officer never becomes *functus officio* even after the submission of a Failure Report. Law, as it stands, in the light of judicial interpretation, is that the Conciliation Officer can send as many Failure Reports reflecting his successive failures to promote a fair and an amicable settlement. It is time the Legislature should intervene to clarify.

The Central Act should provide immediately for recognition of the most representative trade union in the industrial establishment so that it would be easier for the employer to negotiate and promote a settlement with the recognised union under the law. The representative character, law should prescribe, be determined through a Secret Ballot.

A serious thought should be given, without any further delay, for constituting an independent Conciliation and Arbitration Service Agency as has been recommended by the *National Commission on Labour*. Only an independent conciliation machinery can inspire confidence in the parties.

Workers’ Education Programmes should lay greater emphasis on Alternative Dispute Resolution mechanisms like Conciliation, Mediation,
Arbitration since the adversarial process is costly, time-consuming and, more importantly, generates animosity between the disputants.

Conciliation, especially, is desirable since the Indian Trade Unions are politically oriented and, as a consequence, there is multiplicity of Trade unions. Indian Trade Unions are 'poor' and do not have the financial capacity, because of low membership, to engage in the long-drawn adjudicatory process.

It is time to weed out “outsider politicians” from the Executives of Trade Unions, at least, in organised sectors. Probably, after initial suffering, the rank and file would realise that a known devil is better than an unknown devil. The known devil it may be noted, can be made accountable for its actions.

In the Indian context, it is submitted, that if the appointment of Conciliation Officers is going to be on “caste basis” without any regard to the competence of the person being appointed, then, even God may not help us to save the situation. If the conciliation machinery has to be efficient, then, the persons who constitute the system should be efficient. Otherwise, the system, for sure, would fail to inspire confidence. Here, the Non-Governmental Organisations can play a vital and an extremely useful role. They should be able to impress the employers and Trade Unions with the slogan: ‘Look to our stuff. Avail of our services. Be Prosperous, Happy and Contented’.

It is time the Government bestows its attention upon the loopholes that have surfaced as a consequence of judicial interpretations in respect of some of the
provisions bearing upon the conciliation process so that meaningful and effective amendments can be introduced. Such amendments would enable the Conciliation Machinery to play a purposive role to promote longer lasting peace on the industrial front. The impression that in the realm of Industrial Disputes Act the Legislature has relinquished its law-making power in favour of the Courts should be eliminated. In the light of the New Economic Policy being pursued by the Government paving the way for Liberalisation, Privatisation and Globalisation, the Government should get prepared to cast a concerned and considered look, at the earliest, at some of the ticklish provisions in the Industrial Disputes Act, the mother of all the labour enactments so that neither the employers nor the workmen suffer on account of some of the incongruous provisions referred to and discussed in this segment of the Dissertation.