CHAPTER IX

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Conflicts, as the *cognoscenti* may concede, are endemic in industrial establishments. They cannot be wished away. The partners in production, namely, the employers and workmen should realise that continuous confrontation would not augur well for them. When the industry cannot remain competitive in this era of Liberalisation, Privatisation and Globalisation on account of frequent strikes or lockouts, the employers would be compelled to pull down their shutters, sooner rather than later. Then, there would be no workers and no unions.

Whatever earnest endeavours Government may make, it cannot ensure eternal peace on the industrial front. Therefore, it has to contemplate measure to pre-empt industrial disputes, to resolve them as expeditiously as possible whenever they do arise. The *Industrial Disputes Act*, 1947 reflects the foregoing resolve of the Government. The various machineries contemplated under the Act, their powers, duties, *etc* have been critically evaluated in this Dissertation. Now, would follow the Conclusions drawn form the study and, also, Suggestions to make the machineries more effective.
RECOGNITION OF TRADE UNIONS

The Governmental measures should aim at promoting the growth of Independent Trade unions. Such Independent unions should enjoy the Statutory Right to Information for the purposes of Collective Bargaining.

Through appropriate legislative measures, the industrial employers should be directed to accord Recognition to the most representative trade union functioning/operating in its unit. The representative character has to be determined through a fair Secret Ballot.

Only such Recognised unions should be entitled to the status of Independent Unions.

COURT OF INQUIRY

Legislative endeavours should ensure that the loopholes in the extant law be eliminated. Therefore, it is difficult to appreciate the legislature’s move in the 1988 Trade Unions And The Industrial Disputes (Amendment) Bill to dispense with the machinery of Court of Inquiry. It is submitted that when disputes recur, at frequent intervals, in an industry, the causes for internecine disputes need to be investigated and remedial and curative measures have to be contemplated to keep the wheels of industry moving. In this context, a Court of Inquiry, a fact-finding body can play a vital role since it can excavate the much needed material facts which would enable
the appropriate Government to initiate necessary measures to pre-empt disputes.

It may be true that when the dispute is referred for adjudication or for that matter any other machinery provided under the Act, the disputants do come out with the facts leading to the dispute. But the chances of disputants adopting tactical means to manipulate the facts with an intent to tilt the balance in their favour cannot be totally ruled out. They may even suppress material facts that go against their interests. To prevent, *inter alia*, deliberate concealment of material facts and manipulation, it is advisable to rely on the Court of Inquiry- a Treasure Bank of facts.

**WORKS COMMITTEES**

The legislature, by providing for the constitution of “Works Committees”, has successfully given effect to the concept of “Workers’ Participation in the Management”- one of the Directive Principles of State Policy enshrined in Part IV of our Constitution. Participative management, preferably, in the form of “Works Committee” is more suited to the Indian industrial set-up. The constitution of these “Committees” ought to be tried on “three-tier basis: Shop Floor level, Plant level and Board level”. After verifying, initially, the success rates of workers’ participation at Shop Floor and Plant levels, it can be tried at Board level, too.
Employers are statutorily obligated to constitute “Works Committees” only if they are employing 100 or more or have been employed the same number of persons on any day in the preceding twelve months. The technological innovations in all probability would encourage the employer to install labour-saving machineries. He may then, get out of the clutches of the statutory compulsion. It is, therefore, suggested that for the words under section 3 of the Act – “[i]n the case of any industrial establishment in which one hundred or more workmen are employed or have been employed on any day in the preceding twelve months...” the following be substituted;

“Irrespective of the number of workmen employed in any industrial establishment”.

The procedure for electing the representatives on the “Works Committees” prescribed under the Rules promulgated under the Act, it is submitted, are confusing and cumbersome. Therefore, a recognised union functioning in the industry should be obligated to send its representatives, chosen from amongst its members or office-bearers to the “Works Committees” so that the perceived or real rivalry between the “Works Committees” and the trade unions can be eliminated. Further, under the Act, ‘dereliction of duty’ to send its representatives on “Works Committees” by the recognised trade union should be considered as an
important ground for “de-recognition” and “de-registration” of the said union. More importantly, if the recognised union sends workers’ representatives to serve on “Works Committees”, any expenses incurred for seeking expert opinion in the course of Collective Bargaining can be taken care of by the recognised union since it would be in a better financial position when compared to other rival unions with poor membership (and therefore with poor finances). The “Works Committees” then, would, probably, be able to play a positive role in promoting industrial peace.

To ensure that the workers’ representatives on “Works Committees” are not bought over by the employer and silenced, it is submitted that the trade union entitled to send its representatives should be empowered, under the Act, to ‘Recall’ such members if the situation so warrants. Where the recognised union exhibits its inaction in exercising this power of Recall even in compelling circumstances, it should be presumed that the concerned trade union concurs with the decisions taken by the “Works Committees”. A step in this direction would not only help in attaching finality to the decisions of “Works Committees” but also pave way for the harmonious industrial relations.

There is an urgent need for an Amendment spelling out the role assigned to the “Works Committees” to avert industrial strife and to
promote harmony. More importantly, the Amendment must specify the matters or issues a “Works Committee” can take cognisance of. The above suggestions, if taken seriously and given effect to without any further delay, would promote a feeling in the minds of the trade union leaders that “Works Committees” are not their rivals but are only the hand-maidens of the recognised trade unions.

CONCILIATION

In respect of the “Conciliation Machinery” the Government should first address itself to the question: who should be appointed as Conciliation Officers? What qualifications should they possess and what kind of training, etc., are necessary 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 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 be minimised.

After proper selection, the Conciliation Officers should be subjected to "adequate pre-job training and periodic in-service training through Refresher courses ..." as has 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 into 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 should be withdrawn since the conciliation process emphasises upon the art of persuasion and not coercion.

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, in ordinary circumstances, from exercising its referral power under section 10 (1) of the Act.

To wriggle out of the controversy generated by judicial decisions bearing upon the term ‘settlement’, it is suggested that the definition of ‘settlement’ should also include “an implied agreement by acquiescence or conduct, such as, acceptance of benefits accrued under the settlement in question”.

The present ban on strikes during pendency of conciliation proceedings before a Board of Conciliation 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.

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 at our personnel. Avail of our services. Be Prosperous, Happy and Contented'.

VOLUNTARY ARBITRATION

The principle of 'voluntarism' should induce the disputants to opt for Voluntary Arbitration and to select person(s) of their choice to arbitrate upon their dispute.

The N.A.P.B., which has been entrusted with the task of drawing the Panel of Arbitrators to enable the parties to select the right person(s) should also list out the matters which the 10A Arbitrator can arbitrate upon.

The existing lacunae, relating to the ambiguous and incongruous Statutory Provisions and the Rules bearing upon the 'Voluntary Arbitration', discussed in the Dissertation, should be weeded out, at the earliest. Where the Statute mandates that the 'Arbitration Agreement' should be in Form-C and should be duly signed by persons authorised and that a copy of the same should be sent to the Conciliation Officer and the Appropriate Government, it would be prudent to adhere to these statutory requirements, despite contradictory judicial opinions, referred to, earlier. Because, it is a legislative choice made, probably, with an intention to safeguard the interests of the parties and not, for sure, to devitalise the importance of the vital machinery. It is, thus, easy to discern that in the
absence of a written and a duly signed Arbitration Agreement, the possibility of invoking the Review Jurisdiction of High Courts by the disgruntled party affected by the arbitrator's award, can not be ruled out. Hence, bearing in mind the cost and delay aspects, it is advisable to have a clear-cut Arbitration Agreement which can substantially eliminate or at least reduce future complications. Likewise, the statutory purpose would be served better if the Appropriate Government publishes the Arbitration Agreement within the statutorily stipulated period to eliminate unnecessary and unwarranted challenges. The basic objective underlying publication is to make the contents of Arbitration Agreement known to all those who are vitally interested in and concerned with the dispute though they may not be, initially, parties to the Arbitration Agreement. Hence, contents of the Arbitration Agreement may infuse the concerned to get involved in the arbitration process as interveners and this would probably make the Arbitration Award wholesome and effective.

Another flaw relating to section 10A is about the wordings used in sub-section (3A) that deal with the impleading of parties and the related Rule 8A which are in conflict with each other. While section 10A(3A) uses the word "may", Rule 8A uses the word "shall". The use of "may" under the substantive provision indicates that the Appropriate Government may or may not issue the 10A(3A) notification despite the fact that the parties
"represent the majority...." But, if one goes by the word "shall" used in Rule 8A, then the implication would be that once the fact that the majority of each party in a dispute is established, the Appropriate Government ought to issue (3A) notification. This statutory compulsion should be accepted since the Appropriate Government would not be able to exercise its power to forbid the continuance of a strike or lock-out under section 10A(4A) unless 10A(3A) notification has been issued. The Legislature, therefore, has to remove the ambiguity through a suitable amendment to the extant law.

In order to reduce the cost etc., of Arbitration, the 10A Arbitrator should be provided with information relating to collective bargaining process that has taken place before his services are enlisted to arbitrate upon the dispute referred. Where the Conciliation Officer or the Board has registered failure and the dispute is referred to a 10A Arbitrator, he should be provided with the Failure Report sent by the Conciliation Officer or the Board. These Reports, probably, would enable the 10A Arbitrator to perform his job better. Further, without there being compelling reasons, the Arbitrator must not grant adjournments which strikes at the very root of the Arbitration process, that is, providing speedy remedy.
Taking cue from the relevant provisions of the *Arbitration And Conciliation Act*, 1996, cited earlier, an Amendment should specifically provide that the 10A Arbitrator should give reasons for his award unless there is an agreement between the disputants to the contrary or the award is an arbitral award on agreed terms or a consent award. Incidentally, it should be noted that the 1996 Act, referred to above, has also empowered the Arbitral Tribunal to use conciliation, mediation or other procedures with the consent of the parties at any time during the arbitral proceedings to encourage settlement. Further, realizing the importance of bipartite settlements in the realm of industrial relations, the 1996 Act has given a free hand to the Arbitral Tribunal to terminate its proceedings and to record the settlement (arrived at by the parties during the pendency of Arbitral proceedings) in the form of an Arbitral Award on agreed terms or a consent award, if so requested by the disputants. There is need for the incorporation of similar provisions under the *Industrial Disputes Act* to ensure a better performance by the ‘Voluntary Arbitration Machinery’.

**ADJUDICAION**

The Critics of Adjudication have argued that the adjudicatory process is “dilatory”, “expensive”, has come in the way of voluntary settlement of disputes through mutual negotiations and affected the growth of the
Collective Bargaining System, has not succeeded in achieving industrial peace, and what not. There may be some justification for some of the critical comments, but the wholesale onslaught on the adjudicatory mechanism provided under the Act, it is submitted, is not acceptable. Even the bitter Critics of the Adjudicatory mechanism cannot advance the argument that adjudication after reference is the only means for maintaining or re-establishing industrial peace. The Act provides for voluntary settlement of industrial disputes, voluntary arbitration and for reference at the instance of parties enjoying the majority character. Only when these means are not availed of, the Government, in a developing economy in order to keep the wheels of production moving and with a view to avoid or minimise inconvenience to the public who are dependent upon the products or the services of the industries, may be constrained to make a reference. Further, in a planned economy, no Government can be indifferent to severely strained Labour-Management Relations existing in the industries which may pave the way for internecine disputes. It has to, at times, step in to ensure the industrial strife emanating in an establishment does not affect the economy. The Government has a vital interest in promoting industrial peace and avoiding industrial strife so that the planned targets do not become elusive or remain mirages.
The role played by industrial adjudicators since Independence in safeguarding and promoting the interests of the workers cannot be ignored. Before the provisions relating to retrenchment, layoff compensation were inserted in the Act, the Tribunals had been awarding such compensation in appropriate cases. The legislative objectives underlying the Amendments aimed at providing for Social Security benefits like retrenchment, lay-off compensation do acknowledge and applaud the Award of Industrial Tribunals which had ordered the employers to make these Social Security payments. Since there was no uniformity as regards the quantum of Social Security benefits, the Legislature stepped in to ensure the required uniformity.

Despite the plea for retention of the adjudicatory machinery under the Act, the poor quality of the adjudicatory machinery that is made available by the appropriate government, at times, or, the procedural format for the adjudicatory process the Act provides for which delays justice, cannot be winked at or acquiesced in.

It is submitted that it is not enough if the Government provides for adjudication of industrial disputes with a view to resolve industrial conflicts. Such a machinery must inspire confidence in the disputants and should adopt a procedure which ensures expeditious resolution. As pointed out earlier, a District Judge or a High Court Judge can be appointed as an
Experience of the functioning of the adjudicatory machinery discloses that the persons appointed as Presiding Officers of the adjudicatory bodies are retired District Judges. These persons, throughout their careers, would have been engaged in deciding issues arising in Civil Litigation or determining the guilt or innocence of the accused in criminal proceedings. Further, over the years, while in service, they would have rigidly adhered to the provisions of the *Civil Procedure Code, Criminal Procedure Code* and the *Evidence Act*. After retirement, when appointed to adjudicate over industrial disputes, they cannot quickly avail of the procedural laxity which the Act permits. Their lack or inadequate knowledge of the provisions in the Act and judicial interpretations placed upon those provisions would make their task daunting. It cannot be gainsaid that an industrial adjudicator can infuse confidence only when his expertise in the subject-matter is recognised by the disputants. Further, many a time, the government has failed to make appointments promptly for the vacancies caused by the exit of the Presiding Officers either on account of their reaching the age of sixty-five years or otherwise. This may lead to heavy work-load in so far as the other functioning adjudicatory bodies are concerned. This factor also would not promote adequate confidence in the adjudicatory authority.
The procedure contemplated in the Rules for the Adjudication of industrial disputes leaves much to be desired. Under the Act, after the appropriate Government makes a reference, the aggrieved workmen or their trade union has to file a statement of claim and the Tribunal has to fix a date. Then, a date is fixed for filing the written statement by the management. Inevitably, a few months would elapse before the management files the Written Statement. This would be followed by a reply or a rejoinder by the workmen or his trade union. Then, dates would be fixed for filing documents, framing issues, recording of evidence, etc. In the interregnum, the Tribunal might be called upon to decide challenges by the employer relating to its jurisdiction to adjudicate. For example, the preliminary questions raised by the employer to the effect that the Industrial Tribunal cannot adjudicate over the main issue in the reference because his activity is not ‘industry’ under section 2(j), or the dispute raised is not an ‘industrial dispute’ under section 2(k) of the Act, etc or either the management or trade union may raise the jurisdictional question that the Government that has made the reference is not the ‘appropriate Government’ under section 2 (a) of the Act.

Surely, the procedure as laid down in the Rules can be improved upon and the element of expedition can be introduced. Of course, the cooperation on the part of the disputants can go a long way in eliminating the
stigma, as G.Ramanujam has averred, that the adjudicatory process stands condemned as a time-consuming futile exercise at litigation.

The Industrial Relations Commissions ["IRCs"] envisaged under the 1988 Amendments do provide for a much better mechanism for the resolution of industrial conflicts. The 1988 Amendment Bill, which lapsed owing to the collapse of the Government, had contemplated the appointment of persons with expertise in Labour Management Relations, Economics, etc. The Bill had provided, that such IRCs should consist of a President and an equal number of Judicial and Technical Members. Thus, as in the case of the presently operating Income Tax Tribunals which consist of members well versed in Income Tax Laws ("Accountant Members") and Judicial Members, the 1988 Amendment Bill had incorporated provisions for the appointment of persons well acquainted with Judicial procedures and persons possessing expertise in Labour Management Relations etc. The Second National Commission on Labour which has been entrusted with the task of making Recommendations for improving the Labour Laws, Industrial Relations Machineries, etc., should take note of this important feature of the lapsed 1988 Amendment Bill and incorporate the same in its Proposals and Recommendations.

The 1988 Amendment Bill had also provided for the establishment of "Bargaining Councils" and cast a duty on the employer to "establish a
bargaining council ... consisting of representatives of all the trade unions having membership among the workmen employed in the establishment. Each trade union on the "Bargaining Council" was to be called a "Bargaining Agent". If more than one trade union were to be functioning in the establishment, the representation of unions on the Bargaining Council, would have to be in proportion to the number of their members in that establishment. The Bill also provided that the trade union with the highest membership *i.e.*, not less than forty percent of the total membership among the workmen, would be the "Principal Bargaining Agent". If none of the unions enjoyed forty percent of the total membership, then, a union with the highest membership in the establishment would have the right to nominate one of its representatives as the Chairman of the "Bargaining Council". If only one trade union were to be functioning, such a union would be the "Bargaining Council" for that establishment and it would also act as the "Sole Bargaining Agent". Even in the absence of any trade union in the establishment, the employer was required to establish a "Bargaining Council".

If the Government is serious in promoting Collective Bargaining at least in well-organised sectors like Insurance, Banking, to mention a few, then, the provisions relating to the setting up of Bargaining Councils, referred to above, have to be reintroduced.
Further, the Government should be cautious while making references. Indiscriminate exercise of discretionary referral power would hamper the growth of strong trade unions which would hinder the development of the Collective Bargaining Process.

It is true that section 10 (1) by using "may" and "at any time" has paved way for discriminatory referrals. It is also acknowledged judicially that the Government that has refused to make a reference in the first instance is not barred from referring the same dispute to Adjudication, later, even after several years. It is suggested that the Act be amended so that a period of limitation be prescribed for making references.

It is time to find out what factors have prompted the Government over the years to make or decline to make reference. It appears that the discretionary power conferred upon the appropriate government several decades ago has been retained in its pristine form. If the factors referred to, above, acquire normative character, then, as Prof. K.C.Davis has rightly observed, the discretionary power would get structured better.

It is time the Government bestows its attention upon the loopholes that have surfaced as a consequence of judicial interpretations or otherwise in respect of some of the provisions bearing upon various dispute settling machineries so that meaningful and effective amendments can be introduced at the earliest. This would, undoubtedly, enable the machineries 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 Magna Carta of Labour enactments. Because, unless the defects pointed out in the Dissertation are taken care of and some of the incongruous and unintelligible provisions are made intelligible, Social Justice—the signature tune of the Indian Constitution—would, in so far as industrial workers are concerned, continue to remain illusive.